FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References:	**MAN/00FB/HIN/2020/0030**
Properties:	**7 Trinity Grove, Bridlington YO15 2HB**
Applicant: **Representative:**	**Mrs A. Harrison** **Mr C. Harrison**
Respondent: **Representative:**	**East Riding Yorkshire Council** **Ms Julie Hilton**
Type of Application:	**Housing Act 2004 - Schedule 1, Paragraph 10(1)**
Tribunal Members:	**Judge Caroline Hunter** **Neil Swain** **Simon Wanderer**
Hearing dates: **Date of Decision:**	**24 January 2022 and 25 July 2022** **18 August 2022**

DECISION

Summary Decision

The Tribunal confirms the improvement notices with the following variations:

a) Both the section 11 and 12 notices are amended to change the date for commencing of the works to 8 September, 2022 and for completion to the date of 8 November, 2022;
b) In the section 12 notice items 21 and 24 are removed.

The appeal against the demand notice under s.49 of the Housing Act 2004 is dismissed.

The statutory framework

1. The Housing Act 2004 ("the Act") provides for a 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.

2. Those hazards which score 1000 or above are classed as category 1 hazards. If a local housing authority makes a category 1 hazard assessment, it becomes mandatory under section 5(1) of the Act for it to take appropriate enforcement action. These include under s.5(2)(a) serving an improvement notice under s.11 of the Act.

3. Hazards with a score below 1000 are category 2 hazards, in respect of which the authority has a discretion whether to take enforcement action under section 7(1) of the Act. In the case of category 2 hazards, section 7 sets out five different courses of action. These include the power under section 12 to serve an improvement notice and under s.21 to serve a hazard awareness notice.

4. The duty of a local authority to inspect a property is set out in section 4 of the Act. Inspections are governed by the Housing Health and Safety Rating System (England) Regulations) (2005/3208) which by reg. 5 provide that an inspector must:
    a) have regard to any guidance for the time being given under section 9 of the Act in relation to the inspection of residential premises;
    b) inspect any residential premises with a view to preparing an accurate record of their state and condition; and,
    c) prepare and keep such a record in written or in electronic form.

5. The relevant Guidance is the Housing Health and Safety Rating System – Operating Guidance, issued by the Secretary of State under section 9 of the Act in February 2006 ("the operating guidance"). Authorities must also take it into account in assessing hazards: see s.9(1)(a). In addition further guidance has been issued under s.9 which "is intended to help authorities decide which is the appropriate enforcement action under section 5 of the Act and how they should exercise their discretionary powers under section 7." This Guidance is the Housing Health and Safety Rating System – Enforcement Guidance, issued by the Secretary of State in February 2006 ("the enforcement guidance").

6. Section 239 of the Act provides an authority with powers of entry they consider that an inspection of the premises is necessary to determine whether a category 1 or category 2 hazard exists on the premises.

7. Authorities have the power to charge a reasonable amount to cover administrative and other expenses of servicing an improvement under section 11 and 12: section 49(1) of the Act. Where a tribunal allows an appeal against the notice, it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of, any charge under this section made in respect of the notice or order: section 49(7).

8. A "relevant person" may appeal to the First Tier Tribunal against an improvement notice (Schedule 1, para.10 of the Act). Although there are no statutory limits on the grounds of appeal, Schedule 1, paras. 11 and 12 of the Act provide two specific grounds: that another person ought to take the action concerned or pay part of the costs, and; that another course of action (e.g. a hazard awareness notice) is the best course of action in relation to the hazard in respect of which the notice was made. The appeal is by way of re-hearing (Schedule 1, para.15(2) of the Act). The Tribunal may confirm, quash or vary the improvement notice (Schedule 1, para. 15(3) of the Act). In deciding what is the best course of action the Tribunal is required to take into account any Guidance issued under section 9 of the Act: Schedule 1, para. 17(2) of the Act.

Background

9. 7 Trinity Grove ('the property') is a three storey pre 1920s (built in 1902) semi-detached dwelling comprising of two ground floor sitting rooms and a kitchen; a bathroom on the first floor, the WC is across the landing; there are three bedrooms on the first floor. There are two second floor attic rooms and a void area on the half landing above the bathroom.

