



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/43UF/HIN/2020/0003

Property : 34 Garlands Road, Redhill, Surrey, RH1
6NT

Applicants : Stuart Walker and Catherine Walker

Representative : Not represented

Respondent : Reigate and Banstead Borough Council

Representative : Not represented

Type of Application : Appeal in respect of an Improvement
Notice

Tribunal Members : Judge N P Jutton and Mr Michael
Donaldson FRICS

Date of Decision : 20 August 2020

DECISION

1 **Background**

2 The Applicants, Mr Stuart Walker and Mrs Catherine Walker are the
landlords of a residential property known as 34 Garlands Road, Redhill,
Surrey, RH1 6NT (the Property). The Property is described as a pre-1920s
mid-terraced house with a slated pitched roof. The Property is occupied by
tenants, Rebecca Main and Sarah Beckerleg.

3 Following an inspection of the Property, the Respondent served on the
Applicants an Improvement Notice pursuant to sections 11 and 12 of the
Housing Act 2004 (the Act) dated 3 January 2020. The Improvement Notice
provided that the Respondent had identified category 1 and category 2
hazards at the Property. The category 1 hazard was excess cold and the
category 2 hazards were damp and mould growth, and food safety.

4 The Applicants' appeal against the Improvement Notice pursuant to
paragraph 10(1) of Schedule 1 of the Act.

5 The Applicants indicated in their Application to appeal dated 21 January
2020 that they were content for the appeal to be dealt with by the Tribunal as
a paper determination without a hearing. The Respondent has not objected
to that and so the Tribunal proceeds to determine the appeal on paper
without a hearing. Directions were made by the Tribunal on 7 February 2020.
They provided for the parties to serve on each other Statements of Case and
documents in support.

6 By reason of the Covid-19 pandemic and in accordance with guidance issued
by the Senior President of Tribunals, the Tribunal has not carried out an
inspection of the Property.

7 **Documents**

8 There was before the Tribunal a bundle of papers which contained the
Applicants' Application, copies of the Improvement Notice, Statements of
Case on behalf of both parties, a Chronology, the Respondent's HHSRS
Assessment, various photographs and copy correspondence.

9 **The Law**

10 Part 1 of the Act provides for a system of assessing the condition of residential
premises, and the way in which this is to be used in enforcing housing
standards. It provides for a Housing Health and Safety Rating System

(HHSRS) which evaluates the potential risk to harm and safety from any deficiencies identified in dwellings using objective criteria.

- 11 Local Authorities apply HHSRS to assess the condition of residential property in their areas. HHSRS enables the identification of specified hazards by calculating their seriousness as a numerical score by prescribed method. Hazards that score 1000 or above are classed as Category 1 hazards, whilst hazards with a score below 1000 are classed as Category 2 hazards.
- 12 Section 2(1) of the Act defines hazard as “*any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)*”.
- 13 Section 2(3) provides “*regulations under this Section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur*”.
- 14 Those regulations are the Housing Health and Safety Rating System (England) Regulations 2005.
- 15 Under Section 5 of the Act, if a Local Authority considers that a Category 1 hazard exists on any residential premises, it must take appropriate enforcement action. Section 5(2) sets out seven types of enforcement action which are appropriate for a Category 1 hazard. If two or more courses of action are available, the Local Authority must take the course which it considers to be the most appropriate. An Improvement Notice is included in the type of enforcement action that a Local Authority may take following identification of a Category 1 hazard.
- 16 Section 7 of the Act contains similar provisions in relation to Category 2 hazards. Power is conferred on a Local Authority to take enforcement action in cases where it considers that a Category 2 hazard exists on residential premises and those courses of action include in Section 7(2) service of an Improvement Notice.
- 17 Section 9 of the Act requires the Local Authority to have regard to the HHSRS operating guidance and the HHSRS enforcement guidance.
- 18 Sections 11 to 19 of the Act specify the requirements of an Improvement Notice for Categories 1 and 2 hazards. Section 11(2) defines an Improvement Notice as a notice requiring the person on whom it is served to take such remedial action in respect of the hazard as specified in the Notice.

