



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

Case Reference : **LON/00AL/HIR/2022/0001**

HMCTS code (paper, video, audio) : **V: CVP REMOTE**

Property : **St. Nicholas Centre, 79B Tewson Road, London SE18 1BB**

Applicant : **Global Guardians Management Limited**

Representative : **Mr Anthony Owen, Solicitor of Kelly Owen Limited**

Respondent : **Royal Borough of Greenwich**

Representative : **Miss Reid of Counsel**

Type of Application : **Appeal in respect of a decision refusing to vary or revoke Improvement Notice under the Housing Act 2004.**

Tribunal Members : **Judge N Hawkes
Fiona Macleod, MCIEH**

Venue and date of hearing : **Remote video hearing on 6 October 2022**

Date of Decision : **26 October 2022**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: 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 order made is described below.

Decision of the Tribunal

The Tribunal dismisses the appeal and confirms the Respondent's decision dated 16 February 2022 refusing to vary or revoke an improvement notice dated 11 February 2022.

The hearing

1. The Applicant's application is dated 11 March 2022. Directions of the Tribunal were issued on 13 June 2022, leading to a final hearing. The final hearing took place by CVP video on 6 October 2022.
2. The Applicant was represented at the hearing by Mr Owen, Solicitor, and the Respondent was represented by Miss Reid of Counsel.
3. The Tribunal heard oral evidence of fact on behalf of the Applicant from Mr Owen.
4. Before hearing this evidence, the Tribunal adjourned in order to give Mr Owen time to consider whether it was appropriate for him to appear both as a witness and as an advocate.
5. Following the adjournment, Mr Owen stated that he would not seek to give evidence set out at paragraph 5 of his witness statement to the effect that an initial letter was received by his client on 27 January 2022. Accordingly, his evidence was limited to the other matters contained in his witness statement.
6. The Tribunal heard oral evidence of fact on behalf of the Respondent from:
 - (i) Mr Mohammad Islam, a Senior Environmental Health Officer in the Respondent's Private Sector Housing Enforcement Team; and
 - (ii) Mr Nicholas Stabeller an Operations Manager in the Respondent's Private Sector Housing Enforcement Team.

The issue

7. During the course of the hearing, Mr Owen confirmed that the Applicant is seeking to appeal against the Respondent's decision dated 16 February 2022 refusing to vary or revoke an improvement notice dated 11 February 2022 ("the Improvement Notice") but that the Applicant is not seeking to appeal against the Improvement Notice.

The Tribunal's determinations

8. After the close of witness evidence, Mr Owen sought permission to amend the Applicant's Statement of Case to raise new grounds of appeal, namely that:

"The Respondent has not served a valid notice refusing to vary or revoke the improvement notice because paragraphs 8 and 9 of Schedule 1 of the Housing Act 2004 sets out the steps the local authority must take and it has not taken them".

9. Mr Owen clarified that (i) the Applicant's case in respect of paragraph 8 of Schedule 1 to the Housing Act 2004 ("the 2004 Act") is that the Respondent failed to serve the necessary people with the notice refusing to vary or revoke the improvement notice and (ii) the Applicant's case in respect of paragraph 9 of Schedule 1 to the 2004 Act is that the Respondent omitted to set out the right of appeal against its decision.
10. The Tribunal determined that it would not be fair and just in all the circumstances to permit the Applicant to raise these new issues part-way through the final hearing when:
 - (i) The Applicant has at all material times been legally represented.
 - (ii) The only reason given for raising the new issues at such a late stage was that they had not previously been identified.
 - (iii) An email dated 16 February 2022 which is relied upon by the Respondent as the notice refusing to vary or revoke the improvement notice was served on the Applicant's solicitor. If and insofar as it was or should have been served on anyone else, this is not the case which the Respondent was addressing

when it prepared its evidence fact in advance of the hearing.

(iv) The email dated 16 February 2022 makes reference to appeal rights and the Applicant has in fact appealed the notice of 16 February 2022 to this Tribunal.

11. As regards the substantive appeal, the Applicant submitted that that the Respondent should have revoked the Improvement Notice dated 11 February 2022.
12. Section 16 of the 2004 Act provides (emphasis supplied)

16 Revocation and variation of improvement notices

*(1) The local housing authority **must** revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with.*

*(2) The local housing authority **may** revoke an improvement notice if–*

*(a) in the case of a notice served under section 11, they consider that there are **any special circumstances making it appropriate to revoke the notice**; or*

*(b) in the case of a notice served under section 12, they consider that it is **appropriate** to revoke the notice.*

(3) Where an improvement notice relates to a number of hazards–

(a) subsection (1) is to be read as applying separately in relation to each of those hazards, and

(b) if, as a result, the authority are required to revoke only part of the notice, they may vary the remainder as they consider appropriate.