10. The applicant, Mrs Harrison, purchased the property in 1994. From 1997 -2019 it was let to the same tenants. When they moved out new tenants moved in. Those tenants have four children, currently aged between 2 and 11.

11. A service request was received by the Private Sector Housing Department of the respondent East Riding Yorkshire Council ('the council') on 14 February, 2020, from the tenants of the property complaining of disrepair at the property and a further service request was received on 2 March, 2020.

12. On 3 March, 2020 the council sent letters to both Mrs Harrison and her husband to inform them that the council intended to inspect the property on 10 March, 2020. At this point the council erroneously understood that the property was joint owned by Mr and Mrs Harrison.

13. Following an inspection of the property on 10 March, 2020 by Ms Hilton for the council, Ms Hilton sent an informal schedule of works to Mr and Mrs Harrison on 1 April, 2020. This including a pro forma requesting an estimated start and completion dates for the works in the schedule and information about the ownership of the property (the request for information was made under section 16 of the Local Government (Miscellaneous Provisions) Act 1976).

14. The section 16 notice was returned on 14 April, 2020 and detailed that Mrs Harrison was the landlord. No other interested parties were recorded. A land registry search undertaken by the Council also confirmed Mrs Harrison to be the sole owner.

15. On 19 June, 2020 Ms Hilton emailed Mrs Harrison as she was concerned that the works had not started. There was also an issue with the fencing at the bottom of the garden being access to the railway line. This was resolved at it was the responsibility of Network Rail.

16. On 31 July, 2020 the council sent a s.239, Housing Act 2004 notification to Mrs Harrison to advise her that it intended to revisit the property on 18 August, 2020 to check that the works to the schedule issued on 1 April had been carried out. A reply to this was emailed to the council by Mr Harrison on 2 August, 2020. This disputed that some of the issues in the informal notice were hazards, that some had been created by the tenants and that the area above the bathroom would be insulated as soon as the grant was approved. The email concludes:

    "This work cannot and [sic] completed in the 14 days' time period you have given us and if you insist on that the tenants will be given their notice and we will again appeal against any legal notices that you wish to issue."

    The reference to appealing 'again', we assume was a reference to two notices served by the Council on Mrs Harrison on 28 February, 2020 in relation to 35 Richmond Street, Bridlington. These notices had been appealed at this time, although the hearing was not until 5 April 2021. (We note the Tribunal dismissed the appeal, see below.)

17. An email from Ms Hilton was sent to Mrs Harrison on 17 August. It said:
    "I have received an email below from Mr Cliff Harrison. [Referring to the email of 2 August].

    Could you please give your written consent for me to deal with Mr Harrison regarding the above property. I would advise you that the information regarding the repairs was emailed to you on 1st April, 2020 and as you returned the completed S16 notice, which was enclosed in that email, you had clearly received it.

    I have not given you 14 days to complete the works as stated in Mr Harrisons email, I have given you over 4 months. It is your statutory right to appeal any notices the authority serve however the works must be completed if the property is occupied or not as some of the defects constitute category 1 hazards.

    Obviously, you will need to ensure that you follow the correct legal procedure should you choose to serve notice to quit on your tenants as that process has changed due to the pandemic. I shall be visiting the property tomorrow as arranged with the tenant."

18. In response to this email, Mr Harrison emailed the council on the same day, including the following:

"...As I am sure you are fully aware that most companies are and have been furloughed since March and that the building trade was almost at a standstill the firm I always use for my property repairs did not return back to work until last week and like so many other people I am in a [queue] awaiting his services so to say that this work could have been started in April is too silly for words.

I have also given a full list in reply to your work schedule and as yet you have not even bothered to reply to it..."

