



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

Case Reference : **MAN/00BQ/HIN/2021/0011**

Property : **59, Pilling Street, Rochdale, OL12 6QE**

Applicant : **Mr. Irfan Choudhry**

Respondent : **Rochdale Borough Council**

Type of Application : **Appeal against an improvement notice –
Schedule 1, Housing Act 2004**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member J Faulkner**

Date of Determination : **10 January 2022**

Date of Decision : **19 January 2022**

DECISION

Order

1. In accordance with paragraph 15(3) of Schedule 1 to the Housing Act 2004, the Tribunal orders that the improvement notice dated 8 March 2021, (“the Improvement Notice”), is varied as set out in paragraph 2 but is otherwise confirmed as issued.
2. Schedule 1 of the Improvement Notice is varied by deletion of paragraph B only of the requirements for remedial action in relation to the Category 1 Hazard: Falls on stairs.

Background

3. By an application dated 18 March 2021, (“the Application”), the Applicant appealed against the Improvement Notice.
4. Directions dated 13 July 2021 were issued pursuant to which both parties submitted written representations.
5. A remote video hearing was scheduled for Monday 1 November 2021 at 10:30 but was adjourned until Thursday 16 December 2021 at 11:00 due to the non-receipt of the hearing fee from the Applicant.
6. As a result of technological difficulties with the video hearing on 16 December 2021, a further adjournment was granted until Monday 10 January 2022 at 10:30. The parties were notified of the date and time of the adjourned hearing by e-mail dated 16 December 2021, and, by e-mail dated 20 December 2021, of the reasons for the Tribunal’s decision to grant an adjournment and of the circumstances in which the hearing would proceed on 10 January 2022.
7. The parties were notified by e-mail dated 10 January 2022 of a change to the time of the hearing from 10:30 to 13:00 on 10 January 2022.
8. Ms C Glenholmes and Mr. D McVey of the Respondent attended the hearing. Mr. I Choudhry, the Applicant, did not attend the hearing.

The Law

9. The Housing Act 2004, (“the Act”), introduced a new system, the Housing Health and Safety Rating System (HHSRS), for assessing the condition of residential premises, which can be used in the enforcement of housing standards. The system entails identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.
10. Hazards are categorised as Category 1 and Category 2 hazards.
11. Sections 5(2) and 7(2) of the Act set out five types of enforcement action which a local authority may take in respect of a category 1 or a category 2 hazard. If two or more courses of action are available, the authority must take the course which they consider to be the most appropriate. An improvement notice is an enforcement action open to a local authority.

12. An improvement notice 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: section 12(2).
13. The person on whom an improvement notice is served may appeal to the Tribunal against an improvement notice (Schedule 1, para.10(1) of the Act).
14. Paragraph 15(2) of Schedule 1 provides that the appeal is by way of a re-hearing, (para. 15(2)(a)), but may be determined having regard to matters of which the authority were unaware, (para. 15(2)(b)).
15. The Tribunal may confirm, quash or vary the improvement notice (para. 15(3)).

Evidence

16. The Applicant's sole ground of appeal as set out in the Application is "for more time". In this respect, he identified the following problems with carrying out remedial works within the relevant periods set out in the Improvement Notice:
 - (1) "constraints" due to the current tenant not understanding or speaking English;
 - (2) difficulties of finding contractors to carry out works because of Covid-19 and the tenant's lack of English; and,
 - (3) works having been carried forward from a previous improvement notice dated 11 August 2020.
17. The Applicant's written representations contained the following submissions:
 - (1) the Applicant's decision to sell his portfolio of 6 properties, including the Property, by reason of his recent dealings with the Respondent;
 - (2) that a sale of the Property was agreed;
 - (3) the Applicant's experience as a landlord over 10 years;
 - (4) that he had carried out "all the important/hazard causing issues" following the issue of the previous improvement notice;
 - (5) the damage caused to the Property by previous tenants;
 - (6) the following works had been carried out: (i) installation of a new fuse box; (ii) installation of a new boiler and installation at the required height; (iii) installation of new light fittings "...in areas where there wasn't sufficient light"; (iv) installation of replacement carbon monoxide and fire alarms; and,
 - (7) difficulties of communication with the Respondent, and an apparent lack of understanding/empathy of the Applicant's difficulties as listed above.
 - (8) Photographs of works carried out by the Applicant were also submitted.