- 19 Section 11(8) defines remedial action as action (whether in the form of carrying out works or otherwise) which in the opinion of the Local Authority will remove or reduce the hazard. Section 11(5) states that the remedial action to be taken by the Notice must as a minimum be such as to ensure that the hazard ceases to be a Category 1 hazard but may extend beyond such action. Section 12 of the Act deals with an Improvement Notice for a Category 2 hazard, and contains similar provisions to that in Section 11.
- 20 An Appeal may be made to the Tribunal against an Improvement Notice under Paragraph 10, Part 3, Schedule 1 of the Act.
- 21 The Appeal is by way of a rehearing and may be determined by the Tribunal having regard to matters of which the Local Authority is unaware. The Tribunal may confirm, quash or vary the Improvement Notice. The function of the Tribunal on an Appeal against an Improvement Notice is not restricted to review of the Authority's decision. The Tribunal's jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.

22 **The Tribunal's Determination**

- 23 The Applicants' appeal is dealt with by the Tribunal by way of a re-hearing.
- 24 The Improvement Notice dated 3 January 2020 identified the following hazards:
- i. Damp and mould growth
 - *Defective window in the bathroom which cannot be opened.*
 - *Single glazed kitchen window has no trickle vent and no lock opening mechanism.*
 - *There is no means of extracting moist air during cooking or showering resulting in severe condensation and mould growth in kitchen and bathroom.*
 - ii. Excess cold
 - *Gap above single glazed sash window in the dining area lets in draught.*
 - *Entrance door to the Property has a split in the bottom right panel.*
 - *Gaps around the entrance door resulting in uncontrollable draught and extensive heat loss to the ground floor of the property.*
 - iii. Food safety

- *Door to the corner cupboard in the kitchen is broken.*
 - *Seal around the kitchen worktop is defective and there is no barrier to water ingress from the sink.*
 - *Particleboard beneath the worktop is beginning to disintegrate.*
- 25 The Improvement Notice provided that the excess cold hazard was a category 1 hazard and the damp and mould growth and food safety hazards were category 2 hazards.
- 26 The Improvement Notice required the following remedial action to be taken:
- i. Damp and mould growth

The installation of dual speed extractor fans in the kitchen and bathroom ducted to the outside air. The installation of locks on bathroom and kitchen windows so they can be kept locked whilst open to aid ventilation.
 - ii. Excess cold

Overhauling the front door and door frame including repairing a split to the bottom right hand panel. Overhauling the dining room window sashes and frame.
 - iii. Food safety

Repairing a broken door to kitchen cupboard, replacing a seal along the worktop and repairing damage to particleboard beneath the worktop. Ensuring work surfaces and food storage facilities are capable of being readily cleaned and maintained in a hygienic condition.
- 27 The Improvement Notice stated that the Respondent considered that the service of an Improvement Notice was the most appropriate action to deal with the category 1 and category 2 hazards identified. The Notice required the remedial action to begin no later than 1 February 2020 and be completed within a period of 3 months of that date.
- 28 The Tribunal has considered carefully the written submissions made by the parties and the documents in support.
- 29 Following a complaint made by the tenants about reoccurring damp in the kitchen cupboards at the Property, Ms Benedicta Lawson, an Environmental Services Officer with the Respondent, carried out an informal visit to the Property on 17 October 2019. A full inspection of the Property was

subsequently carried out by Ms Lawson pursuant to section 239(5) of the Act on 5 December 2019. The Appellants live in Australia. Mrs Walker attended remotely using Facetime technology albeit at times during the inspection it is understood images on Facetime froze. Also present at the inspection were a Mr Tom Cosens from the Appellants' Letting Agents, a company called Woodlands, and the two tenants.

- 30 Following the inspection, Ms Lawson completed an HHSRS (Housing, Health and Safety Rating System) assessment and based upon that assessment served the Improvement Notice. There is a copy of the assessment at exhibit BL18 to Ms Lawson's Statement dated 18 May 2020.

31 **Damp and Mould Growth**

- 32 The Tribunal makes the observation that a primary source of damp and mould growth in residential properties is commonly condensation. That the tenants and future occupiers of the Property should be careful to keep the Property properly ventilated and as a matter of good practice, not to allow damp clothing to be dried within the Property.

- 33 The work specified in Schedule 2 to the Improvement Notice to address the damp and mould growth is in two parts. Firstly, the installation of dual speed extractor fans in the kitchen and bathroom ducted to the outside air and terminated by louvered wall cowls. The Notice provides that the fans should have a continuous background mode and boost mode controlled by a humidistat set to operate when the relative humidity levels reach 65% at a temperate of 20°C.