19. On 18 August, 2020 the Council reinspected the property. Following the reinspection, on 25 August, 2020, the Council served two notices on Mrs Harrison: one under s.11 of Housing Act 2004 and the other under section 12. The notices required Mrs Harrison to begin them not later than the 24 September, 2020 and to complete them within the period of 70 days of that date. The notices detailed 25 items in total: items 1 -16 in the section 11 notice and 17 – 25 in the section 12 notice. (These notices replaced two notices dated the previous day, that the Council acknowledged were defective as they did not give the full 28 days to start the works.) The council also made a demand for payment of £341.81 under s.49 of the Act on the same day.

20. Mrs Harrison appealed against both notices and the demand for payment on 6 September, 2020. Directions were made by the Tribunal on 18 January, 2021.

21. In 2 December, 2020 the Council reinspected the property and noted that a substantial portion of the work had been carried, however there were still outstanding items. Ms Hilton emailed Mrs Harrison an updated schedule on 3 December. In an email the same day Mrs Harrison reminded Ms Hilton that the matter was under appeal. The email ended at follows:

"I now do not expect to hear again until the rent tribunal office has made their decision.
.... We cannot issue tenants their notice to vacate the premises until 26th February 2021 but a notice to vacate the property will be issued to the tenants on the 27th without delay."

22. On 24 January, 2022 a Video-hearing was held for the appeal. That hearing proceeded on the papers that been provided to the Tribunal members. In the hearing it become clear that:
    a) The Tribunal members had not been supplied with a complete bundle of papers;
    b) It was not clear whether the applicant was appealing one or both of the notices. In particular the papers did not make it clear that the section 12 notice was being appealed as well the section 11 notice.

23. In the light this the hearing was adjourned. Further directions were issued on 14 March, 2022. These stated:
    a) For the avoidance of doubt the hearing is to determine appeal from both the section 11 and 12 notices.

b) If the Applicant wishes to add any further submission and evidence on the section 12 notice (only) she must provide that with 14 days of these Directions.

c) The Respondent must, within 14 days of receipt of (2) above, any response and further evidence to (2) above.

24. Mrs Harrison provided a further submission on 30 March, 2022 both reiterating her previous arguments about the conduct the council and made some comments on particular items in the section 12 notice. The Council responded on 4 April, 2022. They also revisited the property on 7 April, 2022 and noting a number of the items on the notices had been undertaken.

25. The property was inspected by two of the Tribunal members (Judge Hunter and Mr Swain) on 21 July, 2022 at 10 a.m. at the request of Mrs Harrison. She was not present at the inspection, identifying a hostile relationship with the tenants as the reason. The tenants were present, as were the Council's representatives – Julie Hilton and Laura Sandrey.

26. At both hearings Mrs Harrison was represented by her husband. Ms Hilton represented the Council.

The Inspection

27. The notices set out a number of hazards. The Schedule of Works for both category 1 and 2 hazards was used as the basis for the Inspection by the Tribunal, and the item numbered below refer to the item numbers in the Schedules.

Section 11 notice

28. Item 1 – The tenants had taken some action on this to fill in the gaps with mortar. However, there were still some gaps visible.

29. Item 2 – The window was clearly difficult to open and close and the gap referred to still exists. There was still a gap at the top of the window frame that seemed likely to cause a draft (although the height precluded a proper inspection).

30. Item 3 – There was no insulation within the loft space. It was also noted that there was a portable gas heater in the bathroom, apparently to heat the room at colder times as otherwise the room was too cold to use.

31. Item 4 – The hole appears to have been filled with expanding foam.

32. Item 5 – The missing mortar appears to have been replaced by silicone sealant. This was evident on both the inside and outside of the wall. There would be concerns over moisture breaching the gap, but the external wall is part of a covered passageway (between the two semi-detached houses).

33. Item 6 – The gap around the flue appears to have been filled. Due to the height, a detailed inspection could not be undertaken.

34. Item 7 – The downpipe and hopper had been replaced and appeared to be a suitable repair.

35. Item 8 – The gap above the boiler cupboard door had been filled in with appropriate panels.

36. Item 9 – Throughout the house, only one radiator appeared to have a TRV installed. No room thermostat could be located and the front bedroom still did not have any heating provision. The tenant indicated that the controls were non-existent, basically it was either turned on (at full power) or it was turned off.

