



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

**Case reference** : **BIR/31UC/HIN/2021/0006**

**Property** : **61b Charnwood Road  
Shepshed  
LE12 9NL**

**Applicant** : **Manjit Chohan and Paramjit Chohan**

**Representative** : **MCL Property**

**Respondent** : **Charnwood Borough Council**

**Representative** : **Mr L Hutchinson  
Environmental Health Officer**

**Type of application** : **Application under paragraph 10(1) of Schedule  
1 of the Housing Act 2004 to appeal against an  
Improvement Notice**

**Tribunal members** : **Mr G S Freckelton FRICS  
Mr R Chumley – Roberts MCIEH. JP**

**Venue** : **The property was inspected on 28<sup>th</sup> January  
2022. There was no hearing and the matter  
was dealt with by a paper determination**

**Date of decision** : **11<sup>th</sup> February 2022**

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**DECISION**

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## **BACKGROUND**

1. This is an Application by Manjit Chohan and Paramjit Chohan (“the Applicants”) under the Housing Act 2004 (“the Act”) against an Improvement Notice (“the Notice”) served by Charnwood Borough Council (“the Respondent”) in respect of 61b Charnwood Road, Shepshed, Leicestershire, LE12 9NL (“the Property”).
2. On 26<sup>th</sup> October 2020 the Respondent wrote to the Applicants following an inspection of the property on 6<sup>th</sup> October 2020. The letter alerted the Applicants to the presence of Category 2 hazards at the property. On 24<sup>th</sup> November 2020 the Respondent contacted the Applicants for an update regarding the remedial works and was informed on 27<sup>th</sup> November 2020 that they were ‘in the process of being booked in’. Various correspondence continued between the parties until 3<sup>rd</sup> September 2021.
3. On 3<sup>rd</sup> September 2021 the Respondent served on the Applicants an Improvement Notice in accordance with section 12 of the Act. On the same date the Respondent served on the Applicants a demand for payment in the sum of £210.30 in accordance with section 49 of the Act for the cost of taking enforcement action.
4. On 21<sup>st</sup> September 2021, the Applicants submitted an application to the First-tier Tribunal (Property Chamber) (“the Tribunal”) appealing against the Notice dated 3<sup>rd</sup> September 2021 and the demand for payment. The application was received by the Tribunal on 22<sup>nd</sup> September 2021.
5. Directions were issued by the Tribunal on 30<sup>th</sup> September 2021 following which submissions were made by both parties.

## **THE PROPERTY INSPECTION**

6. The Tribunal inspected the property on 28<sup>th</sup> January 2022 in the presence of Mr L Hutchinson (Charnwood Borough Council), Mr Z Mamujee (MCL), Mr N Rippin (MCL), Mr A Jackson (NACRO) and Mrs H Moon (NACRO).
7. MCL are the agents for the Applicants, Charnwood Borough Council are the Respondent’s and NACRO are the Leaseholders of the flats.
8. The property was found to comprise a small self-contained ground floor bed-sit flat approached via a shared pedestrian entryway from Charnwood Road. It is located to the rear of retail shop premises.
9. The accommodation comprises a bed-sitting room with Kitchen area, sitting area and bedroom area. There is a separate bathroom being fitted with a three-piece sanitary suite including a shower mixer over the bath.
10. The property has UPVC double glazing and gas fired central heating provided by the boiler located in a cupboard off the bathroom.

## **THE APPLICABLE LAW**

11. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards. The Housing Health and Safety Rating System (‘HHSRS’) replaces the system imposed by the Housing Act 1985, which was based upon

the concept of unfitness. The HHSRS places the emphasis on the risk to health and safety by identifying specified housing related hazards and the assessment of their seriousness by reference to (1) the likelihood over the period of 12 months of an occurrence that could result in harm to the occupier and (2) the range of harms that could result from such an occurrence. These two factors are combined in a prescribed formula to give a numerical score for each hazard. The range of numerical scores are banded into ten hazard bands, with band A denoting the most dangerous hazards and Band J the least dangerous. Hazards in Bands A to C (which cover numerical scores of 1000 or more) are classified as 'category 1 hazards' and those in bands D to J (which cover numerical scores of less than 1000) are classified as 'category 2 hazards'.