18. The Respondent's reasons for opposing the Applicant's appeal are set out in its response dated 8 July 2021, and are summarised as follows:
- (1) at an HHSRS inspection carried out on 3 February 2021, 7 Category 1 hazards and 2 Category 2 hazards were identified. Mr.Choudhry was informed of the inspection but did not attend;
 - (2) since the issue of the Improvement Notice, the only communication from Mr.Choudhry has been to advise the Respondent that he was appealing the Improvement notice. In particular, there has been no information provided by Mr.Choudhry regarding works undertaken/proposed to address the hazards identified in the Improvement Notice;
 - (3) Mr.Choudhry has not provided the Respondent with a Gas Safe Certificate or EICR for the Property;
 - (4) the Property is occupied by a single woman with 2 young children;
 - (5) the Respondent has not encountered difficulties in communicating with the tenant, having successfully arranged appointments with her for inspections of the Property on 3 February and 19 May 2021;
 - (6) Mr.Choudhry's appeal does not appear to raise any issues with the identification of the hazards or with the Improvement Notice generally;
 - (7) Ms Glenholmes of the Respondent has no personal issues with Mr.Choudhry;
 - (8) the Improvement Notice was issued on 8 March 2021, the completion date for all remedial works was 3 May 2021, and, on re-inspection on 19 May 2021, Category 1 and 2 hazards remained unremedied at the Property.
19. A witness statement by Ms Glenholmes, to which were attached photographs from the re-inspection on 19 May 2021, set out the chronology of the matter and confirmed that, as at 19 May 2021, the only works undertaken were the fitting of handrails to the main staircase and to the cellar steps.
20. In response to questions from the Tribunal at the hearing, Ms Glenholmes and Mr. McVey confirmed as follows:
- (1) there was a further inspection of the Property on 19 September 2021;
 - (2) the tenant and her 2 children remain in occupation of the Property;
 - (3) the handrail fitted to the cellar steps was not fitted to a satisfactory standard;
 - (4) category 1 and category 2 hazards, as identified at the inspections on 3 February and 19 May 2021, remained.

Reasons

21. The Tribunal was satisfied that it was consistent with the overriding objective to proceed with the hearing on 10 January 2022 in the Applicant's absence, both parties having been given notice of the date of the hearing in e-mails

dated 16 and 20 December 2021. The Tribunal noted that there had been extensive delays in the determination of this Application and that any further delay would be unfair to the parties in general, and to the Respondent in particular.

22. The Tribunal noted that in the Application and his written submissions the Applicant had not challenged the Respondent's assessment of the hazards at the Property, or the appropriateness of the Respondent's choice of enforcement action.
23. Further, the Tribunal is satisfied that the Applicant's appeal has been made under the general right of appeal under paragraph 10 of Schedule 1 to the Act.
24. In reaching its decision, the Tribunal noted the following:
 - (1) there was evidence only of remedial works undertaken at the Property comprising the installation of a new boiler, consumer unit and handrail to the main staircase;
 - (2) the Tribunal accepted the Respondent's evidence of the Applicant's failure to undertake the remedial works set out in the Improvement Notice (save as noted in (1) above) within the time periods set out in the Improvement Notice, and that Category 1 and 2 hazards remained at the Property as at the re-inspection undertaken on 19 September 2021;
 - (3) the Tribunal considers that the Applicant was given sufficient time and opportunity to undertake the required remedial works within the time periods set out in the Improvement Notice and that the difficulties of communication with the tenant and/or posed by Covid-19 restrictions have been exaggerated ;
 - (3) the Applicant's continuing failure to provide the Respondent with copies of a current Gas Safe Certificate and/or EICR for the Property; and,
 - (4) there was no evidence before the Tribunal of any sale of the Property, notwithstanding the Applicant's assertion as at 17 August 2021 that a sale was agreed.
25. Having regard to the evidence, the Tribunal determined, in accordance with paragraph 15(3) of Schedule 1 to the 2004 Act, to vary the Improvement Notice to reflect the remedial works undertaken by the Applicant to the handrail on the staircase, as noted in paragraph 27(1), but otherwise to confirm it as issued.

Mrs C Wood
Tribunal Judge
19 January 2022