



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

Case Reference : **MAN/00FA/HIN/2022/0007**

Property : **First Floor Flat, 139 Plane Street, Hull
HU3 6BY**

Applicant : **Darren Yellowly**

Representative : **Ian Denston, Strada Homes**

Respondent : **Hull City Council**

Representative : **Marc Luxford**

Type of Application : **Housing Act 2004, Schedule 1,
Paragraph 10(1)**

Tribunal Members : **Judge J. E. Oliver
Mr P. Mountain FRICS**

**Date of
Determination** : **10th January 2023**

Date of Decision : **5th February 2023**

DECISION

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Decision

1. The Improvement Notice dated 28th September 2021 is varied to the extent that only the following work is now required:

Fire

Provide an automatic fire detection system comprising a series of interlinked smoke alarms in accordance with BS5839 Part 6 Grade D1 and, if shown, interlinked heat alarms conforming to BS EN 54-5:2001, break glass call points and remote sounders as indicated RED on the plan attached to the Improvement Notice.

The detectors must incorporate an audible battery fault warning and the system must incorporate a means of silencing. Any method of silencing must enable the system to be restored automatically to the normal condition not more than 30 minutes after the action of silencing and during this period of disablement an audible warning should sound for a minimum of 0.008 seconds at least every 10 minutes. The wiring must be in accordance with current I.I.E. Wiring Regulations and should be supplied via twin and earth (1.5mm²) directly to a separately fused circuit at the distribution board and may operate at low voltage via a mains transformer. Interconnection between detector heads should be such as to ensure that all heads sound simultaneously following activation of an individual head.

Landlord's quarterly meters may be used in conjunction with fire alarm systems. Token meters and quarterly meters serving one letting other than in student shared houses are unsuitable and must not be used.

Detectors should be fixed to the ceiling at least 300mm from any wall or light fitting but in a location where access for cleaning and testing is safe and easy. They should not be installed above heaters or air ducts/vents.

Provide a certificate, in accordance with BS 5389 Part 6, confirming that the detectors conform to the required standard and that the installation has been carried out in accordance with the above specification.

2. The remedial work is to commence within 28 days of the service of this decision upon the Applicant and the work is to be completed within 2 months thereafter.

Background

3. This is an appeal by Darren Yellowly (“the Applicant”) in respect of an Improvement Notice dated 28th September 2021 and served on 30th September 2021 (“the Improvement Notice”) in respect of First Floor Flat, 139 Plane Street, Hull (“the Property”). The Applicant is represented in the proceedings by Ian Denston of Strada Homes, the managing agent of the Property.
4. The Respondent to the application is Hull City Council (“the Respondent”). The Respondent is represented by Mark Vincent, the Environmental Health Officer, responsible for the issue of the Improvement Notice and, at the hearing, by Marc Lockwood.
5. The Improvement Notice stated there were six Category 2 hazards at the Property, all under the hazard of Fire.
6. The Hazards were:
 - (1) The ceiling to the ground floor flat’s living room does not offer 30 minutes fire resistance.
 - (2) The automatic fire detection (AFD) system is powered by a single source of power and is not appropriate for this building as this is not mains powered.
 - (3) The kitchen fire door to the first floor flat does not close on the latch set.
 - (4) The first-floor flat entrance fire door has paint on various areas of the combined intumescent heat and cold smoke seals.
 - (5) The first-floor flat door entrance fire door requires one further fire rated door hinge.
 - (6) The first-floor flat entrance fire door’s self-closing device requires adjusting to allow this door to close onto the latch set.
7. The Improvement Notice required the necessary works to be started by 31st October 2021 and to be completed within 2 months of that date.
8. The Respondent also served upon the Applicant a demand for payment of costs in the sum of £384.68.
9. By an application dated the 21st October 2021, the Applicant filed an appeal against the Improvement Notice and the demand for costs.
10. On 8th June 2022 directions were issued providing for both parties to file their statements and documents in support and thereafter for the matter to be listed for a hearing.
11. The application was listed for an inspection and video hearing on 10th January 2023.

