



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

Case Reference : **BIR/00CS/HIN/2022/0009**

Property : **Flat 2, 78 Causeway Green Road, Oldbury,
West Midlands, B68 8LF**

Applicant : **Mr Gavin Moran**

Respondent : **Sandwell Metropolitan Borough Council**

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

Tribunal Members : **Judge M K Gandham
Mr R Chumley-Roberts MCIEH, JP**

**Date and venue of
Hearing** : **Paper Determination**

Date of Decision : **13 January 2023**

DECISION

Decision

1. The Tribunal orders that the Improvement Notice dated 12 May 2022 be quashed.

Reasons for Decision

Introduction

2. On 2 June 2022, the First-tier Tribunal (Property Chamber) received an application from Mr Gavin Moran ('the Applicant') for an appeal under Paragraph 10 of Schedule 1 to the Housing Act 2004 ('the Act'). The appeal related to an Improvement Notice dated 12 May 2022 ('the Notice'), served upon him by Sandwell MBC ('the Respondent') relating to the property known as Flat 2, 78 Causeway Green Road, Oldbury, West Midlands, B68 8LF ('the Property'), of which the Applicant is the freeholder.
3. The Notice detailed, in Schedule 1, various defects at the Property. These defects were categorised as a category 1 hazard in respect of Excess Cold (in respect of the communal front door) and category 2 hazards in respect of Electrical Hazards (relating to the location of the consumer unit) and Falls on the Level (relating to the uneven kitchen floor). The Respondent served, with the Notice, a Statement of Reasons as to why the decision to take enforcement action had been made. The Respondent did not serve a Demand for Payment.
4. The Respondent provided a Statement of Case and bundle on 22 July 2022 and a Statement of Case and bundle setting out the Applicant's case was received by the Tribunal on 31 August 2022. The Tribunal also received additional witness statements from the Applicant on 19 October 2022 and 16 November 2022.
5. Neither party requested an oral hearing and an inspection was arranged for 18 November 2022.

The Law

6. 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 (the 'HHSRS') replaced 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'.

7. 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 improvement notice) which may constitute appropriate enforcement action.
8. 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.
9. Section 9 of the Act requires the local housing 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.
10. The person upon whom an improvement notice is served may appeal to the First-tier Tribunal (Property Chamber) under Part 3 of Schedule 1 to the Act. The appeal is by way of a rehearing and may be determined having regard to matters of which the local housing authority were unaware. The Tribunal may, under paragraph 15(3) of Schedule 1, confirm, quash or vary the notice.

Inspection

11. The Tribunal inspected the Property on 18 November 2022. The Applicant was present and the Respondent was represented by Ms Joanne Edwards (a Consumer Protection Officer) and Mr Richard Hawkins (the Team Manager of the Citizen & Consumer Protection Accommodation Team), both of whom were employed by the Respondent.
12. The Property is located within a semi-detached house on Causeway Green Road in Oldbury. The house has solid brick walls and a pitched, tiled roof with an extension to the rear. There are three dwellings located on the plot – Flat 1, being located on the ground floor of the house; the Property, being located on the first floor of the house; and Flat 3, being located in a rear extension.
13. The front door to the house leads to a common hallway from which Flat 1 and Flat 2 can be accessed (Flat 3 has its own entrance located via the rear garden). The common hallway is approximately 3 metres long. A cupboard containing the consumer units for the house was located directly behind the front door, approximately 1.5 metres from the ground. Each dwelling had its own meter, and the meter for the Property was located towards the top of the cupboard.
14. The front door to the house was made from wood and there were some gaps where the door met the frame. In addition, a hole had been cut out in the centre of the door,

approximately one third of the way down from the top, for the delivery of post. There was a letter plate in place to cover the hole.

15. There was a radiator located on the right hand side of the common hallway, which was connected to the heating system for the ground floor flat, and a three-step ladder was secured to the wall on the left hand side of the hallway, just after the meter cupboard.
16. The front door to the Property was located at the end of the common hallway, with the front door to Flat 1 being located on the right-hand side of this hallway. The doors to each of the flats appeared to be fire rated doors and were solid, with individual locks and handles. There was a threshold strip to the entrance door to the Property and there appeared to be no obvious gaps around the door.
17. The Tribunal were unable to gain access to the Property (although a dog could be heard inside), so were unable to inspect the kitchen floor.
18. Other than some infilling to one side of the frame to the front door of the house, no works appeared to have been carried out since the inspection by the Respondent on 5 April 2022, which was carried out prior to them issuing the Notice.