37. Item 10 – The landlord had replaced the missing baluster. However the balustrade was still loose and was easily moved around. The balustrade was very low. This did not seem excessive on the first floor (due to the layout). However on the second floor the balustrade was only slight above adult knee height, with a straight drop down to the floor below.

38. Item 11 – Restrictors had been fitted to all of the windows that we checked.

39. Item 12 – The door had been replaced with a suitable one.

40. Item 13 – Although only inspected from ground level, the chimney appeared to have been repaired.

41. Item 14 – The slipped tiles appear to have been rectified. However, there was a significant amount pointing missing along the tile edge and more appeared to be loose.

42. Item 15 – A new backdoor step had been suitably installed.

43. Item 16 – There are several changes in level throughout the yard area (all of which is hard landscaped). The changes vary in height and the edges are rough and uneven in places.

Section 12 notice

44. Item 17 – The electrical sockets had not been repaired or replaced. The hole in the backbox of the socket on the first floor was clearly big enough for a child's finger to access.

45. Item 18 – We could not inspect this as the washing machine was in the way. However, the council's representative confirmed it had been completed satisfactorily.

46. Item 19 – It was unclear whether any action had been taken on this item. However the tenant indicated that the problem had been less frequent recently. No electrical certificate was yet available.

47. Item 20 – The toilet appeared to be still leaking.

48. Item 21 – Item on hold due to tenant's request.

49. Item 22 – From ground level, there was no evidence visible of blockages in the gutter, so it is assumed that this work has been completed.

50. Item 23 – The dining room window had been repaired.

51. Item 24 – Smoke detectors were present in the hallways. No detectors were present in the kitchen or any other principal habitable room.

52. Item 25 – A number of bedroom doors had gaps around the edges. Two had holes through them were door handles had been moved and the previous holes just left. The second floor main bedroom door had sections that had been cut out of it and then been stuck back in. This left sizeable gaps within the door structure and underneath it.

The issues before the Tribunal

The power to serve the notices

53. Mr Harrison attacked the notices was being improperly served because of two failures by the council to comply with their own policies.

54. First, Mr Harrison submitted that Ms Hilton should not have been involved in the informal discussions as it is the council policy that complaints be dealt with by the "Private Sector Housing Department'. His argument on this was that Ms Hilton was a 'environmental officer' in the 'Environmental Department'.

55. In her statement Ms Hilton deals with this as follows:

> "I am an Environmental Health Officer working within the Private Sector Housing Team. Private Sector Housing functions have been within the remit of Public Health since 1848 with the introduction of the Public Health Act of that year. The title of Sanitary Inspector changed to Public Health Inspector and in 1984 changed to Environmental Health Officer."

In the light on this, we see no merit in the submission.

56. Secondly, Mr Harrison relied on an information leaflet for tenants and landlords from the Council. This states: 'Before contacting the council, we expect tenants to have written to the landlord to report any repair issues.' He argued that this leaflet creates a policy that prevents the council from taking action without first checking whether the tenant has written to the landlord. Further the council did not comply with the policy, as no written complaint was received by him or his wife. Furthermore the council did not check this when the tenants made their complaint to the council. Mr Harrison provided the Tribunal with the original information taken by the council from the tenants. This states that they have informed their landlord. The notes continues:

> "If so when? 2 week ago – he's on holiday currently not back for a month."

57. In response Ms Hilton stated that she had had no reason to doubt that the tenant had reported it to the landlord. She also reminded the Tribunal of section 5 of the 2004 Act (see para. 2). This, in our view, makes Mr Harrison's argument untenable. Section 5 requires a council to take action on category 1 hazards (they '*must* take the appropriate enforcement action…' emphasis added). Any policy limiting action would be unlawful, and we do not read the leaflet as creating such a policy.

The difficult in finding contractors

58. It will be obvious from the background facts above that when the original complaint was notified to Mr and Mrs Harrison the country was just days away from the first Covid lockdown. By the time that 10 April informal notice was issued the country was in complete lockdown.

