



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

Case Reference : **CHI/29UN/HIN/2021/0014**

Property : **60 Goodwin Road, Ramsgate Kent CT11
0JJ ('the property')**

Appellant : **Dr N Gabriel**

Representative : **In person**

Respondent : **Thanet District Council**

Representative : **Mr R Hopkins, Housing Manager**

Type of Application : **Schedule 1 para 10 (1) Housing Act 2004
(Appeal against improvement notice)**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr B Bourne MRICS**

Date of hearing : **21 January 2022
CVP Remote**

Date of Decision : **03 February 2022**

DECISION

For the reasons given below, the Tribunal confirms the Improvement Notice served on the Appellant by the Respondent.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP:REMOTE. 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 to which the Tribunal was referred are contained in electronic bundles the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

- 1 The Respondent served an Improvement Notice on the Applicant on 29 July 2021 and the Applicant filed an appeal against the Notice on 18 August 2021.
- 2 Directions were issued by the Tribunal on 24 September 2021.
- 3 The Tribunal received and read the electronic bundle of documents, including the Applicants' statement of case referred to below.
- 4 The hearing took place via a CVP video link to which the parties had previously consented.
- 5 In accordance with current Practice Directions relating to Covid 19 the Tribunal did not make a physical inspection of the property but was able to obtain an overview of its exterior and location via GPS software and was assisted by photographs contained in the Respondent's evidence (p77 et seq).
- 6 The Tribunal understands that the property, 60 Goodwin Road Ramsgate Kent CT11 0JU comprises a detached house with garage and garden in a residential area of Ramsgate. According to the Respondent's description the property is a three-storey brick and tile building comprising a ground floor, first floor and second floor. There are five bedrooms, one of which contains an en-suite bathroom; a shared use bathroom containing a WC, bath and wash-basin; a shared use shower room containing a WC, shower and wash-basin; a communal living room; and a shared use kitchen. In addition, three rooms were being used for storage and an attached garage.
- 7 The Tribunal heard evidence from the Respondent to establish that a proper procedure had been carried out by them and that the penalty they imposed on the Appellant was a proportionate response to the offence.
- 8 The Appellant is the freehold owner of the property which he had leased to a tenant in 2016.
- 9 Following a complaint from a member of the public who alleged that the property was being operated as an unlicensed House in Multiple Occupation ("HMO") in that four separate households were living in the premises and that there were episodes of antisocial behaviour and regular domestic disturbances at the property the Council began an investigation and established that the Appellant was one of the co-owners of the freehold registered as such at the land registry.
- 10 The Respondent had also received a complaint from an occupying tenant of the premises raising concerns about a faulty boiler,

