



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

Case reference : **LON/00BF/HIN/2021/0007**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **8 Westover Close, Sutton, SM2 6UB**

Applicant : **Mr James Grinyer - Landlord**

Representative : **In person**

Respondent : **London Borough of Sutton**

Representative : **Mr Sean Pettit- Counsel**

Type of application : **Appeal Against the service of an
Improvement Notice**

Tribunal members : **Judge Daley
Mr A. Fonka MCIEH CEnvH M.Sc**

**Date of Hearing
and Venue** : **22 July 2021, Heard remotely by Video
Link**

Date of decision : **06 September 2021**

DECISION

Covid-19 pandemic: description of hearing V: CVPREMOTE

This has been a remote video hearing which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle of documents which comprised an applicant and respondents hearing bundle, the contents of which have been noted. The parties said this about the process: the parties were asked if there were satisfied with the means by which

the hearing had been conducted, the Applicant and the Respondent's representative both confirmed that they were content with the means of hearing.

DECISION

- 1. The Tribunal determines that the Applicant's appeal against the Notice of Improvement dated 8 February 2021 is allowed.**
- 2. The Respondent shall reimburse the Applicant the cost of the Application in the sum of £100 and the hearing fee in the sum of £200.00.**

Introduction

The Application

3. This is an application for an appeal against an improvement notice, which was served on 8 February 2021, under Section 11 and 12 of the Housing Act 2004.
4. The Notice provided that -:
3. The Council is satisfied of the existence of category 1 hazards on the Residential Premises as set out in Schedule 1 to this Notice. The Council is further satisfied that no Management Order is in force in relation to the Residential Premises under Chapter 1 or 2 of Part 4 of the Act.
4. The Council requires you to carry out the remedial action, as specified in Schedule 2 to this Notice. You are required to start taking this action by the 8 March 2021 and this action must then be completed within 28 days.
5. Schedule 1 listed the following hazards, Excess Cold No 2 Category 1 Hazard:- No fixed form of heating in 3 of the 4 bedrooms and the radiator in the kitchen was hanging off the wall. Fire No 24, Category 2 Hazard:- No hard wired or interlinked smoke alarms in the property. No fire doors to any of the bedrooms and no door at all to the kitchen or one of the bedrooms. Defects to the heating and key operated locks to the balcony. Personal Hygiene, sanitation and drainage No 17 Category 2 Disrepair to both the bathroom and the downstairs toilet. Toilet in main bathroom is loose and possible issues with the floor causing the loose toilet.
6. The Applicant's appeal which is dated 24 February 2021, was on the grounds that the procedure which had been followed by the Respondent was defective, he stated that:- "The Housing Act 2004 section 239(5) clearly states that 24 hours- notice of a formal inspection of a property must be given."
7. In respect of the hazards that had been identified, he disputed that the property was excessively cold. In respect of point 2 of the notice in respect of the fire hazard, he agreed to fit the fire doors, however Mr Grinyer considered that the schedule of work which required interlinked smoke alarms be fitted was unnecessary, as the flat was smaller than a house and was not a licenced HMO. He also disputed that the hazard found in respect of personal hygiene was the responsibility of the landlord, as he considered that

the condition was caused by the manner in which the tenants had misused the bathroom.

8. He further cited that the time given to carry out the work was insufficient, and requested that as a result of the Covid Pandemic, additional time be given to carry out the works due to the vulnerabilities of the tenant. He stated that it was not reasonably practical to carry out the work within the time frame given.
9. Directions were given by the Tribunal on 19 April 2021, where the following issues were identified -: (i) In accordance with paragraph 15(2) of Schedule 1 to the Housing Act 2004, the appeal is to be by way of a re-hearing, but may be determined having regard to matters of which the council were unaware. (ii). the issues that the Tribunal will need to consider include: • has the Council gone through the necessary steps prior to issue of the improvement notice? • Do hazards exist and if so what category? • Should the Council have taken enforcement action? • If so, what enforcement action is appropriate? • If an improvement notice is the correct action, should the terms be varied (e.g. specified remedial works and/or timescale).
10. The Directions were subsequently varied so that the hearing was set down for 22 July 2021.

Attendance at the hearing and preliminary issues

11. The hearing was attended by Mr James Grinyer, the Applicant Landlord. Also in attendance on behalf of the Respondent Local authority was Mr Sean Pettit-Counsel, Mr McDowell from the LA's shared legal services, and Ms Louise Miller, Environmental Health Officer, and nominated officer in this matter, and Mr Richard Hugill her line manager.