Submissions

The Applicant's submissions

19. The Applicant, in his statement of case, contended that the Respondent had failed to act fairly and reasonably in issuing the Notice in that it had given too much weight to the complaints raised by Ms Adkins (the tenant), insufficient weight to the Applicant's evidence regarding Ms Adkins' conduct, had given inconsistent advice to the Applicant and had adopted inconsistent standards with regard to the rectification of any defects.
20. The Applicant stated that Ms Adkins had been in rent arrears for over 12 months and that she had failed to keep the Property in good repair and condition. He also submitted that she had caused internal damage to the Property, had kept a dog at the Property without consent and that she had refused access to allow the Applicant to carry out maintenance and repair.
21. In relation to the front door, the Applicant submitted that, although a dwelling for the purposes of the HHSRS included common areas giving access to the flat, the front door should have been assessed in the context of being the communal front door rather than the front door to the Property itself. The Applicant stated that the front door to the Property was a fire door, therefore, the protection provided by the two doors was much greater than the communal door alone. In addition, the Applicant stated that rubber trim strips had been added to the inside of the door frame to the Property to ensure a closer fit.
22. In relation to the location of the consumer unit, the Applicant stated that he had previously been advised by the Respondent that the provision of a stepladder was an appropriate measure to remedy the problem regarding the location of the meter. In addition, he stated that he had a valid electrical safety certificate for the

installation of the unit and had consulted the National Landlords Association, who had advised that the position of the unit was in accordance with standard practice. As such, he submitted that the hazard assessment in relation to the unit was erroneous and should be withdrawn.

23. In relation to the kitchen floor, the Applicant submitted that Ms Adkins had persistently obstructed any remedial works. He stated that he had contacted her and requested that she clean the kitchen floor so that the new floor could be laid, but that she had refused to do so. As such, the Applicant submitted that the Respondent was estopped from pursuing enforcement action in respect of this item. He further stated that the Respondent's contention – that he should have arranged for the kitchen to be cleaned himself – was not reasonable due to Ms Adkins being contractually responsible to keep the interior clean and her being in substantial rent arrears.
24. The Applicant's bundle included his witness statement, in which he alluded to Ms Adkins' actions being disingenuous. He remarked that she had made further complaints to the Respondent as soon as he had completed works that had been detailed in an initial improvement notice dated 24 June 2021 ('the Initial Notice') that had been served upon him by the Respondent and then obstructed him from carrying out the works required in the Notice.
25. The bundle also contained a Schedule of Rent Arrears (indicating that Ms Adkins was in substantial arrears), a number of photographs of damage to the Property, transcripts from telephone messages and a letter and two invoices from DM Hickman Property Maintenance.
26. In the additional witness statement provided by the Applicant in October 2022, he stated that D M Hickman had replaced the letterbox to the communal front door and had added rubber sealant strips around this door following the Respondent's inspection on 3 March 2022. The Applicant stated that these strips had been removed prior to the Respondent's inspection on 5 April 2022 (which inspection had resulted in the issuing of the Notice). The Applicant suggested that the strips could only have been removed by someone with access to the common hallway, such as one of the tenants.
27. In his third witness statement, provided on 16 November 2022, the Applicant stated that he had served a section 8 notice for possession on Ms Adkins (due to her rent arrears and the breaches of her tenancy agreement) and that Birmingham County Court had made a 14-day order for possession and had also awarded him damages and costs. [A copy of the order had not been supplied with his statement].

The Respondent's submissions

28. The Respondent provided within its bundle, its statement of case, witness statements (with various exhibits) from Ms Edwards and Mr Hawkins and extracts from the relevant law and guidance.
29. The Respondent confirmed that the Property was initially inspected on 4 November 2020 following a complaint from Ms Adkins. Due to COVID, the Respondent confirmed that the Property was not inspected again until June 2021, after which

the Initial Notice was served. Following this, the Respondent stated that the Property was re-inspected on three occasions, on each occasion the Respondent allowing the Applicant further time to complete works.

30. Upon removal of the category 1 hazards from the Initial Notice following an inspection on 15 February 2022, the Respondent stated that they received a further complaint from Ms Adkins on 16 February 2022.
31. The Respondent stated that Mr Hawkins inspected the Property on 3 March 2022, when additional disrepair was found. The Respondent confirmed that these works included hazards relating to the communal front door, the consumer unit and the kitchen floor.
32. With regard to the communal front door, the Respondent stated that gaps were noted around the front door and letterbox, as illustrated in the photographs taken during the inspection (a copy of which were included within the bundle). The Respondent considered the resulting draughts to be an unacceptable category 1 hazard due to excess cold.
33. In relation to the consumer unit in the hallway, the Respondent stated that this was located too high on the wall and represented a category 2 hazard, as it was at a height which was difficult for tenants to access. The Respondent confirmed that Ms Edwards did inform the Applicant, on 25 March 2022, that a lockable stepladder could be installed in the common hallway to ease access, however, the Respondent stated that this advice had been given in error and that Ms Edwards had spoken to the Applicant to inform him of this, and to apologise for her mistake, prior to the issuing of the Notice. The Respondent confirmed that a stepladder was not a safe solution as it would create an unnecessary risk in the event of the loss of light in the hallway.
34. In relation to the kitchen flooring, the Respondent contended that uneven gaps and torn sections in the laminate flooring was evident in the photographs taken at the inspection and that this also represented a category 2 hazard. The Respondent considered that Ms Adkins' refusal to clean the floor was not a valid excuse or defence for the failure to resolve the hazard and that if Ms Adkins would not clean the floor, the Applicant would need to arrange for this to be done so that the hazard could be removed.
35. The Respondent submitted that it had acted reasonably in issuing the Notice, that it was the appropriate action to take and that there were no grounds to revoke it.
36. Ms Edwards' witness statement detailed her history with regard to the Property and her various inspections and conversations with the Applicant. Exhibited to her statement were copies of both improvement notices and photographs taken at her inspections, including the inspection on 5 April 2022, prior to the issuing of the Notice.
37. The witness statement from Mr Hawkins detailed his involvement with the Property and, again, exhibited to his statement were copies of photographs taken during his inspection of the Property on 3 March 2022 and copy correspondence between him