The Property/Inspection

12. The Tribunal inspected the Property in the presence of the Ian Denston on behalf of the Applicant and Mark Vincent and Andrea Towse on behalf of the Respondent.
13. The Property is a mid-terraced brick-built house, having been converted into two flats.
14. At the time of the inspection the downstairs flat was undergoing extensive remedial work and was unoccupied. The upstairs flat was occupied.

15. It was agreed by the parties that hazards numbered 3-6 on the Improvement Notice had all been rectified and the only issues for consideration by the Tribunal were those numbered 1 and 2, relating to the fire resistance of the ceiling in the downstairs flat and the automatic fire detection system.
16. Mr Denston highlighted the depth of the ceiling in the downstairs flat being consistent with having been completely repaired/replaced at some point, in that there was very little distance between the ceiling and the original coving. He confirmed his company had undertaken repairs to the ceiling and no evidence of lath and plaster had been found. A wall, adjacent to the living room, had been removed and there was a line in the ceiling showing where the original wall had been.
17. The Applicant demonstrated the fire alarm was working and confirmed it was wirelessly interlinked to the four other alarms within the Property.
18. Mr Vincent advised the model number shown on the fire alarm in the living room of the downstairs flat was different to the specification of fire alarm submitted to the Tribunal by the Applicant.

The Law

19. The Housing Act 2004 provides the framework for the assessment of the condition of residential properties and the remedies that can be used to enforce standards in respect of them.
20. The Housing Health and Safety Rating System (HHSRS) provides a rating system for hazards. The score will determine which category the hazard falls; a score over 1000 will be a Category 1 hazard and those below 1000 will be a Category 2 hazard.
21. Section 5(1) of the Act provides that if a Category 2 hazard exists then a local authority must take the appropriate enforcement action which can be an improvement notice, prohibition order, a hazard awareness notice, a demolition order or declaring the area in which the premises are situate, a clearance area.
22. Section 12(4) of the Act provides that an improvement notice may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.
23. Section 12(2) requires the person upon whom the improvement notice is served to take remedial action in respect of any of the hazards that are specified.
24. Schedule 1, paragraph 14 (1) of the Act provides that a person upon whom an improvement notice has been served may appeal to the First-tier Tribunal within 21 days beginning with the day upon which the improvement notice was served. The grounds for the appeal are set out in paragraphs 11 and 12 of the Act. Paragraph 13 provides an appeal may be made against the decision by a local authority to vary or revoke an improvement notice.

25. Schedule 1, paragraph 15 provides for the First-tier tribunal to deal with any appeal by way of re-hearing, thus allowing it to consider the property at the date of the hearing and take into account matters of which the local authority may not have been aware at the date the notice was served. The Tribunal has the power to confirm, quash or vary the improvement notice.

Hearing/Submissions

26. At the hearing the Mr Denston appeared on behalf of the Applicant. Marc Lockwood appeared on behalf of the Respondent, together with Mr Vincent.
27. It was agreed the issues for determination by the Tribunal were those of the fire resistance to the ceiling of the downstairs flat, the adequacy of the fire alarm system and the demand for the payment of costs.
28. It was stated at the hearing that both Mr Denston and Mr Vincent are qualified as Environmental Health Officers and are members of the Chartered Institute of Environmental Health.

Downstairs ceiling

29. The parties agreed the issue was whether the ceiling to the living room of the downstairs flat offered 30 minutes fire resistance. In order to give this level of fire resistance, it was accepted this would require a thickness of gypsum plasterboard and 12.3 mm of skim coating plaster.
30. In his written submissions, Mr Vincent confirmed the ceilings in the other parts of the flat satisfied this requirement. His issue with the living room was because, when initially inspecting the flat, he had seen evidence of large cracks in the ceiling.
31. The Tribunal queried with Mr Vincent the fact this had not been highlighted at the inspection. He confirmed the cracks had been where the internal wall had been removed that had formed a hallway adjacent to the living room. He stated that, at the inspection, this appeared to have been filled in since his original inspection, although this was denied by Mr Denston, who advised no work had been carried out to the ceiling since that date.
32. Mr Denston confirmed that the ceiling had previously been repaired. This had included a patch repair at the rear of the room near the window and the removal of a ceiling rose. Where work had been carried out, there had been no evidence of lath and plaster that would suggest the ceiling was not fire resistant. The depth of the ceiling, in relation to the coving, supported his view that the ceiling had been previously repaired as had all the ceilings in the flat. The depth indicated plasterboard had been used and offered the required fire resistance. When he had carried out the patch repair near the window “red board” had been used and that offers 30-minute fire resistance.