Preliminary Matters

12. The Tribunal was informed that there was a preliminary issue in respect of the late service of documents by the Respondent. Mr Grinyer stated that he had received a 274- page document, one day before the hearing, and had also been served with a skeleton argument filed by the Respondent. He objected to these documents being admitted, as he stated that they had been served out of time, and not in accordance with the directions. He had insufficient time to consider the documents.
13. Mr Pettit in reply, on behalf of the Respondent, stated that the documents which had been served dealt with the statutory provisions which had been applied by Ms Miller in making the decision to serve the Improvement Notice. He further stated that all of the documents were publicly available. The documents would show the guidance that had been followed by the LA in making its decision, such as the LACORs Guidance. He stated that it was necessary to show what had been applied in reaching the decision. In respect of the skeleton argument, he stated that this merely set out the submissions that he intended to advance at the hearing.

14. The Tribunal in reaching its decision considered, The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, in particular rule 3 the overriding objective. The Tribunal considered that the Applicant would be prejudiced, in dealing with this matter if he needed to be referred to these documents given the volume and the fact that service had been on-line. The tribunal decided that a better way of dealing with this matter would be for the Respondent to refer to those documents, in particular the relevant paragraphs, which had actually been used in making the decision.
15. The Tribunal decided to admit the skeleton argument, it considered that it would be helpful to the applicant and the Tribunal if the submissions that were to be advanced were before the Applicant who was not legally represented, and this meant that both he and the Tribunal could follow the arguments which were being advanced.
16. The Tribunal procedure to be followed in the hearing was that this matter should proceed by re-hearing, given this we would hear from the Respondent's witness about the evidence they had considered and factors which had led to the serving of the Improvement Notice.

The Hearing

17. *Evidence of Ms Miller, Environmental Health Officer*
18. Evidence was provided by Ms Miller, who was the Environmental Health Officer authorised to deal with this matter on behalf of the Respondent. Ms Miller stated that she had a Master's degree in Environmental Health. In her witness statement made in compliance with paragraph 10 of the Directions, Ms Miller set out the background which had led to the service of the notice. She stated that the LA opposed the Applicant's application.
19. In her statement she set out that the property was a four bedroomed flat situated over 2 floors, with 2 bedrooms and the bathroom at the entry level and a further two bedrooms, single toilet and kitchen on the lower floor level.
20. She stated that a call had been received by the LA concerning the condition of the property on 29 September 2020, and as a result she had returned the call and discussed the issues which existed at the property and as a result of the discussions, she had undertaken an informal visit of the property on 5 October 2020.
21. Ms Miller stated that during her visit she could see that there were problems at the premises.
22. Ms Miller had requested the telephone number of the landlord, as her aim, if possible, was to use the informal visit to deal with the condition at the property quickly and informally. She spoke with Mr

Grinyer on 6 October, and in her evidence, she stated that this call was not a positive call and it ended with Mr Grinyer requesting that she put her concerns in writing.

23. Ms Miller stated that she had written to him highlighting the concerns and serving a Section 235 notice (requesting information). She had obtained his address from the land registry. Her letter which was dated the same date listed 8 matters which had caused her concern as potential hazards. Amongst the potential hazards was an electrical socket hanging from the wall, no fire doors, the bathrooms being in poor state of repair and a lack of fire alarms in the premises.
24. The letter asked for Mr Grinyer to respond within 21 days setting out his intentions in relation to carrying out the work, and also pointing out that he needed to respond by providing the documents requested in the Section 235 Notice.
25. Ms Miller stated that she was contacted by one of the tenants from the property by email on 26 October. Ms Miller received information that nothing had been done at the property, and that Mr Grinyer had served an eviction notice on the tenant.
26. Ms Miller obtained an email address from the correspondence that had been sent to the tenant. She used the address to email Mr Grinyer informing him that he could not evict his tenant without serving a section 21 Notice, and also informing him of the moratorium on evictions which was in place due to the Covid 19 pandemic.
27. Her letter dated 27 October stated:- “I wrote to you on 6 October 2020 about some repairs which are required at the property but have not received a response. Therefore as an authorised officer of the council, I intend to carry out a formal inspection of the property on Monday 2 November 2020 @10am.”
28. In her witness statement, Ms Miller stated that Mr Grinyer had replied stating that he had not received the information, he also provided a correspondence address. Ms Miller emailed Mr Grinyer and re-sent information, to this address. As a result of her communication with Mr Grinyer, Ms Miller changed the dates in her letter.
29. In her letter dated 30 October 2020, Ms Miller informed Mr Grinyer of her intention to carry out an inspection of the property on 12 November 2020. She also sent both a Section 235 and a section 239 Notice, giving him notice of her power of entry.
30. She told the tribunal that Mr Grinyer wrote to her on 5 November 2020, by email requesting that she cancel her visit on 12 November 2020, and gives him a month to remedy the situation.
31. Ms Miller stated that she carried out the formal visit on 5 November 2020, and during her visit an electrician was also present. She stated that the

condition of the electrical installations was so poor that it failed the safety inspection.

