FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case number	:	BIR/47UG/HIN/2020/0003P
Property	:	Flat 19, Champney, St. Cecilia Close, Kidderminster DY10 1LW
Applicant	:	St. Cecilia's Limited
Respondent	:	Wyre Forest District Council
Type of Application	:	An Appeal against an Improvement Notice under paragraph 10(1) of Schedule 1 to the Housing Act 2004
Tribunal Members	:	Judge David R Salter (Chairman) Mr D Lavender MCIEH
Date of Decision	:	20 May 2020

DECISION

Preliminary statement

1 This has been a remote hearing on the papers which has been consented to by the parties. It was conducted by the members of the Tribunal by telephone. The form of remote hearing was P: paper determination which is not provisional. A face to face hearing was not held because it was not practicable and neither of the parties requested the same. The documents to which the Tribunal was referred in making its determination were submitted by way of an application to the Tribunal and in furtherance of Directions issued by the Tribunal. The Tribunal's decision and related orders are described at the end of the following reasons.

REASONS

Introduction

2 The Applicant owns the Property which is occupied by a tenant under an assured shorthold tenancy. An Improvement Notice dated 20 December 2019 was served by the Respondent Local Authority by first class post on the Applicant. The Improvement Notice detailed a Category 2 Hazard (Fire) and set out the remedial action to be taken and the time within which it should be undertaken. The Applicant submitted an application by way of appeal to the Tribunal dated 9 January 2020 which was received by the Tribunal on 10 January 2020.

3 Directions were issued by the Regional Judge on 15 January 2020. In those Directions, it was indicated that a statement made by Susan Griffiths (a Director of the Applicant), which was annexed to the Application, should be treated as the Applicant's Statement of Case. In addition, such Directions made provision for the submission of a Statement of Case by the Respondent Local Authority and for a reply thereto by the Applicant. The Directions also recited that, with the agreement of the parties, the Tribunal's determination would be a paper determination. Further, this determination would be preceded by an inspection of the Property by the Tribunal.

4 In furtherance of these Directions, the Respondent Local Authority submitted a Statement of Case dated 4 February 2020 and related documents (received by the Tribunal on 6 February 2020). Subsequently and by way of response, the Applicant filed a further statement by Susan Griffiths dated 18 February 2020 and related documents which were received by the Tribunal on 19 February 2020.

5 On 18 March 2020, a Procedural Judge reviewed this case and determined 'in accordance with the overriding objective and considering PHE advice' that the Tribunal's planned inspection of the Property on 3 April 2020 would no longer take place. In light of this determination, the Procedural Judge also directed that, first, it was open to the parties, within a specified period of time, to submit to the Tribunal photographs of the condition or other relevant aspects of the Property, secondly, the Tribunal may, if it considered it necessary to do so, conduct a "drive by" inspection of the Property, and, thirdly, that any party considering an inspection to be essential should notify the Tribunal 'within the next 7 days setting out the reasons'. The Procedural Judge also reiterated that the Tribunal's determination would be a paper determination.

6 No such photographic evidence was received the Tribunal, the Tribunal did not conduct a "drive by" inspection, and neither party notified the Tribunal that an inspection was considered to be essential.

7 Following deliberations on 3 April 2020, the Tribunal issued further Directions (Directions No. 3) on 7 April 2020 that invited the parties to submit written representations to the Tribunal on or before 27 April 2020 relating to the question of whether the Improvement Notice served by the Respondent Local Authority satisfies the requirements relating to the service of improvement notices in the Housing Act 2004, in particular section 13(3).

8 The Tribunal received written representations on this question from each of the parties which were dated 22 April 2020 (the Applicant) and 24 April 2020 (the Respondent Local Authority) respectively.

Background to service of the Improvement Notice

9 In its Statement of Case, the Respondent Local Authority set out the background relating to its decision to serve the Improvement Notice and, where appropriate, adduced supporting documents and photographs in evidence.

10 The essence of the exposition of that background follows.

11 In 2017, the Respondent Local Authority together with the HWFRS started to review fire safety in high rise flats within its area. This review included Champney and another property owned by the Applicant. From July of that year, representatives of the Respondent Local Authority and of the HWFRS made several site visits to Champney. Following these site visits, the Respondent Local Authority wrote on 17 September 2018 to the Applicant's managing agent, S.M Properties, drawing attention to some of the fire safety related matters it would be reviewing at Champney and the other property.