59. Mr Harrison suggested that more time should been allowed for the works to be undertaken before the formal notices were made on 25 August. He stated that it was very difficult to find contractors because of this and that he made that clear to the Council (see the email at para. 18, above). He pointed to an email Ms Hilton wrote to him and her wife on 2 July 2020 in relation to giving 24 written notice to tenants. This stated:

> "I am aware that these are difficult times and obtaining the services of builders etc can be challenging however it is particularly important at this when we all have be careful about contract that your tenants have to opportunity to take all necessary precautions before giving access to anyone into their home."

60. Further, Mr Harrison was not able to undertake electric works himself (he is a registered electrician) because he and his wife were shielding due to their son being vulnerable.

61. In reply Ms Hilton pointed to the fact that Mrs Harrison was given 120 days to carry out the works prior to the notices were served. Further she asserted that by mid-June 2020 the majority of the building trade were back at work in the East Riding area. She referred to the Government's Coronavirus (COVID 19) guidance to landlord issued in March 2020 that stated at para 3.6:

> "Landlords' repair obligations have not changed. Tenants have a right to a decent, warm and safe place to live – and it is in the best interests of both tenants and landlords to ensure that properties are kept in good repair and free from hazards.
>
> Good management requires regular review and maintenance of a property, but we understand that planned inspections may be more difficult at this time. However, that is no reason to allow dangerous conditions to persist.
>
> Where reasonable and safe for you, and in line with other Government guidance, you should make every effort to review and address issues brought to your attention by your tenants, and keep records of your efforts.
>
> Urgent health and safety issues are those which will affect your tenant's ability to live safely and maintain their mental and physical health in the property. This could include (but is not limited to):
> – If there is a problem with the fabric of the building, for example the roof is leaking
> – If your boiler is broken, leaving your tenant without heating or hot water
> – If there is a plumbing issue, meaning your tenant does not have washing or toilet facilities
> – If the white goods such as fridge or washing machine have broken, meaning the tenant is unable to wash clothes or store food safely

– If there is a security-critical problem, such as a broken window or external door
– If equipment a disabled person relies on requires installation or repair."

62. Ms Hilton also pointed to the changing regulations on COVID from June onwards. She stated that she considered that is was possible to carry out at least some of the works to the property in a safe manner using industry/HSE and Public Health England guidance on safe working practices.

63. The Tribunal notes that Mr Harrison was able to instruct tradesmen in this period (see the next para.). In the light of the long period that the Council allowed for the works to be undertaking informally, the changed position on COVID by August 2020 and the fact the notice required works commence works not later than the 24 September, 2020 and to complete them within the period of 70 days of that date, in the Tribunal's view the decision to serve the notices was reasonable.

Obstruction by the tenants

64. A further complaint made by Mr Harrison was that the tenants made it impossible to undertake works through their obstruction. He cited a number of events in April and May 2020 where the tenants obstructed access to electricians and gas engineers to undertake safety checks. His evidence suggested that the tenants required reasonable notice before they allowed access, rather than complete refusal.

65. The Council did not call the tenants as witnesses, so we proceed on the basis that Mr Harrison's evidence is unchallenged. First we note that it was not complete refusal. Secondly, in our view it cannot make any difference to the Council's decision to serve the notices. Whatever the behaviour of the tenant, the Council have the duty (in Category 1 Hazards) or the power (in Category 2 Hazards) to take action. The behaviour of the tenants would be relevant to any decision to take any action on failing to comply with the services but not to the decision to serve the notices.

Council acted vexatiously

66. Mr Harrison made a number of assertions that he suggested demonstrated that the council has been acting vexatiously in pursuing this case. As well as the matters set out in the paragraphs above, he referred to the insistence by the Council on dealing with Mrs Harrison and not Mr Harrison directly, the fact that the Council served section inspection notices under s.239 of the Act (these were not necessary he suggested) and the way the Council dealt with Network Rail works.

67. Ms Hilton responded to each of these issues in her evidence. She concluded that formal action involves a lot of work and is not undertaken lightly or maliciously.