32. Ms Miller informed the Tribunal that when she attended the property, there was an apparent issue with excessive cold. There were no radiators in some rooms and where present, they were not working; the kitchen radiator was falling off the wall. In the bedroom there were electrical sockets above the radiator which were defective and those which were working were overloaded. There was one bedroom which did not have a door, the doors which were within the property were not fire doors and this represented a serious hazard. There was also a lack of ventilation and air vents within the property.
33. The Tribunal was informed that within the bathroom, there were issues with the hygiene. One of the toilets within the property was loose and the tenants were fearful of breaking it when they used it. The bath was also cracked. She stated that both bathrooms were dirty and in a poor state of repair. She stated that of the disrepair the electricals represented the most serious hazard as they raised a safety concern.
34. As a result of her visit on 5 November, Ms Miller wrote to Mr Grinyer by email, informing him of the outcome of her formal inspection of the property. She provided him with copies of the management regulations and informed him that failure to comply was an offence under Regulation 234 (3) of the Housing Act.
35. In paragraph 4 of her email she stated-“There is no legal requirement to give notice prior to entry of the property, but the council has done so out of courtesy. A formal inspection has now been carried out at the property and it was noted that during the visit an electrician was present undertaking an electric test. Information provided suggests that the electrical system was in a dangerous condition.”
36. The email informed Mr Grinyer of the council’s intention to serve an improvement notice. There was also an inadequate means of escape from the property, which was on the second floor. Ms Miller was so concerned that she provided the tenants with two battery operated smoke alarms.
37. On the 11 November 2020, Ms Miller served a Preliminary Improvement Notice (PIN) as was the practice of the LA. Mr Grinyer was given to 6 January 2021, to fix the problems which had been observed at the property.
38. Ms Miller stated that she had then considered the hazards at the property, and had referred to the LACORS guide. She was asked by the Tribunal why she had scored each of the hazards as 3. She stated that in her opinion the hazards warranted a 3. Ms Miller had also asked the head of service to re-check her assessment. He had agreed with her assessment.
39. As a result of the work not being carried out, and no agreement being reached concerning progressing the outstanding work, an improvement notice was served on 8 February 2021.

40. At the hearing Ms Miller took the Tribunal through the scoring that she used for each of the issues that were set out in the notice. She identified that as the electrics had been repaired the Hazard Rating had changed and this was the reason that save for the excessive cold all of the Hazards had been categorised as category 2 Hazards.
41. Ms Miller stated that she considered that the decision to serve the Improvement Notice was reasonable, as Mr Grinyer had been given a reasonable opportunity to carry out the work within the property. He had been given 2 months to carry out the work and had not responded to the PIN or responded positively to her informal contact with him.
42. Ms Miller at the hearing and in her witness statement stated that the council had tried to work with Mr Grinyer to remedy the defects which existed at the property for the benefit of the tenants. However, Mr Grinyer had not worked with the council. She noted that Mr Grinyer had a duty of care which he was not exercising towards the tenants.
43. In answer to questions from Mr Grinyer, Ms Miller did not accept that the LA had acted unreasonably in serving the notice. She acknowledged that the date for the inspection in the notice had been incorrect. However, she stated that the council under the management regulations was empowered to go in without notice. Given this she did not accept that the notice was defective.

Mr Grinyer's evidence and submissions

44. In his evidence, he stated that the first letter had been sent to the incorrect address, and that had Ms Miller asked him for his address during their telephone conversation on 5 October, he would have provided it.
45. As a result he stated that he had assumed that the process would re-start once he had informed the council of the error concerning his address. He stated that in reality he had only had a few months to attend to the work and that it had been difficult to attend to work at the property due to the Covid Pandemic which had been especially prevalent in January.
46. He stated that no notice had been given to him in accordance with Section 239, as the inspection had taken place before the date set down in the notice. For this reason he considered that the Improvement Notice dated 8 February 2021, should be quashed.
47. He queried why the notice specified that 24 hours should be given, if the LA was simply allowed to inspect the premises unannounced.
48. He stated that he had been given the PIN one day before the formal inspection was due to take place.