12 At a meeting held on 28 September 2018, representatives of the Respondent Local Authority and of the HWFRS agreed on various fire safety works that were essential in respect of the front doors and interiors of flats at Champney and for which the Applicant was responsible.

13 Thereafter and commencing in October 2018, all flats where 'front doors were suspect from the outside' were to be visited after which Katy Lee, the Respondent Local Authority's Housing and Enforcement Officer, was deputed to visit all flats in the course of 2019 in order to ascertain whether fire safety requirements had been complied with.

14 On 11 January 2019, representatives of the Respondent Local Authority and of the Applicant met, discussed fire safety works and visited two of the Applicant's flats in Champney. Thereafter and following further consultation with the HWFRS, the Respondent Local Authority wrote to the Applicant (c/o S.M Properties) on 18 January 2019 indicating the fire safety works that should be undertaken in all flats – works which included those works that were specified, subsequently, in the Improvement Notice. The deadline for the completion of those works was April 2019.

15 On 21 May 2019, Katy Lee inspected the Property. She found that 'there was no overhead door closer, no fire action sign (on or adjacent to the front door) and that there were pipes in the kitchen leading to the vent and waste shafts which were unsealed and gaps around a water pipe in the airing cupboard of the bathroom and so potentially breached the compartmentation between flats'. With regard to the door, Katy Lee noted that there was 'an existing hidden in door perko type closer', but she regarded such door closers to be unreliable for ensuring that a fire door closes by itself from any open position as was posited by the guidance offered by the Door and Hardware Federation.

On inspection, fire safety deficiencies were also found to exist in the other property for which the Applicant was responsible. Accordingly, on 20 June 2019, Katy Lee wrote to

the Applicant reiterating the need for the required fire safety works to be completed in their properties. A further deadline of 1 September 2019 was set for completion of these works. Further discussions between the Respondent Local Authority, HWFRS and the Applicant about the works took place on 16 July 2019.

16 On 25 November 2019, the Respondent Local Authority received an e-mail from S.M Properties in which it was stated that perusal of the work schedule for the Applicant suggested that all fire precaution work was complete.

17 Subsequently, on 11 December 2019, Richard Osborne, the Respondent Local Authority's Principal Environmental Health Officer (Housing), inspected the Property. He discovered and reported upon the following:

'the front door did not have an overhead closer fitted and the existing perko closer did not close the door by itself when tested from various open positions. There was no fire action sign within the flat advising the tenant what to do in the event of a fire. There were gaps around the mains water pipe going through the ceiling in the bathroom airing cupboard. In the kitchen there waste pipes going through the communal vent shaft that were not sealed round. These gaps from the kitchen into the communal shaft could, in the event of a fire, result in smoke coming from the flat into the communal vent shaft and rise through the vent shaft into other flats where gaps exist via the chimney effect…'

These findings corresponded with those identified by Katy Lee during her inspection of the Property on 21 May 2019.

18 In these circumstances, the Respondent Local Authority concluded that, as the Applicant had been aware of the issues relating to the fire hazard for over twelve months but had failed to fully comply with the requests to carry out necessary works, the service of an Improvement Notice was the appropriate course of action.

19 Accordingly, as intimated above in paragraph 2, an Improvement Notice dated 20 December 2019 was served by first class post on the Applicant.

The Improvement Notice

20 A copy of the Improvement Notice and a Statement of Reasons for the chosen course of action were included in the Respondent Local Authority's Statement of Case.

21 The substantive provisions in the Improvement Notice are as follows:

'**The deficiencies giving rise to the hazard:-**

1 Lack of operationally effective door closer on the front door – in the event of evacuation front door would not be pulled closed allowing fire and smoke spread in to and out of the flat.

2 Gaps to ceiling around water pipes in airing cupboard in the bathroom – no or limited fire stop to cavities, allowing fire and associated smoke to spread.

3 Gaps around pipes entering the vent shaft in kitchen – no or limited fire stop to cavities, allowing fire and associated smoke to spread.