- 34 In their Application Notice to the Tribunal, the Appellants reasonably agreed to comply with this requirement and to install extractor fans in the kitchen and bathroom. That is confirmed in the Appellants' Statement of Case dated 1 May 2020 and there is at Appendix 5 to that Statement of Case an invoice for the work carried out dated 16 February 2020. Ms Lawson confirms in her response to the Appellants' Statement of Case that the said invoice meets the required specification for the installation of extractor fans. As such the Tribunal is satisfied that the requirement of the Improvement Notice to install extractor fans in the bathroom and kitchen at the Property has been complied with.

- 35 The second requirement in the Improvement Notice to address damp and mould growth is for the installation of locks on the bathroom and kitchen windows which are capable of being kept locked when open in order to aid ventilation. Ms Lawson accepts in her Statement of Case that the installation of the extraction ventilation is sufficient to remove excess moisture which she says negates the requirement for locks on the windows. In the circumstances,

the Tribunal removes the requirement in the Improvement Notice to install locks on the bathroom and kitchen windows as would allow them to be kept locked when open.

- 36 The Improvement Notice makes reference to a defective window in the bathroom which it is contended by the Respondent cannot be opened. However, there is no requirement in the Improvement Notice for works to be carried out in relation to the window. Whether or not the window can be opened has been the subject of some dispute. It may be the case that the Respondent took the view when drafting the Improvement Notice that despite the contention that the window could not be opened, that the installation of extractor fans in the bathroom would be sufficient to address the problems of damp and mould growth. The extractor fans remove ie extract air from the Property. They do not allow air into the Property. In the view of the Tribunal, it is important that windows are allowed to open and are periodically opened to allow air into the Property to help address potential issues of damp. In the view of the Tribunal, the Improvement Notice should address works required to ensure that the window can be opened. If it is the case, as the Appellants understand, that the window can be opened, then there will be no works to carry out. If however as the Respondent contends the window cannot be opened, then work should be carried out to it to ensure that it is capable of being readily opened and closed. The Tribunal therefore amends the Improvement Notice by adding a requirement that the Appellants should carry out such works as may be necessary to ensure that the bathroom window is capable of being readily opened and closed.

37 **Excess Cold**

- 38 The Improvement Notice identifies the source of excess cold as defects to the front door and to the dining room window. The Notice requires the front door and frame to be overhauled to include repairs to the bottom right hand panel. It provides that works should be carried out to ensure that the door is capable of being readily opened and securely closed and when closed, is closely fitted into the frame. That the work should ensure that the door is left *“whole, sound, free from draught and in proper working order, upon completion”*.
- 39 As to the dining room window, the Notice provides that the window sashes and frames should be thoroughly overhauled, any rotten, broken or defective timber cut away, and new timber properly spliced in, for the renewal of any broken or worn or otherwise defective sash cords and *“carrying out such other works as may be necessary to ensure that the sashes are capable of being readily opened and securely closed”*.
- 40 The Respondent says that the tenants complained that the hallway was cold because it was draughty. Ms Lawson says she identified a gap on the right

hand side of the door and a split in the bottom right panel of the door. That during the inspection on 5 December 2019 Mr Cosens, Ms Lawson says, was invited to feel the right hand side and bottom of the door and that Mr Cosens confirmed that he could feel some draught.

- 41 As to the window in the dining room, Ms Lawson identifies the window as a single glazed window with poor thermal insulation. She says that she could feel a draught when she ran her hand across the top of the frame of the window. She says that during the inspection on 5 December 2019, she *“highlighted the gap across the top of the single glazed sash window”*. Ms Lawson says that in her assessment, the combination of the defects that she identified with the front door and the dining room window would contribute to *“extreme heat loss and uncontrollable draught”*. In the assessment, she states *“There is likely to be an extensive amount of heat loss and discomfort especially for the vulnerable group as a result of uncontrollable draught”*.
- 42 Ms Lawson says that the requirement in the Improvement Notice to thoroughly overhaul the front door and door frame, to carry out such works as may be necessary to ensure that it readily opens and closes securely so that it is left whole, sound and free from draught and in proper working condition is simply to ensure that the door is left in proper working order. That the requirement is designed to ensure that such works are carried out as to cover *“every defective part of the door”*.
- 43 Similarly, Ms Lawson says that the requirement in relation to the dining room window to cut out any rotten or broken or otherwise defective timber, to renew defective parts and to carry out such works as may be necessary to ensure the sashes are capable of being readily opened and securely closed is no more than a requirement to carry out such works as may be necessary. She says that apart from what she describes as an *“obvious”* gap above the dining room sash window, it was not clear to her if there was in fact the onset of any deterioration with the timber frame. She did not know if there was any rot. The requirement was just to carry out such works as may be necessary to ensure the window was free from draught and could be opened and closed securely. She makes the point that the Appellants have not looked at the front door or the window and as such, they cannot be sure of the extent of repairs required without reference to a carpenter.
- 44 The Appellants say that from the photographs they have seen that the split in the panel to the front door is *“minimal”*. That there are no significant gaps around the front door. That the suggestion made by Ms Lawson of *“uncontrollable draught and extensive heat loss”* is *“a highly exaggerated and inaccurate assessment”*. The Appellants offer in their application to have the split in the panel of the front door rectified to stop it worsening.