- overcrowding and associated noise issues, poor general conditions and faulty electrics.
- 11 The Appellant was notified by letter of the Respondent's intention to inspect the property. He did not however attend the inspection which took place on 15 April 2021 when the Respondent confirmed that the property was occupied by five persons from four separate households. As the occupants were all sharing basic amenities, the premises met the standard HMO test and a mandatory HMO licence was required owing to the number of occupiers.
- 12 At the inspection the Respondent also carried out a full assessment under the HHSRS which revealed that there were two Category 1 hazards existing on the property, namely fire and excess cold. The assessment also revealed that three Category 2 hazards existed on the premises, namely electrical hazards, food safety and personal hygiene, sanitation and drainage. The Respondent is under a statutory duty to take action if a Category 1 hazard exists.
- 13 On 29 July 2021, further letters were sent to the Appellant advising that the Respondent believed that the property was being operated as an HMO and requesting him to make an application to licence the premises. As at the date of the hearing no application had been received by the Respondent.
- 14 The service of an Improvement Notice was deemed to be the most appropriate course of action. Subsequently, on 29 July 2021, an Improvement Notice was served under Sections 11 and 12 of the Housing Act 2004 on the Applicant and his co-owner Louris Yoursy Naguib Elias.
- 15 The member of the Respondent's staff who carried out the inspection and compiled the report is currently on maternity leave and her evidence was therefore checked and presented to the Tribunal by Ms Ritchings who had discovered an inaccuracy in the original calculation which has now been rectified and which does not affect the overall categorisation of the faults (page 66). Since no note of a consultation with the fire service could be traced in the documents Ms Ritchings contacted the Kent Fire and Rescue Service who have now produced a report which was before the Tribunal at the hearing (page 72). Any technical errors in the report are therefore deemed by the Tribunal to have been corrected, and were not in any event queried by the Appellant.
- 16 Examples of the faults found by the Respondent on inspection included a number of fire hazards including missing or non-functioning smoke alarms, the absence of fire doors and an unhooded electric cooker. An electrical report submitted by the Appellant in January 2021 and which purported to certify the property as safe is totally unsatisfactory because the electrician has stated that he was unable to gain access to the majority of rooms in the premises. There also existed cold hazards, hygiene hazards due to broken or missing tiling, fire hazards due to incorrect locks being fitted and the presence of rubbish in the garden potentially blocking an emergency escape route.
- 17 The Appellant argued that the service of an improvement notice was too harsh a penalty to be imposed. The Tribunal agrees with the

Respondent who has concluded that a hazard warning notice was not appropriate in these circumstances because its effect is only advisory. Category 1 hazards which existed at this property required a penalty which was capable of mandatory enforcement.

- 18 The Appellant said that contrary to the terms of the lease he had granted, his tenant had sub-let the property and the Appellant was currently seeking to repossess the property through an action in the county court. No copy of the lease/tenancy agreement was produced to the Tribunal and no details of the county court possession action, other than the initial summons, were disclosed. His evidence was that no substantive hearing had yet taken place. The Appellant did not dispute however, that he received £1,500 per month in rent from the tenant nor that the property was currently occupied by four separate households sharing facilities at the premises nor that it was now an unlicensed HMO. He has not made any attempt to obtain a licence for the property claiming that his intention is to gain vacant possession and sell the property and that the improvements required by the Respondent would not be necessary if he sold the house with vacant possession. That final point is strongly refuted by the Respondent who state that the electrical faults found in their inspection would be required irrespective of the status of the property as an HMO. The Respondent had offered a compromise solution to the Appellant by suggesting that he applied for a temporary exemption while attempting to sell the property. That offer has only recently been taken up by the Appellant but has not yet been granted. Neither have any of the outstanding works been done.
- 19 Having heard the evidence from both parties the Tribunal is satisfied that the Respondent carried out a fair procedure and reached a reasonable conclusion that Category 1 hazards existed at the property. The Tribunal is also satisfied that the service of an improvement notice was a reasonable response to the situation giving the Appellant a three month period in which to rectify the problems at the property none of which would involve structural work and most of which were straightforward inexpensive repairs.
- 20 The Tribunal is not impressed by the Appellant's failure to respond to the Respondent's investigations, failure to apply for an HMO licence, failure to attempt to effect any repair, failure to produce any substantial evidence of his attempts to terminate the lease or to sell the property, and his very late acceptance of the Respondent's suggestion that he should apply for a temporary exemption from licensing.
- 21 In these circumstances the Tribunal is satisfied that the correct course of action for it to take is to confirm the improvement notice served by the Respondent.
- 22 The Tribunal therefore determines that it will confirm the improvement notice as served.

23 The Law:

Housing Act 2004 Sched 1 *Appeal against improvement notice*

10 (1) The person on whom an improvement notice is served may appeal to a residential property tribunal against the notice.

(2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

14(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

(2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.

(3) A residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

15(1) This paragraph applies to an appeal to a residential property tribunal under paragraph 10.

(2) (a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order confirm, quash or vary the improvement notice.

Judge F J Silverman as Chairman
03 February 2022

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk.
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.