12. Where the application of the HHSRS identifies a category 1 hazard the local housing authority has a duty under section 5 (1) of the Act to take appropriate enforcement action. Section 5 (2) sets out the courses of action (which include the serving of an enforcement notice) which may constitute appropriate enforcement action.
13. Where the application of the HHSRS identifies a category 2 hazard the local housing authority has a power under section 7(1) of the Act to take enforcement action. The serving of an Improvement Notice is one of the types of enforcement action which may be taken.
14. Section 9 of the Act requires the local authority to have regard to any guidance for the time being given by the appropriate national authority about the exercise of their functions in connection with the HHSRS. In February 2006 the Secretary of State issued 'Housing Health and Safety Rating System – Operating Guidance' ('Operating Guidance') which deals with the assessment and scoring of HHSRS hazards. At the same time the Secretary of State also issued 'Housing Health and Safety Rating System – Enforcement Guidance' ('Enforcement Guidance') which is intended to assist local housing authorities in deciding which is the most appropriate course of action under section 5 of the Act and how they should exercise their discretionary Powers under section 7 of the Act.
15. The person upon whom an Improvement Notice is served may appeal to a First-tier Tribunal (Property Chamber), who may by order confirm, quash or vary the Improvement Notice under Part 3 of Schedule 1 to the Act.

## **THE IMPROVEMENT NOTICE**

16. The one hazard identified in the Notice was:

### **Noise**

The flat roof of the premises serves as a walkway to access the first-floor flats above. The walkway consists of timber decking which appears to be resting directly on the roof deck. There is noise transmission into the premises when people traverse the walkway.

### **Specification of works to be carried out**

Either suspend the timber decking off the flat roof of the premises to prevent noise transmission into the fabric of the premises or investigate whether the roof space below the roof deck is insulated to prevent noise transmission and upgrade as necessary. The current standards for sound insulation can be found in the Building Regulations 2010 Approved Document E: Resistance to the Passage of Sound.

17. The hazard identified was judged as being a Category 2 Hazard.

18. The Notice stated that works were to be commenced by 11<sup>th</sup> October 2021 and be completed within 6 months of that date which the Tribunal calculates to be 10<sup>th</sup> April 2022.

### **THE APPLICANT'S SUBMISSIONS**

19. The Applicants submissions were contained in the application to the Tribunal dated 21<sup>st</sup> September 2021 and the further submission sent under cover of a letter to the Tribunal dated 18<sup>th</sup> October 2021. In this the Applicants submitted that it was important to note that the property had been going through improvement works prior to the serving of the Improvement Notice. It was also submitted that the Applicants had been co-operating with the Local Housing Authority and Fire Service to ensure the safety of the tenants but it was unfortunate that some of the remaining issues had taken longer due to the Covid-19 pandemic and the availability of materials and tradesmen to carry them out. However, the majority of the works which had been requested through the Improvement Notice the Applicants were in the process of carrying out. The Applicants stated that they were in the process of carrying out the majority of the works which had been requested through the Improvement Notice.
20. However, the Applicants submitted that the Improvement Notice had been served on the basis of noise which supposedly travelled from the walkway above this flat into the flat itself. It was claimed by the Respondent that the noise transmission was a Category 2 hazard yet they had provided no evidence to support this claim They were however requesting that the walkway was rebuilt and suspended off the flat roof to reduce noise transmission.
21. The Applicants further submitted that the walkway in question was a direct walkway which served three single person flats above the subject property. In the submission of the Applicants the walkway was not a public thoroughfare but was located at the rear of the property so that pedestrians (third parties) would not accidentally walk on it. The use of the walkway was very limited being used for access to the three single person flats and whatever noise might be transmitted would be infrequent throughout the day. Furthermore, the Applicants submitted that the flats are in a linear/series arrangement so the first flat is accessed first with the second and third being slightly further on and in total there was approximately 10 metres of walkway which could be walked upon.
22. It was further submitted by the Applicants that a noise hazard is defined as “*Threats to physical and mental health due to exposure to noise within the property or within its curtilage*”. In the submission of the Applicants the Respondent had provided no evidence to confirm the hazard which it was submitted, would need to be at a substantial level over a substantial period of time to cause such an impact. The Applicants had seen no surveys carried out by the Respondent over an acceptable level of time to ascertain the frequency of noise nor the duration of the noise when it does occur.
23. In addition, the Applicants submitted that the suggested improvement work was not practical as in attempting to suspend the walkway, not only would that be compromising the structure of the walkway but would also change the height at which the residents in the first-floor properties would be reaching their front doors. This could potentially cause a trip hazard. In addition to this, altering the height of the walkway would potentially cause an issue with the fire corridor which has been created so that tenants could use the walkway in the event of fire. It was submitted that the current walkway was 1.1 metres below the windows to comply with fire regulations and if the height was changed in order to raise the