However, they take the view that the requirement to thoroughly overhaul the front door and door frame is unnecessary and unreasonable.

- 45 As to the dining room window, the Appellants agree that there is what they describe as a “*marginal*” gap at the top of the window which they say is typical for an original sash window of this type. They describe the window as “*a lovely reconditioned, original sash window*”. They do not accept that the window needs a thorough overhaul and they do not believe that the gap above the window is causing an extreme level of heat loss in the Property. They say that the Respondent in carrying out its assessment should have regard to the age of the house. That they do not accept the Respondent’s assessment that the level of cold in the Property poses an “*extreme*” risk of harm and that as such the Respondent in its application of the HHSRS is wrong to conclude that the level of cold in the house can be classified as a category 1 hazard.
- 46 The Appellants agree to repair the split in the bottom right hand panel to the front door. In the view of the Tribunal, a requirement to thoroughly overhaul the front door and door frame and to carry out such works as are necessary to ensure that it opens and closes properly, is close-fitting to the frame, free from draught and in proper working order, is a requirement to carry out such works as may be necessary, no more and no less. It is not an onerous requirement. It is simply a requirement to carry out such works as are needed to ensure that the door is wind and water tight and secure. The works may be less extensive in the event than the Appellants fear, but such works as are required should be carried out.
- 47 Similarly with the dining room window, the works that are required are simply those works that are necessary to ensure that the window is wind and watertight, opens and closes properly, and to ensure it is free from draught. The extent of those works does not appear to be known by either party. It may well be that when the works commence, they are less extensive than the Appellants fear or conversely, they could be more. Either way, the work needs to be carried out. As Ms Lawson says, the Improvement Notice does not ask for the window to be replaced with double glazing or secondary glazing, just to be made draught-free. As such, the Tribunal agrees with the remedial action required by the Improvement Notice.
- 48 **Food Safety**
- 49 The Improvement Notice identifies three alleged defects. The first is a broken door to a corner cupboard in the kitchen. The second is a seal around the kitchen worktop which it is said is defective providing no barrier to water ingress from the sink, and the third is that the particleboard beneath the worktop is beginning to disintegrate.

- 50 The work required by the Improvement Notice is to repair the broken door to the kitchen cupboard, replace the seal along the worktop and to repair damage to the particleboard beneath the worktop. Further, to ensure that the work surface and food storage facilities are “*smooth, impervious and capable of being readily cleansed and maintained in a hygienic condition*”.
- 51 In their Application form, the Appellants state that they believe that there has been a significant decline in the condition of the Property since the current tenants moved in. However, they accept that the problems identified need to be rectified and they say they will “*pay to have the work outlined in point 4 to be completed as required*”. The reference to point 4 is understood to be a reference to paragraph 4 of the Second Schedule to the Improvement Notice.
- 52 The Appellants make nonetheless various allegations to the effect that Ms Lawson may have broken the cupboard door in the kitchen during her inspection. They state in their Statement of Case that “*we do not feel that it is a reasonable request to order us to pay for the repair of the door when Mrs Lawson is very likely to have forced the door off its hinges and then choose to withhold the truth from us*”. They make that statement notwithstanding the statement in their Application form that they will complete the work “*as required*”.
- 53 Ms Lawson says that the tenants mentioned to her that the corner cupboard had come off its hinges and that the tenants had to lift it up and pull it out when they had a need to use the cupboard. Ms Lawson says she took photographs of the cupboard when it was open with the removed door on the side and when it was placed back into position. She refers to pictures exhibited to her Statement at BL8 and BL9. The allegation that she broke the cupboard door, Ms Lawson says, is false. In reply, the Appellants say that it is not possible to “*lift*” the cupboard door on and off.
- 54 The issue for the Tribunal is whether or not the cupboard door needs repairing as set out in the Improvement Notice. It is not per se a matter for the Tribunal to determine as to what was the cause of the damage to the door. In any event, in the view of the Tribunal, on the basis of the evidence before it, it is not possible to determine what was the cause of the failure of the door.
- 55 The work required at paragraph 4 of Schedule 2 to the Improvement Notice to replace the seal along the worktop, to repair damage to the particleboard beneath the worktop and to ensure that otherwise the work surfaces and food storage facilities are in a proper and hygienic condition, do not appear to be challenged by the Appellants. In any event, the Tribunal is satisfied that such requirements are reasonable and that the work set out in the said paragraph does need to be and should be carried out. Further, in the view of the Tribunal the work required to the particleboard beneath the worktop and to