(4) The local housing authority may vary an improvement notice–

(a) with the agreement of the person on whom the notice was served, or

(b) in the case of a notice whose operation is suspended, so as to alter the time or events by reference to which the suspension is to come to an end.

(5) A revocation under this section comes into force at the time when it is made.

(6) If it is made with the agreement of the person on whom the improvement notice was served, a variation under this section comes into force at the time when it is made.

(7) Otherwise a variation under this section does not come into force until such time (if any) as is the operative time for the purposes of this subsection under paragraph 20 of Schedule 1 (time when period for appealing expires without an appeal being made or when decision to vary is confirmed on appeal).

(8) The power to revoke or vary an improvement notice under this section is exercisable by the authority either–

(a) on an application made by the person on whom the improvement notice was served, or

(b) on the authority's own initiative.

13. It is common ground that the requirements of the Improvement Notice have not been complied with. There is therefore no mandatory requirement that the Improvement Notice “must” be revoked but rather the Respondent “may” revoke the improvement notice in the circumstances specified in section 16(2) of the 2004 Act.

14. The Tribunal found Mr Islam to be a clear and credible witness. We accept on the balance of probabilities the evidence of Mr Islam which included the following matters.

15. On 17 January 2022, Mr Islam carried out a formal inspection of St. Nicholas Centre, 79B Tewson Road, London SE18 1BB (“the Property”) in accordance with Housing Health and Safety Rating System under the 2004 Act.

16. During the course of the inspection, Mr Islam observed:

“• Lack of adequate early warning fire detection system in the event of a fire

• Lack of adequate fire resistance escape routes in the event of a fire

• Lack of adequate firefighting equipment in the event of a fire

• Broken push bar to the fire exit door leading to back on the landing between first and second floor

- *Evidence of active pest infestation throughout the building with evidence of mice droppings in the communal kitchen on the ground floor and putting mouse traps throughout the building*

- *The absence of adequate cooking facilities*

- *Broken hot water tap in the kitchen sink*

- *Disrepairs to the communal shower room with visible damaged to the wall*

- *Lack of adequate artificial lighting to the ground floor hallway”*

17. The Applicant was given an opportunity to carry out remedial work on an informal basis pursuant to a letter which was issued on 24 January 2022. The letter included provision that work detailed in schedules to the letter should start by 7 February 2022 and should be completed by 7 March 2022. It was also stated that the Applicant was required to complete and return within 14 days a Representation Form, setting out its proposals including methods, dates and times for the remedial work.

18. The letter issued on 24 January 2022 warned (emphasis supplied):

“If we do not receive your representations within 14 days and we consider improvements unsatisfactory we will review the case and if appropriate begin formal enforcement proceedings, which may result in the service of statutory Notices/Orders, which will be charged for (£300 to £500) and may also result in prosecution or civil penalties for up to £30,000 per offence.”

19. On 11 February 2022, before receiving an email from Mr Owen sent at 16.30 hours enclosing the Applicant’s Response Form, Mr Islam sent the Improvement Notice out by post. The Applicant’s response to the letter of 24 January 2022 was to express a willingness to voluntarily carry out remedial work to address the hazards found at the Property. The Applicant therefore submits that the Improvement Notice should have been revoked.

20. Having considered all of the evidence to which we were referred, the Tribunals find as a fact on the balance of probabilities that the Applicant’s Response Form was served out of time and that the remedial work detailed in the schedules to the letter of 24 January 2022 had not commenced by 7 February 2022.

21. In light of these defaults on the part of the Applicant and the nature of the hazards found at the premises (which include two category 1 hazards) we are not satisfied that the Respondent erred in declining to

exercise its discretion to revoke the Improvement Notice on receipt of the Applicant's Response Form out of time. Mr Owen stated that the Respondent's policy encourages the informal resolution of disputes but he did not refer the Tribunal to any specific term of the policy which would require the Respondent to revoke an improvement notice in the circumstances of the present case.

22. Accordingly, we dismiss the appeal and confirm the decision dated 16 February 2022 refusing to vary or revoke an Improvement Notice dated 11 February 2022.
23. We note that it is not in dispute that, as at the date of the hearing, some of the hazards set out to in the Improvement Notice dated 11 February 2022, the validity of which is not challenged, have still not be remedied.

Name: Judge Hawkes

Date: 26 October 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).