49. In respect of the notice itself, he disagreed with the contents. He disputed the categorisation of the premises as excessively cold. However he was prepared to have the electrical heaters that he had supplied hard wired to the property.
50. He did not accept that the property needed interlinked fire alarms as the property was not required to be licensed as an HMO. He stated that he was prepared to replace all of the doors save the balcony door which was only accessible by one tenant.
51. Mr Grinyer disputed that the work to the bathroom was a category 2 Hazard, stating that he had fixed the toilet many times however it had been damaged by tenants. In his application he disputed the suggestion that he had demonstrated no desire to carry out the work. He referred to the fact that electrical works had been undertaken prior to the service of the Notice.
52. Mr Grinyer stated that when he had purchased the property it was partially centrally heated. He informed the Tribunal that he had an energy performance certificate, and the rating was very good.
53. He stated that if the Tribunal disagreed with him about the procedure being flawed, then he asked that the notice be varied to allow more time to enable him carry out the work. Mr Grinyer did not give any details of the variation which was sought by him

Property Inspection

- 54 Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property, however based on the application form, the photographs and submissions of the parties, the Tribunal understands that the property is as set out by Ms Miller in her witness statement.

Closing Submissions

54. The Tribunal heard from Mr Sean Pettit, counsel who made closing submissions on behalf of the Respondent. He reminded the Tribunal that the premises were a House in Multiple Occupation. He stated that Section 234 of the Housing Act 2004 created obligations on landlords over and above those determined using the Housing Health and Safety Rating System.
55. He stated that under Section 11 and 12 of the Housing Act 2004, an improvement notice requires the person on whom it is served to carry out remedial action within a certain time.
56. He referred to the inspections which had taken place on 5 October 2020, (the informal inspection) and the 5 November 2020 (the formal inspection).
57. He stated that during the inspections both category 1 and 2 hazards had been found. Accordingly, there was a duty on the LA to take action in respect of the Category 1 and a power in respect of the Category 2.
58. He stated that the LA had acted lawfully in serving the improvement notice. The LA had through Ms Miller carried out an inspection and had

arrived at a lawful and reasonable conclusion. It had used a cautious approach in exercising its duties and powers.

59. Mr Pettit referred us to Section 239 (3) of the Housing Act 2004, which states that a person who is authorised by the local authority may enter the premises in question at any reasonable time for the carrying out a survey or examination of the premises.
60. However, Mr Pettit submitted that where the offence was committed under section 234(3) of the Housing Act the LA could enter without notice. He stated that Ms Miller believed Mr Grinyer in her reasonable opinion, to be in breach of the Management of Houses in Multiple Occupation (England) Regulations 2006, (“the management regulations”).
61. He further submitted that the letter dated 30 October 2020, from Ms Miller, was compliant with Section 239 (5) as the requirement was only to give 24 hours’ notice as long as access was only made after the specified period. A perfectly valid notice had been given. He submitted that there was no requirement to specify a date. The primary purpose was to enable the landlord to be present rather than to undertake the works.
62. Mr Pettit also relied upon the reasonable steps that had been taken by Ms Miller to resolve the conditions at the property prior to serving the notice.
63. The Tribunal heard from Mr Grinyer in closing where referred to the requirement in section 239(5) to provide 24 hours’ notice. He stated that given the notice was defective, the inspection could not form part of the enforcement action.
64. At the conclusion of the hearing the Tribunal asked the parties if they were happy with the video means by which the hearing was conducted. Neither party had any issue with the video link.

The Law

11. Improvement Notices relating to category 1 hazards: duty of authority to serve notice (1) If—

(a) The local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b) No management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

Serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard

concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

(a) If the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

(b) If those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;

(c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Improvement notices relating to category 2 hazards: power of authority to serve notice

(1) If—

(a) The local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) No management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

The authority may serve an improvement notice under this section in respect of the hazard.

Section 234 Management regulations in respect of HMOs

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

(a) There are in place satisfactory management arrangements; and

(b) Satisfactory standards of management are observed.

(2) The regulations may, in particular—

(a) Impose duties on the person managing a house in respect of the repair, maintenance, cleanliness and good order of the house and facilities and equipment in it;

(b) Impose duties on persons occupying a house for the purpose of ensuring that the person managing the house can effectively carry out any duty imposed on him by the regulations.