ensure that work surfaces and food storage facilities are in a proper condition may require not just repair but possibly the replacement of components.

56 Type of Enforcement Action

57 The Tribunal has given careful consideration in relation to all of the hazards and as to whether an Improvement Notice is the most appropriate enforcement action to take.

58 Section 5(2) of the Act identifies 7 types of enforcement action. None of the hazards which are set out in the Improvement Notice in the view of the Tribunal represent imminent danger to the health and safety of the occupants of the Property and that rules out the options of emergency remedial action and an Emergency Prohibition Order. Patently, the condition of the Property and the nature of the deficiencies rules out the radical options of demolition or clearance. The choice is therefore between a Hazard Awareness Notice, an Improvement Notice (with the possibility of suspending the Improvement Notice) and a Prohibition Order.

59 The Tribunal does not consider that a Hazard Awareness Notice would have been appropriate in respect of hazards covered by the Improvement Notice. A Hazard Awareness Notice advises the owner of the property of the existence of a hazard and the deficiency causing it. It requires no action to remedy the deficiency on the part of the owner. In the view of the Tribunal, not least given the risk of harm and health represented by the hazards identified, a Hazard Awareness Notice would not be appropriate. The hazards require remedying. There is no suggestion by either party that the Improvement Notice be suspended nor does the Tribunal think it would be appropriate to do so.

60 This is not a case in the view of the Tribunal in which the hazards identified can be properly or appropriately addressed by the service of a Prohibition Order. Accordingly, the Tribunal is satisfied that the service of an Improvement Notice is the most appropriate form of enforcement action to take in respect of the hazards identified at the Property.

61 The Improvement Notice provided that the remedial works be started no later than 1 February 2020 and to be completed within a period of 3 months, that is by 1 May 2020. The Tribunal varies the Improvement Notice in respect of the timescale for the works to be carried out so they must be started no later than 21 September 2020 and must be completed no later than 21 December 2020.

62 **Summary of Tribunal's Decision**

63 The Tribunal confirms the issue of the Improvement Notice dated 3 January 2020 subject to the following notes/variations:

- i. That in addition to the work identified in the Improvement Notice to the front door and door frame and to the dining room window, that the Appellants carry out such work as may be necessary to ensure that the window to the bathroom is capable of being readily opened and securely closed.
- ii. That the requirement to install locks on the bathroom and kitchen windows such that they are capable of being kept locked when open is removed.
- iii. That the requirement to repair damage to the particleboard beneath the worktop be changed to read:

*“ ...repair damage to and if need be replace the worktop in its entirety
.”*

That the requirement to ensure that work surface and food storage facilities are smooth, impervious and capable of being readily cleansed and maintained in a hygienic condition be changed to read:

“To undertake such works of repair or replacement to the work surface and food storage facilities to ensure they are smooth, impervious and capable of being readily cleansed and maintained in a hygienic condition”.

- iv. That the remedial work required by the Improvement Notice as varied be commenced by 21 September 2020 and be completed by 21 December 2020.
- v. The Tribunal notes that the works required as set out at paragraph 1 of Schedule 2 of the Improvement Notice in relation to the installation of extractor fans to the kitchen and bathroom have been completed.

Dated this 20th day of August 2020

Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person 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.
4. 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.