4 Lack of fire action signage.

Nature of remedial action required to be taken:-

1 Fit an overhead door closer to the front door so that the door is pulled closed once opened.

2 Seal all holes and voids that link to neighbouring flats in the airing cupboard with fire rated expanding foam or filler, this includes around the water pipe.

3 Seal all holes and voids in the ventilation shaft with fired rated expanding foam or filler, this includes around the waste and water pipes.

4 Provide a 'Fire Action' sign detailing action to be taken in the event of a fire on or adjacent to the inside of the front door.'

22 The Improvement Notice required the Applicant to begin the remedial action on 17 January 2020 and to complete all the works by 24 January 2020.

23 The Improvement Notice was accompanied by a demand by the Respondent Local Authority, also dated 20 December 2019, made in exercise of its power under section 49 of the Act ('the section 49 demand') for payment by the Applicant of the sum of £311.69 in respect of expenses incurred by the Respondent Local Authority in serving the Improvement Notice.

Relevant Law

24 Part I of the Housing Act 2004 ('the Act') introduced a new scheme for assessing the condition of residential premises which operates by reference to the existence of Category 1 and Category 2 Hazards. Section 2 of the Act defines Category 1 and 2 Hazards and provides for the making of Regulations for calculating the seriousness of such hazards taking into account 'both the likelihood of the harm occurring and the severity of the harm if it were to occur'. The relevant Regulations are the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) ('the HHSRS') which came into force on 6 April 2006.

25 Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review. Section 4 imposes a duty on an authority to inspect properties in specified circumstances. If on such an inspection, the authority considers that a Category 1 Hazard exists, section 5 imposes a *duty* to take the appropriate enforcement action. Where an identified Hazard is rated as Category 2, section 7 provides that the authority has *discretion* to take action. In either instance, the enforcement action may include the service of an Improvement Notice (see, sections 11 and 12) that requires the party on whom it is served to take remedial action in respect of the hazard.

26 Section 13 of the Act sets out the statutory provisions regarding the contents of an Improvement Notice whether it is served under section 11 (Category 1 Hazards) or under section 12 (Category 2 Hazards). More specifically, section 13 provides as follows:

"**13 Contents of improvement notices**

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates –

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,
(c) the deficiency giving rise to the hazard,
(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,
(e) the date when the remedial action is to be started (see subsection (3)), and
(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

(4) The notice must contain information about –

(a) the right of appeal against the decision under Part 3 of Schedule 1, and
(b) the period within which an appeal may be made.

(5) In this Part of the Act, "specified premises", in relation to an improvement notice, means premises specified in the notice…as premises in relation to which remedial action is to be taken in respect of the hazard."

27 Section 8 of the Act requires the authority to prepare a Statement of Reasons which explains why the authority decided to take the 'relevant action', in this instance an Improvement Notice, rather than any of the other kinds of enforcement action that were available to them.

28 As intimated in section 13(4) of the Act (see above, paragraph 26), Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices to the First-tier Tribunal. Paragraph 15 states the appeal is to be by way of a rehearing. However, the Tribunal may determine the appeal by having regard to matters of which the authority was unaware, and in making its determination the Tribunal may by order 'confirm, quash or vary the Improvement Notice'.

29 More generally, section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about the exercise of their functions under Chapter 2 of Part 1 of the Act relating to Improvement Notices. Section 9(2) provides that an authority must have regard to any such guidance.

30 In 2006, the then Office of the Deputy Prime Minister issued guidance under section 9 relating to HHSRS Operating Guidance (reference 05HMD0385/A) and HHSRS Enforcement Guidance (reference 05HMD0385/B), as amended.

Submissions

The Applicant

31 The Applicant informed the Tribunal that it acquired the freehold of Champney in December 1995, and that it took an assignment of the lease pertaining to the Property in July 2008. It added that Champney is a tower block of flats, which was, initially, owned and controlled by the Local Housing Authority, but later acquired and refurbished in the early 1990s by the Applicant's predecessor in title.