68. Mr Harrison stated that the Council, and Ms Hilton in particular, had no intention whatsoever of trying to compromise over the errors she had made on her repair list and the deadline that she had given this was purely down to personal reasons and not professional ones. We do not see any basis for this assertion.

Items on both notices are not necessary

69. Turning to the individual items on the notices, Mr Harrison made a number of complaints.

70. Item 10 – Mr Harrison had replace the missing baluster. However he suggested that the balustrade had been happily in situ since 1902 and was not a hazard. As the Tribunal's inspection showed, the balustrade was still loose and was easily moved around. It was also very low, particularly at the second floor. We considered that this item should remain on the section 11 notice.

71. Item 21. The separate toilet (next to the bathroom) does not have a wash hand-basin. The toilet is very small and the council's response to the lack of a hand-basin was to suggest a cistern top wash basin. With small children both the tenants and Mrs Harrison did not think this was suitable solution.

72. The Council was willing suspend this item. We have no power suspend items and we amend the section 12 notice to remove it.

73. Item 24 - although Mr Harrison had installed a fire detection system before the notice was served, it was the Council case that it was not adequate and does not meet BS5839 or the requirements of the guidance provided by LACoRS. In particular smoke detectors were required in the living and dining rooms and heat detector in the kitchen.

74. In the view the Tribunal this is misreading of the requirements referred to. These are for Houses in Multiple Occupation (HMOs), not for houses in single family use. For this reason we amend the section 12 notice to remove it.

Charges for the inspection

75. In addition to the appeal against the notices, Mrs Harrison appealed against the charges for the inspection on 18 August, 2020. Mr Harrison argued that the inspection not necessary and charging for the inspection was just a money exercise.

76. In her first statement Mrs Hilton stated:

> I have charged for only one visit which was my visit on 18th August, 2020 with Ms Sandrey, we were at the property for one hour and the Housing Act 2004 states we are at liberty to charge for officer time. I chose not to charge for my initial inspection as, if the works been complied with in the first instance, there would have been no charge made for that inspection. The council is far from recovering the costs of the noncompliance with the notices and I refute the suggestion that this was done in order to make money for the department.

77. We were provided with a breakdown of the charges. In our view they are reasonable.

Conclusion

78. It is nearly 2 years since the notices were served on Mrs Harrison. Although some of them were completed in the set time scale and some have since been

completed, other still are outstanding. In the Tribunal in the 35 Richmond Street, Bridlington case (MAN/00FB/HIN/2020/0017) found at para. 67:

> "it was not acceptable for the Applicant [Mrs Harrison] to propose a delay in commencement of the works for three months, and for proposed completion to be almost a year from the date of initial inspection, whilst denying the works were needed, taking action to evict the tenants who had laid complaint to the Respondent [the Council], whilst simultaneously expecting (with no basis for such expectation) the Respondent to revert for further negotiation."

79. A not dissimilar pattern is discernible is this case. In terms of Mrs Harrison's argument that the notices were invalid we dismiss the arguments. However, we have to take into account the fact that a range of the items have been corrected. Does that mean that we should amend the notices to remove them?

80. The Upper Tribunal has considered the nature of the rehearing in HMO licencing cases: see for example *Hastings B.C. v. Turner* [2021] UKUT 258 (LC). That case turned on the evidential burden of the authority in such cases. The evidence not in dispute in the same way in this case. There is evidence that some of the works have been undertaken, although as the Tribunal's Inspection showed there were some items where the evidence was not clear and some where none have happened.

81. For this reason we consider that the best way forward it to not to remove any items (apart from items 21 and 24, see below), but to vary the dates for starting and completing the works. The new date for commencing of the works is 8 September, 2022 and for completion it is 8 November, 2022. In our view that is a reasonable time given the outstanding works. It will be for the Council decision is determine if any items are outstanding on 8 November, 2022 and if so what action to take.

82. Items 21 and 24 should for the reasons set out in para. 72 and 74 be moved from the section 12 notice.