(3) A person commits an offence if he fails to comply with a regulation under this section.

(4) In proceedings against a person for an offence under subsection (3) it is a defence that he had a reasonable excuse for not complying with the regulation.

(5)A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Tribunal Decision and Reasons

65. The Tribunal considered carefully the oral and documentary evidence which included the Applicant and the respondent's bundles, together with the submissions and the case law referred to by the parties. The Tribunal in reaching its decision has not referred to every issue raised by the parties, but only those which were material to the decision made, although all of the evidence referred to was taken into consideration.
66. The Tribunal were satisfied that the Local Authority in its decision making had acted reasonably in assessing the condition at the property. The Tribunal found that there was little evidence put before it to contradict the assessment of Ms Miller.
67. However, the Tribunal accepted the submissions of Mr Grinyer that the procedure followed by the LA was flawed, that the flaw was material and serious and for that reason the Improvement Notice ought to be set aside.
68. The Tribunal noted that the Local Authority had elected to serve notice of its intention to carry out an inspection under Section 239 of the Housing Act 2004.
69. The Tribunal noted that Section 239 (5) required at least 24 hours' notice to be given of the inspection. The Tribunal accepted that had Mr Grinyer been notified on 30 October 2020, that the inspection was to be carried out on 5 November, then he would have been duly notified. However, the Tribunal does not accept that the manner in which he was notified by the LA meant that 24 hours' notice was given.
70. The Tribunal does not accept that the notice specified in the letter complied with the requirements. The Tribunal heard that the letter stated that the inspection would be carried out on 12 November, given this it is clear that Mr Grinyer was unaware when he wrote his letter of 6 November requesting a postponement that the inspection had been carried out. The Tribunal heard that electrical tests were being carried out by him on 5 November. Given this, it cannot be satisfied that Mr Grinyer would not have opted to be present at the inspection had he been properly notified.
71. The Tribunal finds that notwithstanding the well intentioned efforts of Ms Miller to secure the required improvements to the property, there was a flaw in the procedure followed by the LA.
72. The Tribunal then considered whether this was a material flaw which was sufficient to affect the validity of the improvement notice.
73. The LA in its submissions stated that notice of the inspection was given out of courtesy as no notice was required, as it was empowered to enter the premises without notice under Section 239, if it had reasonable cause to

believe that a breach of the management regulations had occurred. The Tribunal in considering whether the inspection had occurred under Section 239, noted that the LA in its notice to the Landlord, Mr Grinyer, did not rely on a potential breach of Management of Houses in Multiple Occupation (England) Regulations 2006, (“the management regulations”).

74. The Tribunal noted that under these regulations the LA could have relied upon specific breaches of these regulations. However, it chose not to do so, the Tribunal is satisfied that the LA in carrying out its inspection was not acting under the Management Regulation, and as such it did not enter the premises pursuant to the exercise of its powers in relation to sections 72, 95 and 234(3) of the Housing Act.
75. The Tribunal finds that the failure to give notice was a material flaw. Mr Grinyer was not afforded the opportunity to be present at the inspection. The Tribunal noted that there were other material errors which meant that the PIN did not provide Mr Grinyer with the notice which was set out in the letter.
76. The Tribunal heard Mr Grinyer’s evidence and were concerned that at times he displayed a casual disregard to the conditions that existed at the premises, and the potential impact on the occupants, and notwithstanding the Covid Pandemic, displayed a lack of urgency which meant that the property remained in an unsatisfactory condition.
77. However we have carefully considered the provisions of the act, and consider that in order for the Notice to be valid, the formal inspection was considered to be a necessary step by the LA. Mr Grinyer was entitled to rely upon the LA following the correct procedure. The Tribunal finds that Mr Grinyer did not have 24 hours’ notice, and was thus deprived of an opportunity to remedy the conditions that existed at the property, or failing that to attend the inspection and put proposals forward for remedying the defects and thus avoid a notice being served. The Tribunal noted that the condition at the property has a detrimental effect on the tenants’ well-being.
78. Accordingly the Tribunal finds that the Improvement Notice dated 8 February 2021 is defective and determines that the Improvement Notice is set aside and the Applicant’s appeal is allowed.
79. Given the findings of the Tribunal we find that the Applicant is entitled to be reimbursed for the hearing and application fee in relation to this matter.

Right of Appeal

- 1) If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

- 2) The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 3) If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 4) The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Signed Judge Daley

Dated 06/09/21