32 The Applicant also stated that since it acquired Champney it has taken fire safety 'very seriously' and following the coming into force of the Regulatory Reform (Fire Safety) Order 2005 it has had regular meetings with the Herefordshire and Worcestershire Fire

and Rescue Service ('HWFRS'). In addition, it indicated it had undertaken works to improve the fire safety of Champney that included the following 'completed works':

'upgrades to landing doors, adding intumescent heat seals, cold smoke seals and overhead door closers. Any gaps in any of the landing areas which may have allowed smoke to spread were sealed with fire resisting foams. Extensive signage (including fire exit signs and fire evacuation procedures) was introduced…on every floor level, to ensure that people are aware of how to safely escape should there be a fire. All smoke alarms have been upgraded and are hardwired.'

33 Further, the Applicant averred that the Respondent Local Authority did not invite it to attend either a meeting relating to fire safety held on 28 September 2018 or to inspections of the Property, which the Respondent Local Authority carried out on 21 May 2019 and in December 2019 from which emanated the identification of the fire hazard and related remedial works specified, subsequently, in the Improvement Notice. The Applicant indicated that if it had been present at the latter inspection when the Respondent Local Authority framed its 'final concerns' about the Property the Applicant could have addressed those concerns, which it considered to be low-cost minor issues, 'there and then'. In these circumstances and taking into account 'the extensive work that had been to all flats in our ownership', the Applicant regarded the service of an Improvement Notice for such 'small remaining issues was blown out of proportion'.

34 As to the service of the Improvement Notice, the Applicant pointed out that whilst it was dated 20 December 2019 it was served during the Christmas break. Consequently, the Applicant did not receive the Improvement Notice until 7 January 2020 leaving it with very little time to respond (see also in paragraph 37 below, the Applicant's written representations relating to the question of whether the Improvement Notice satisfied the statutory service requirements in section 13 of the Act).

35 The Applicant commented upon each of the deficiencies identified in the Improvement Notice as giving rise to the Category 2 Hazard (Fire) and the specified remedial action to be taken in each instance as follows:

Door closer

The Applicant stated that the front door of the Property (together with an integral door closer) was provided by the Respondent Local Authority in 2011 as part of a fire safety scheme when it was known at that time that such perko type closers were unreliable and did not meet the guidance on self-closing devices given by the Door and Hardware Federation in its *Code of Practice: Hardware for Fire and Escape Doors* (paragraph 3.3.7.4: Concealed Jam Closers)) that was published in 2006. It adduced copies of the documents relating to the fire safety scheme and of the pertinent paragraph from the Code of Practice in evidence.

However, notwithstanding the above, the Applicant submitted that the door closer at the Property was working effectively in that it 'pulls the door closed once opened'. The tenant had confirmed to the Applicant on 7 January 2020 that it was 'working perfectly', and an inspection undertaken on the Applicant's behalf on 8 January 2020 had found no fault with the door closer. The Applicant also believed that the door closer had been tested by the HWFRS which was 'happy with its performance'.

The Applicant informed the Tribunal that, nevertheless, it fitted an additional overhead door closer on 9 January 2020.

Fire stop to cavities (water pipes in airing cupboard/vent shaft in kitchen)

The Applicant stated that all kitchen vents were sealed during the refurbishment in the early 1990s (see above, paragraph 31). Further, the Applicant opined that evidence that the ventilation shafts in Champney are 'completely sealed' was provided by the occurrence of a fire in one of the flats on 24 October 2000. Whilst substantial smoke damage from the fire occurred within that flat, there was no means of escape for the smoke to any other part of Champney with the consequence that 'there was no smoke or fire damage whatsoever sustained to any other part of the building as a result of the fire'.

The Applicant also informed the Tribunal that since the fire at Grenfell Tower it has undertaken a number of smoke tests in various flats in Champney in conjunction with the HWFRS that were intended to test the 'integrity of the compartmentation of the individual flats'. The Applicant averred that the results of these tests proved that there is no means of escape for smoke from individual flats.

The Applicant added that an inspection of the bathroom and kitchen of the Property had been undertaken on its behalf on 8 January 2020, the result of which was that the 'integrity of the compartmentation' was found to be faultless. Notwithstanding this finding, the Applicant informed the Tribunal that it had applied additional expanding foam and filler in the airing cupboard and around the water pipes.