walkway that would represent a far greater hazard than any minor infrequent transfer of noise.

24. It was also submitted by the Applicants that one of the other items of improvement work requested was to make the walkway less slippery and deal with small undulations in the walkway which may cause a trip hazard. The Applicants were proposing to lay a nonslip matting along the walkway which would not only make the walkway less slippery but also reduce any noise transmission as the matting would absorb a good proportion of the noise that may be transmitted from anyone using the walkway itself.
25. The Applicants therefore submitted that the Improvement Notice should be revoked together with the demand for recovery of expenses.

### **THE RESPONDENT'S SUBMISSIONS**

26. The Respondent forwarded its written submission to the Tribunal dated 8<sup>th</sup> November 2021. The submission included a statement of the reasons for opposing the appeal and various items of correspondence between the parties.
27. The Respondent detailed the various letters and emails between the parties and submitted that it had reviewed the Applicants grounds for appealing the Improvement Notice and although it accepted that extensive remedial works had already been carried out on site these for the most part related to the remedial works required as prescribed within the letter served in October 2020 and the Enforcement Notice served by the Leicestershire Fire Authority. However, in the opinion of the Respondent the fact that extensive remedial works had been carried out did not override a Local Authorities' power to address the continued presence of Category 2 hazards within the premises.
28. The Respondent submitted that the Applicants and the Applicant's agent were first alerted to the hazards identified in the premises and of a Local Authority's powers of enforcement to address such hazards in the Respondent's letters of 26<sup>th</sup> October 2020. The Respondent's revisit to the premises under Notice of Entry was carried out on 16<sup>th</sup> August 2021 and the subsequent Improvement Notice served on 3<sup>rd</sup> September 2021. The Applicants made no contact with the Respondent to discuss the hazards within the property. The Respondent submitted that it repeatedly requested updates from the Applicants regarding the remedial works required and despite being given assurances that such works were either being looked at or had started on site, when it attended the premises under Notice of Entry in August 2021, hazards were still present and the Applicants were unable to provide definite timescales for addressing the outstanding remedial works.
29. The Respondent further submitted that the pre-formal and formal action taken in respect of the premises accorded with Charnwood Borough Council's Private Sector Housing Enforcement Policy and that the noise hazard was assessed using the Housing and Safety Rating System Operating Guidance. A hazard scoring calculation and assessment of the relevant matters was supplied to the Tribunal and, in the submission of the Respondent, evidenced the presence of the Category 2 hazard prior to service of the Improvement Notice.
30. The Respondent submitted that on 16<sup>th</sup> August 2021 Mr Hutchinson (a qualified Environmental Health Officer) had stood in the bedsit area of the premises along with the occupier and a colleague, Lesley Bassford, who was a Specialist Environmental Health

Officer also employed by Charnwood Borough Council. At that time one of the officers by the NACRO (the leaseholders) was asked to walk along the decking serving the first-floor flats. Siobhan Stretton (a representative of the Applicants) was present at the time and stood outside by the open front door. It was noted by the Respondent, that the noise generated by the NACRO officer walking along the decking permeated into the premises under the roof deck. It was submitted that the noise was intrusive at the time of the property inspection (10:00am) whilst there was normal background noise from traffic etc. It was submitted that this background noise would dissipate at night, when noise nuisances become more objectionable.