33. Mr Vincent agreed there had been repairs to 75% of the ceiling, but there remained doubt over the fire resistance of the remaining area. The cracks he had identified at the original inspection raised doubts about the ceiling. Whilst Mr Denston referred to a repair with “red board”, this was not a material he recognised. He was familiar with “pink board” being a suitable fire resistance material. He had asked Mr Denston to provide further information about “red board” but this had not been forthcoming.
34. The Respondent had undertaken a HHSRS score of the ceiling to the living room of the downstairs flat in the Property, resulting in the decision to score a Category 2 hazard on the Improvement Notice. It was disputed whether this had been carried out correctly. Mr Denston submitted that any score should be validated by worked examples and whilst one had been provided by Mr Vincent, this related to an electrical hazard and not fire. Mr Vincent disputed this and provided a copy of the worked example which refers to “Fire”.
35. Mr Denston argued that it was the responsibility of the Respondent to appoint an expert to carry out an inspection of the ceiling to determine its fire resistance. If it was found the ceiling was defective, then those costs could be recovered under section 239 of the Act.
36. The Respondent submitted the onus was upon the Applicant to prove the ceiling was fire resistant.

Fire alarm

37. Mr Denston advised the fire alarm at the Property is a FireAngel wirelessly interlinked system that is classified as a Grade F AFD system.
38. In his written submissions to the Tribunal, he produced a specification from FireAngel of a battery powered multi-sensor fire alarm guaranteed for 10 years being a FireAngel FS2126-T. Mr Vincent submitted this specification did not match the fire alarm fitted in the Property which was a FireAngel Wi Safe 2.
39. The Improvement Notice specifies a Part 6 Grade D1 AFD requiring it to be hard wired.
40. Mr Denston argued the Respondent based their requirements for the AFD on LACORS that was now 13 years old. When that guidance was produced, the system now installed at the Property did not exist. It could not be said that the system was inadequate because technology has evolved and improved. The Respondent’s requirements do not offer the tenant’s greater protection than the alarm now fitted in the Property.
41. In response to the issue of the AFD in the Property being different to the specification produced to the Tribunal, Mr Denston advised that he thought both could provide the same functions.

42. Mr Vincent confirmed the Respondent's requirements are based upon the advice of several bodies including LACORS, Hull Fire Service and Safelinks. In his written evidence, he exhibited an e-mail from Hull Fire Service setting out the requirements from BS5839.6:2019 stating a Grade F system is only suitable in existing single-family dwellings of no more than two storeys. He advised that no evidence had been produced by the Applicant to show the current system installed at the Property could offer the same protection as a Grade D system.
43. Mr Denston was asked how his system would work should the battery fail. He confirmed the batteries were guaranteed for 10 years; if they failed they would be replaced but this shouldn't occur, given the guarantee. He believed that if one battery failed, then this should not affect the remaining batteries.

Costs

44. The Respondent confirmed that a claim for costs had been made relating to the costs associated with the service of the Improvement Notice in the sum of £384.68. A breakdown of those costs was provided to the Tribunal after the hearing. Mr Denston made no submissions in respect of the claim on behalf of the Applicant.

Determination

45. The Tribunal determined from the submissions made by both parties only two of the six Category 2 hazards contained within the Improvement Notice remained outstanding at the date of the hearing and upon which a decision was required.
46. The Tribunal considered the issue for the fire resistance of the ceiling in the living room of the downstairs flat. Here, it noted the evidence given by Mr Vincent, that his concerns stemmed from cracks that had been visible at his first inspection of the Property but had seemingly been repaired when inspected. However, none of this was brought to the attention of the Tribunal at the inspection.
47. The Tribunal noted the ceiling had been repaired at some point in the past since its depth was greater than the original ceiling. This was evidenced by the proximity of it to the coving. It also noted the Respondent accepted all the other ceilings in the flat had been repaired and provided fire resistance.
48. Mr Denston gave evidence that repairs had been carried out to the ceiling in the past and none of those had revealed lath and plaster. If this had been evident, then this would have shown a lack of plasterboard and fire resistance.
49. The Respondent argued it was the Applicant's responsibility to prove the ceiling was fire resistant. The Tribunal does not accept this in this case.
50. The Respondent has accepted the other four ceilings are fire resistant. It is not clear how that decision has been arrived at, but the only reason said to suspect the living room ceiling's viability are the cracks.