Fire signage

The Applicant provided the Tribunal with several copies of its fire action notice, some of which it indicated were illustrative of its location *in situ*. It informed the Tribunal that there are a minimum of twelve copies of this notice displayed within Champney with at least one copy on each floor landing and a copy on the noticeboard adjacent to the main entrance door. The Applicant added that the copies of the fire action notice, which are laminated, are displayed in prominent places and, consequently, they are easily visible to all occupiers of and visitors to Champney.

Further, the Applicant indicated that those taking up a tenancy of a flat in Champney are routinely provided with a laminated copy of the fire action notice which such individuals are instructed to 'read carefully and display within the flat'. Within the specific context of the Property, the Applicant informed the Tribunal that it had provided the tenant with a further copy of the fire action notice which he had been advised to affix to the inside of the door of the Property.

36 In light of its submission, the Applicant invited the Tribunal to dismiss the Improvement Notice and to grant its appeal.

Further written representations

37 In further written representations dated 22 April 2020 and filed in response to Directions No. 3, the Applicant submitted that the Improvement Notice did not satisfy the requirement of section 13(3) of the Act in that it provided for the commencement of remedial action earlier than the 28th day after that on which the notice was served. More specifically, the Improvement Notice was deemed to be served on 23 December 2019 following its posting by first class post on 20 December 2019. It specified the date by which the remedial action should be started as 17 January 2020. This date is less than 28 days from the date of service of the Improvement Notice. For the Improvement Notice to be treated as served correctly, the earliest possible date specified for the remedial action to be started should have been 20 January 2020. Consequently, the Improvement Notice does not satisfy the requirements of section 13(3) of the Act.

Thereafter, the Applicant applied to the Tribunal for an order 'under Section 20, for reimbursement of their costs in the sum of £100.00'.

The Respondent Local Authority

38 The Respondent Local Authority opined that the basis of the Applicant's appeal was unclear. However, it inferred from the Applicant's Statement of Case that its appeal was based, principally, on the proposition that the Improvement Notice was served, unnecessarily, because either no fire safety works were needed as the Property was faultless or the Applicant had complied with the Improvement Notice in that it had undertaken all the works required by that notice.

39 As to this proposition, the Respondent Local Authority denied that the Improvement Notice was served unnecessarily. In so doing, it drew the Tribunal's attention, first, to the 'failings' that had been identified by Richard Osborne during his inspection of the Property on 11 December 2019 and which showed that the works specified in the Improvement Notice were needed (see above, paragraph 17), thereby dispelling the Applicant's initial contention that the Property was faultless; 'failings' which were set out in his written statement and shown in photographs both of which had been adduced in evidence. Secondly, the Respondent Local Authority queried and rejected the Applicant's further and alternative contention that all required works had been undertaken on the ground that it was difficult to entertain the notion that the Applicant could have physically undertaken the works if no such works were truly necessary.

40 Further, the Respondent Local Authority rejected the Applicant's statement that as it did not receive the Improvement Notice until 7 January 2020 there was limited time available to the Applicant to respond to the requirements of the notice. In this respect, the Respondent Local Authority stated:

'…there were 8 working days between the alleged receipt of the notice and the day it was posted. The operative day of the improvement notice was 10 January 2020. The deadline for the completion of the works was 24 January 2020, with the latest starting date for the works being 17 January 2020. It is therefore denied that the Appellant did not have sufficient time to respond to the notice or that, as seems to be implied the notice was somehow unreasonable or unreasonably timed. The service of the notice provided sufficient amount of time for the Appellant to prepare its appeal. The Respondent cannot be held responsible for the Appellant's office being apparently completely closed until the second week in January 2020, with no one checking the post.'

The Respondent Local Authority added that the required works were low cost and easy to undertake as was evident from the Applicant's indication that such works were completed in a day and that this further suggested that the timings in the Improvement Notice were not in any way unreasonable (see also in paragraphs 45-48 below, the Respondent Local Authority's written representations relating to the question of whether the Improvement Notice satisfied the statutory service requirements in section 13 of the Act).

41 The Respondent Local Authority also took issue with several statements that had been made by the Applicant in its evidence in respect of the fire safety deficiencies that had been specified in the Improvement Notice. In reliance upon the findings of the inspection undertaken on 11 December 2019 by Richard Osborne and recorded in his written statement and illustrated in the photographs which accompanied that statement (see above, paragraphs 17 and 39), the Respondent Local Authority refuted, first, the Applicant's statement that the perko door closer works perfectly and, secondly, its statement that all vents/ventilation shafts are completely sealed leading to the similarly denied Applicant's conclusion that the integrity of the compartmentation is faultless.