31. The Respondent further submitted that the decking on the flat roof of the premises served as the only means of access to the three first floor flats within the site. As such it was extremely likely that it would be used multiple times on a daily basis by the occupiers of the flats and any visitors. The decking was over parts of the ceilings in the bathroom and bedsit area of the property and therefore noise transmission was likely to affect the occupier on a daily basis.
32. The Respondent submitted that the occupier of the property had complained to Charnwood Borough Council about the noise generated from people walking on the decking on three separate occasions and, in the opinion of the Respondent, the Applicants suggestion of laying a nonslip matting may not satisfactorily address the noise hazard as the decking rests directly on the flat roof of the property. In addition, it was submitted that had the freeholders or the Applicants been minded to carry out the works they had had plenty of opportunity to do so, yet had not even sought quotations for this at the time of the property inspection on 16<sup>th</sup> August 2021.
33. It was further submitted by the Respondent that the Applicants claims that the Improvement Notice required them to rebuild the decking was incorrect and that remedial works to rectify the noise hazard could be carried out from underneath the decking by removing the ceiling of the property below (61b), investigating the levels of noise insulation under the flat roof and upgrading as necessary. This had already been explained to the Applicant in an email on 20<sup>th</sup> September 2021 and following this option would be sensible as Improvement Notices had also been served on the Applicants on 3<sup>rd</sup> September 2021 in respect of flat 63a Charnwood Road (which have also been appealed) requiring in part an investigation of the fire resistance of the flat roof over 61b and any upgrade works required as necessary to provide sufficient fire resistance. Therefore, both items of work could be carried out simultaneously.
34. In conclusion the Respondent therefore submitted that the appeal should be refused.

### **THE TRIBUNAL'S FINDINGS**

35. The Tribunal noted at its inspection that rubber matting had been fitted to the treads to the metal staircase adjacent to the rear bathroom wall of the property and to the walkway leading to the first-floor units. The walkway passed over the bathroom and sleeping area within the property. At the same time the parties informed the Tribunal that additional insulation had been fitted within the flat roof void over the subject property.
36. The Tribunal arranged to walk over the walkway and observed no undue noise in the property itself.

## **DETERMINATION**

37. As described by the Respondent, the Tribunal accepts that the Hazard of Noise is a Category 2 Hazard.
38. The Tribunal accepts that the Respondent sent a letter to the Applicant dated 26<sup>th</sup> October 2020 detailing the works required to the property.
39. The Tribunal accepts that the Respondent sent various letters/emails to the Applicants between October 2020 and 3<sup>rd</sup> September 2021, requiring the Applicants to confirm the position regarding the outstanding works during which time no satisfactory response was received.
40. The Tribunal accepts that a formal Improvement Notice was served by the Respondent on the Applicants dated 3<sup>rd</sup> September 2021.
41. The walkway was over the bathroom and sleeping area of the property. This has limited use and the rubber matting and additional insulation in the roof void will have improved the noise transmission. The Tribunal is however of the opinion that the rubber matting is likely to have a limited lifespan.
42. The Tribunal agrees with the Respondent that the service of an Improvement Notice is the appropriate course of action in this case especially as the work has been carried out.
43. The Tribunal determined that the Applicant could have made more effort to contact the Respondent to discuss the matter prior to the serving of the Improvement Notice.
44. Having considered and balanced the factors of the case the Tribunal determined that the Improvement Notice was a reasonable and proportionate response to the risks at the property. However, as the work has been completed to rectify the defect, the Improvement Notice should now be revoked.
45. As the Tribunal determined that the Improvement Notice was the appropriate action for the Respondent to take, it confirms that the fee of £210.30 is reasonable and allowable under section 49 of the Act and payable by the Applicant.

## **APPEAL**

46. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Graham Freckelton FRICS  
Chairman  
First-Tier Tribunal Property Chamber (Residential Property)