51. The test for the Tribunal is proof on the balance of probabilities. Here, there is evidence that all the ceilings in the flat have been repaired or replaced at some time. The Applicant gave evidence that when repairing the ceiling there was no evidence of lath and plaster. Where repairs have been carried out red board has been used that is fire resistant. Mr Vincent advised he had not heard of this material but did know of pink board. The Tribunal considered it odd that two qualified Environmental Officers could differ as to what amounted to fire resistant material. Mr Vincent referred to cracks in the ceiling; the Tribunal's attention was not drawn to this at the inspection, nor of any repair. The Tribunal had only noted a slight difference in the ceiling level where a wall had been removed. In his evidence Mr Denston advised no repairs had been carried out to the ceiling since the first inspection.
52. The Tribunal considers that, in these circumstances, the evidence shows it is more likely than not the living room ceiling has been replaced as have the other ceilings in the downstairs flat. Whilst Mr Vincent said there were cracks in the ceiling at the first inspection, there was no evidence of these when inspected by the Tribunal. There was nothing said to show the living room ceiling would not be fire resistant other than the presence of the cracks referred to by Mr Vincent. Mr Denston gave evidence that any repairs to the ceiling had not revealed any lath and plaster; such material, if present, would suggest the ceiling is not fire resistant. The Tribunal consider that in these circumstances the onus is on the Respondent to undertake further investigations. If the ceilings were found to be defective, the costs could be recovered under section 239 of the Act. It has not done so. The Respondent has not taken such steps and the Tribunal therefore finds on the balance of probabilities the ceiling does afford adequate fire resistance. Accordingly, the requirement in the Improvement Notice for the ceiling to be either upgraded or replaced is removed.
53. Within the hazard of Fire, the Improvement Notice also requires the installation of a Grade D AFD system to replace the existing Grade F system.
54. Mr Denston submitted the current system, which is battery powered and wirelessly interlinked, offers the tenants the same protection as the Grade D hard-wired system required by the Respondent. Mr Vincent confirmed the requirement of a Grade D system is in accordance with the guidance of LACORS, Hull Fire Service and alarm providers.
55. The Tribunal noted the Applicant's argument that fire systems had evolved and the guidance from LACORS, now 13 years old, probably does not reflect the advances that have been made in alarm systems. However, the Tribunal could not ignore several factors.
56. The first factor is the industry standard, referred to in the documentation provided by both parties in their exhibits to the Tribunal, and that is BS 5839.6:7019. This states that Grade F systems are only suitable for installation in single-family dwellings of no more than two stories. The Property is not a single-family dwelling.

57. The second factor is that the description of the FireAngel AFD in the Property supplied by the Applicant. This specification did not match the one fitted in the Property. Whilst the Applicant advised it was effectively the same, being battery operated and wirelessly interlinked, the Tribunal was not provided with any evidence of this.
58. The third factor is the Applicant advised the FireAngel system offered the same protection as a Grade D system. The batteries have a 10-year guarantee and he believed that should one battery fail, the others in the Property would continue to operate. Again, the Applicant did not produce any technical evidence to support this; the information provided did not relate to the one in the Property and whilst the Applicant said they were similar, the Tribunal was unable to confirm this.
59. The Tribunal did not have sufficient evidence before it to support Mr Dentson's argument that the AFD currently in the Property affords the same protection as the system required by the Improvement Notice.
60. The Tribunal therefore confirms the requirement for the installation of a Grade D1 AFD as set out in the Improvement Notice.
61. The Tribunal thereafter considered the demand for the payment of costs in the sum of £384.68. The Applicant has largely succeeded in his application before the Tribunal and therefore no costs are payable.

Tribunal Judge J Oliver
5 February 2023