42 Further, the Respondent Local Authority dismissed the Applicant's contention, which was based on a small number of limited smoke tests that had been carried out in Champney and the similar tower block owned by the Applicant, that there was no means of escape for smoke within Champney.

43 Finally, the Respondent Local Authority informed the Tribunal that it had not been afforded an opportunity to inspect the Property with a view to ascertaining whether the works which the Applicant stated it had carried out in respect of the door closer, the application of additional expanding foam and filler and fire signage had been undertaken. Accordingly, the Respondent Local Authority indicated that it could neither confirm nor deny that the Applicant's statements in respect of each of these various works were factually correct.

44 In light of this evidence, the Respondent Local Authority invited the Tribunal to confirm the Improvement Notice and to dismiss the Applicant's appeal.

Further written representations

45 In further written representations dated 24 April 2020 and filed in response to Directions No. 3, the Respondent Local Authority stated that the wording of the Improvement Notice showed that its intention was to provide the Applicant with the 28 days required by section 13(3) of the Act i.e. the remedial work was to be started on 17 January 2020 which is exactly 28 days from the date of posting (20 December 2019). Nevertheless, the Respondent Local Authority conceded in the following words that, *prima facie*, this was insufficient to satisfy section 13(3):

'…it is accepted that in the light of the decision in ***Isaac Odeniran v Southend on Sea Borough Council [2013] EWHC 3888 (Admin)*** the meaning of the date of service was misunderstood and service was not in fact effected on 20 December 2019 but a few days later. It is clear to the Respondent that extra days should have been added to the deadline for the start of the works of 17 January 2020 to allow for deemed service to take place on the second working day after posting. This inadvertently led to the Applicant being given less than 28 days from the date of service to commence works.'

However, notwithstanding this concession, the Respondent Local Authority maintained that it was fully justified in serving the Improvement Notice. The required works were not unreasonable and did not require the investment of extensive time or finances on the part of the Applicant.

46 The Respondent Local Authority reiterated that it had not been able to confirm by inspection that the required works had been undertaken. However, it drew the Tribunal's attention to the Applicant's evidence in which it intimated that these works had been undertaken by 9 January 2020. Consequently, the works had been carried out 'before the intended operative date of the notice on the 10 January 2020 and a significant amount of time before the intended date for commencement of works on 17 January 2020'.

47 Further, the Respondent Local Authority opined that the Applicant had not been deprived of its right of appeal and had not been prejudiced in any way whatsoever by its inadvertent mistake.

48 Finally, the Respondent Local Authority observed:

'The fact that the Appellant chose to undertake the works before lodging the appeal which would have suspended the operation of the notice until the appeal was determined and before the notice's intended operative date was solely the Appellant's decision and tends

to support the Respondent's conclusion that it had indeed been justified in its decision to serve the notice and require the Appellant to undertake the works.'

Determination

Improvement Notice

49 In determining this application, and hence the Applicant's appeal against the Improvement Notice, the Tribunal's initial focus following the submission of the parties' further written representations in response to Directions No. 3 is on whether the service of the Improvement Notice satisfies the requirements of section 13 of the Act, and, in particular, section 13(3).

50 In their respective representations, each of the parties concentrated, rightly, on the wording of section 13(3) which, as seen in paragraph 26, provides that an improvement notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served ('the 28 day requirement'). Each party recognised and in the case of the Respondent Local Authority accepted, that the Improvement Notice did not, on its face, satisfy this requirement in that there was insufficient time between the date on which the Improvement Notice was deemed to be served (it was not entirely clear that the parties agreed on what date that should be, although this was of no consequence as the outcome in terms of whether section 13(3) was satisfied was the same) and the date specified for the commencement of the works required by the Improvement Notice. Nevertheless, as indicated in paragraphs 45-48 above, the Respondent Local Authority sought to persuade the Tribunal that it was 'fully justified' in serving the Improvement Notice. In short, the works were not unreasonable and did not require the investment of extensive time or finances and, more generally, the Applicant had not been deprived of its right of appeal or been prejudiced in any way whatsoever by the Respondent Local Authority's 'inadvertent mistake'.

