



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

Case reference : **CAM/42UH/HIN/2022/0002**

HMCTS Code : **V:CVP REMOTE**

Property : **Flat 1 (136A), 136/137 High Street,
Lowestoft, Suffolk NR32 1HR**

Applicant : **Kay Balls**

Representative : **Terrence Gallivan of Counsel**

Respondent : **East Suffolk Council**

Representative : **Victoria Jempson of Counsel**

Type of application : **An appeal against an Improvement
Notice under Schedule 1 to the
Housing Act 2004**

Tribunal members : **Judge K Seward
Mr G F Smith MRICS FAAV**

Date of hearing : **13 June 2022**

Date of decision : **16 June 2022**

DECISION AND REASONS

Description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP Video. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The documents to which the tribunal was referred are in an Applicant's indexed bundle of some 104 pages and a Respondent's bundle of around 552

pages. Before the hearing the Applicant added a Technical Report from Rointe and confirmation email that remedial works in relation to the fire alarm and emergency lighting test would be undertaken on 7 June 2022. On the day of the hearing the tribunal received a revised Improvement Notice dated 13 June 2022 containing suggested amendments agreed by the parties. The tribunal has noted the content of all these documents.

Decision of the tribunal

- (1) The tribunal orders that the Improvement Notice is varied by consent of the parties as set out in the Appendix to this decision but is otherwise confirmed.

The application

1. Flat 1 (136A) High Street, Lowestoft (“the Property”) is a first floor flat. It is one of three flats above two shops at Nos. 136/137. The building is a four storey mid-terrace constructed around the mid 1800’s. It is located in the historic high street which lies within a conservation area and the North Lowestoft Heritage Action Zone. The Applicant owns the freehold of the Property and common parts of the building.
2. On 10 December 2021, East Suffolk Council (“the Council”) issued an Improvement Notice (“the Improvement Notice”) in relation to damp and mould growth, excess cold and fire hazards at the Property. It required remedial work to begin not later than 21 January 2022 and to be complete within a period of 20 weeks i.e., by 10 June 2022. The Improvement Notice was received by the Applicant on 13 December 2021 who submitted an appeal to the tribunal on 2 February 2022.
3. Although the application was received by the tribunal outside of the 21-day time limit, the Council confirmed that it does not oppose the appeal being allowed to proceed. In the circumstances, the tribunal exercised its discretionary powers under paragraph 14 (2) of Schedule 1 to the Housing Act 2004 to allow the appeal to proceed in a decision dated 6 April 2022.
4. Eight grounds of appeal were identified. Only ground 6 concerns the scope of the works required by the Improvement Notice and ground 7 concerns the period for compliance. Grounds 1-5 raise matters of law on whether there has been compliance with the legislative provisions in the Housing Act 2004 and associated Housing Health and Safety Rating System (England) Regulations 2005. Under ground 8 the Applicant queries whether the Council Officer had the required delegated authority to issue the Improvement Notice.

5. Whilst the appeal was made against the Improvement Notice as originally drafted, the Council issued a Notice of Variation on 29 March 2022 extending the time for remedial works to be completed until 1 September 2022. The Notice of Variation also recognised that the Property has low profile double-glazing to the front elevation windows rather than single glazed, as previously indicated.

Inspection

6. The tribunal inspected the subject Property prior to the hearing in the presence of Counsel for both parties along with Jeremy Balls (the Applicant's son) and Robert Beresford, the Council's Environmental Health Technical Officer.
7. During the inspection it became clear that there had been compliance with much of the requirements to ameliorate/address the fire hazard with works undertaken for new fire extinguishers and fire escape signage. However, considerable areas of black mould remained evident in the rear bedroom, kitchen and bathroom. The bathroom in particular displayed extensive areas of damp to such an extent that plaster and tiles had come off the walls.

Hearing

8. The hearing opened at 12.05 pm. At the start of the hearing, Counsel announced that following discussions during the course of the morning, the parties had reached agreement to settle in principle. Such agreement was yet to be distilled to writing. In light of this development, the tribunal adjourned the hearing for an extended lunch break to allow the parties to finalise their agreement in writing.
9. When the tribunal resumed, the parties confirmed that consensus had been reached to a variation to the terms of the Improvement Notice. The revised document was produced during the hearing.
10. Counsel for the Applicant confirmed that the appeal was no longer being pursued on grounds of non-compliance with the legislative requirements or for lack of delegated authority. Accordingly, grounds 1-5 (inclusive) and 8 were withdrawn.
11. The remaining grounds 6 and 7 were not withdrawn but the tribunal is invited by the parties to exercise its power to vary the Improvement Notice in the manner agreed between the parties.
12. Rule 35 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows the tribunal at the request of the parties, but only if it considers it appropriate, to make a consent order disposing of the proceedings. In such circumstances there is no need for

the tribunal to provide reasons (Rule 35(2)). The tribunal may confirm, quash or vary an improvement notice under Schedule 1, paragraph 15(3) of the Housing Act 2004.

13. Under ground 6, the Applicant argues that the works required by the Improvement Notice are excessive and disproportionate as currently drafted. Those objections would be overcome by the variations requested by both parties as below (the references being to those in the Council's Notice of Variation of 29 March 2022):-
- Remove the requirement for thermal insulation to the external kitchen wall by adding the words "excluding the kitchen" after "external walls" in the penultimate paragraph, page 5.
 - Remove the requirement for insulation to ceilings by deleting the words "and ceilings" in line 1, final paragraph of page 5.
 - Removing the requirements for fire hazards already undertaken. This would be achieved by deleting the words "and the latest servicing and testing records of the last year" in the final paragraph of page 6 and substituting the words "and test". Deleting pages 7 and 8 and paragraphs 1 and 2 of page 9.
14. Under ground 7 the Applicant argues that the period for carrying out the works is unreasonably short. After the appeal was made the period for compliance had already been extended once by the Notice of Variation. The parties' consent to a further variation so that the remedial works shall be completed no later than 1 November 2022 or by the start of a new tenancy.

Conclusion

15. In recognition of the fire hazard works already completed and servicing records supplied, the tribunal agrees that the requested revisions appear reasonable. Such variations would have been warranted notwithstanding the agreement reached by the parties on the day.
16. Given all the circumstances including the nature and extent of works required, the tribunal agrees that a longer compliance period is justified. In light of the consensus reached between the parties on other points, the tribunal sees no reason to take a contrary view.
17. The tribunal considers it appropriate to make a consent order and shall exercise its powers to vary the Improvement Notice to reflect the amendments agreed between the parties.

Name: Judge K Seward

Date: 16 June 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix – The Varied Improvement Notice