and the Applicant. Mr Hawkins confirmed that the Applicant had not been issued with a demand for payment for the second improvement notice but that the Applicant had a duty to comply with the Notice due to the additional hazards identified at the Property.

The Tribunal's Deliberations

38. The Tribunal considered all of the evidence submitted by the parties, briefly summarised above, and examined each hazard detailed on the Notice in turn.

Item 1 – Excess Cold

39. The Tribunal noted that the definition of a dwelling in the Operating Guidance includes, for a flat, any shared passageways. The Tribunal also noted that the purpose of the 'Excess Cold' hazard is to cover any threats to health from sub-optimal indoor temperatures.
40. The communal front door to the house did have some gaps between the door and the frame at the time of the Tribunal's inspection. Although the Tribunal noted the Applicant's comments regarding sealants having been removed by an occupier, the Tribunal did not consider that the gaps were sufficient to categorise the hazard as a category 1 hazard in any event, especially considering the presence of a radiator in the common hallway and there being a further door before access could be gained to the Property.
41. Although the radiator in the common hallway was controlled by the occupier of the ground floor flat, the photographs taken by Ms Edwards during her inspections on 18 November 2021 and 16 December 2021 showed that there was also a radiator behind the entrance door to the Property, which was itself a solid fire door capable of preventing any draughts from entering the upstairs accommodation.
42. The Respondent had not raised any queries regarding the heating at the Property and the Tribunal considered that any draughts resulting from gaps around the edge of the communal front door would not have resulted in a threat to the health of the occupants of the Property. As such, the Tribunal was not satisfied that an 'Excess Cold' hazard existed.

Item 2 – Electrical Hazards

43. The Tribunal noted that the consumer unit for the Property was located above the reach of an average adult, so it would have been difficult for tenants to access the same. Although Ms Edwards had agreed that the use of a lockable stepladder would have negated the hazard, the Tribunal accepted that this advice had been given by her in error and that it would, potentially, have created a hazard itself. The Tribunal also noted that this error had been communicated to the Applicant prior to the issuing of the Notice.
44. That said, the Tribunal noted that the category 'Electrical Hazards' covers hazards from shocks and burns resulting from exposure to electricity (Operating Guidance, paragraph 23.01). Although the Operating Guidance, at paragraph 23.18(c) refers to

“inappropriately sited fuses and meters” this is in relation to the likelihood of the location resulting in harm from an electric shock or burn. The Respondent did not suggest that the location of, or state of repair of, the consumer unit would have resulted in either a shock or burn from exposure to electricity and the Tribunal found no evidence that this was the case.

- 45. Accordingly, the Tribunal was also not satisfied that an electrical hazard existed.

Item 3 – Falls on the Level

- 46. The Tribunal was unable to gain access to the Property to inspect the kitchen floor.
- 47. The Tribunal noted that the Applicant had stated that he had not been able to carry out the work as Ms Adkins had refused to clean the kitchen floor so that a new floor could be laid. The Tribunal also noted that he stated that Ms Adkins was in substantial rent arrears. The Tribunal did not consider that either of these two factors could absolve the responsibility of the Applicant to remove any hazard, the Applicant having recourse to the County Court to resolve any such disputes.
- 48. Although the Tribunal was unable to evaluate the hazard itself, the Tribunal noted, from the photographs supplied by the Respondent, that there did appear to be some minor gaps between the laminate/vinyl panels that had been laid. However, the Tribunal considered that these gaps were unlikely to permit footwear to be trapped in them and the floor covering was unlikely to provide a significant trip or slip hazard. At most, the Tribunal considered that the floor covering could potentially have amounted to a very low category 2 hazard, so found that it would have been inappropriate to serve an improvement notice for this hazard alone.

Determination

- 49. As the Tribunal found that neither the category 1 hazard for ‘Excess Cold’, nor the category 2 hazard for ‘Electrical Hazards’ existed, the Tribunal determined that it was inappropriate for an improvement notice to have been served, thus ordered the Notice be quashed.

Appeal

- 50. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM
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Judge M K Gandham