51 Section 13(3) must be construed within the context of section 13 as a whole. In this regard, section 13(1) makes compliance with the requirements of the various provisions in section 13 mandatory. Thus, it provides that an improvement notice *must* comply with the provisions of section 13. In this case, the Improvement Notice does not satisfy the requirements of section 13(3), because the deemed service of the Improvement Notice i.e. in this instance, on the second working day after the Improvement Notice was posted means that the 28 day requirement is not met; a presumption that is not displaced by the unsubstantiated statement in the Applicant's Statement of Case and not pursued in its further written representations that the Improvement Notice was received on 7 January 2020. Accordingly, the Tribunal in exercise of its powers under paragraph 15(3) of Part 3 of Schedule 1 to the Act quashes the Improvement Notice and, in so doing, allows the Applicant's appeal against the Improvement Notice.

52 However, this finding does not necessarily mean that the Respondent Local Authority was not justified in serving the Improvement Notice. On the evidence, the Tribunal is persuaded that, on the balance of probabilities, the deficiencies identified in the Improvement Notice were present at the time of the service of that notice and, further, that the remedial works specified in the Improvement Notice to rectify those deficiencies were reasonable. In the former respect, the Tribunal notes the somewhat contradictory position adopted by the Applicant in that in its evidence it denied the existence of those deficiencies and, yet, immediately prior to the filing of its appeal, indicated that it had undertaken the remedial works specified in the Improvement Notice – albeit, works that have not been subject to inspection by either the Tribunal or the Respondent Local Authority.

Costs

Section 49 demand

53 In view of the Tribunal's finding that the Improvement Notice be quashed and that the Applicant's appeal against that notice be allowed (see above, paragraph 51), the Tribunal finds that the Applicant should not be responsible for the payment of those expenses incurred by the Respondent Local Authority in respect of the Improvement Notice amounting to £311.69 and as demanded in the section 49 demand. Accordingly, the Tribunal in exercise of its powers under 49(7) of the Act considers it to be appropriate to quash the section 49 demand and, hereby, so orders.

Reimbursement of application fee

54 Finally, it is incumbent on the Tribunal to consider the application made by the Applicant in its further written representations for an order 'under Section 20, for reimbursement of their costs in the sum of £100.00.' In this respect, first, it is not readily apparent to the Tribunal to which section 20 the Applicant is alluding, section 20 of the Act concerns the making of prohibition orders relating to Category 1 Hazards, and, secondly, the Tribunal presumes that, in the absence of an express designation of the nature of the specified costs incurred by the Applicant, such costs constitute the application fee of £100.00 paid by the Applicant. In the latter regard, the Tribunal is invested with a power under Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Tribunal Rules') 'to make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party…'. However, it is important to emphasise that the determination of whether or not an order for reimbursement of any fee, in whole or in part, is made under Rule 13(2) is a matter that lies solely within the *discretion* of the Tribunal. There is no right to reimbursement. It follows that the Tribunal must be persuaded in a given case that there are grounds for the exercise of its discretion. In this instance, the Tribunal is obliged to infer that the application, which it has interpreted as falling within the province of Rule 13(2), is founded, simply, on an expectation on the Applicant's part that the Tribunal would uphold its submission that the Improvement Notice does not satisfy the requirements of section 13(3) of the Act. This is, without more, insufficient to warrant the exercise of its discretion. In this circumstance, the Tribunal is disinclined to make an order under Rule 13(2).

Summary of Findings

55 The findings of the Tribunal may be summarised as follows:

Improvement Notice

In exercise of its powers under paragraph 15(3) of Part 3 of Schedule 1 to the Act, the Tribunal quashes the Improvement Notice and allows the Applicant's appeal.

Section 49 demand

In exercise of its powers under section 49(7) of the Act, the Tribunal quashes the section 49 demand.

Reimbursement of application fee

The Tribunal makes no order under Rule 13(2) of the Tribunal Rules.

Judge David R Salter

20 May 2020

Appeal to the Upper Tribunal

56 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

57 If the party wishing to appeal does not comply with the 28-day time limit, the party shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

58 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.