



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

Case Reference : BIR/37UJ/HIN/2022/0002

Property : 14 Park Lane, Loughborough, LE12 5NH

Applicant : Michael Wright

Represented by : Mrs J. Uppal, Solicitor

Respondent : Rushcliffe Borough Council

Represented by : S. Matthews and G. Pickering, Environmental Health Officers,
and Mrs A. Walker, Solicitor

Type of Application : Appeal against Improvement Notice under Part 3, Schedule 1
to the Housing Act 2004

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
Mr A. McMurdo MCIEH

**Date and Venue of
Hearing** : 15 December 2022 by on-line video Hearing

Date of Decision : **22 February 2023**

DECISION

- 1 The Improvement Notice is confirmed in respect of Issues listed below identified as issues 1,2,3,5,6 and 8. All required work to be undertaken by 30 April 2023.

REASONS

Introduction

- 2 The subject property is situate and known as No.14 Park Lane, Sutton Bonnington, near Loughborough, Leicestershire, LE12 5NH. It is a large, three storey possibly Edwardian detached house in a residential area on the fringe of Sutton Bonnington, a village about 5 miles north of Loughborough.
- 3 It is of traditional brick and tile construction with rendered elevations to the first and second floors and many original features including most of the window frames. Viewed from the road frontage, there is a parking area to the right of the house, a lawn to the left and single storey wing to the rear which is separated from the house by a passageway.
- 4 The house has been converted to multiple occupation and now has 12 letting rooms, one of which is occupied by the owner and Appellant, Mr M. Wright. There had been an HMO Licence which expired and although an application had been made for renewal, it had not been renewed by the date of the Hearing on 15 December 2022.
- 5 The Local Authority, Rushcliffe Borough Council, issued an Improvement Notice on 13 January 2022 to which the Appellant appealed on 2 February 2022. The Local Authority submitted that it had been varied on 22 June 2022 by agreement between the parties, but this would have needed Notice under the Housing Act 2004, Schedule 1, Part 2(6) and as the Tribunal received no evidence that it had been served, it treats the original Notice of 13 January 2022, as effective. The Notice identified several Category 1 and 2 hazards and required the Appellant to remedy the items by 1 July 2022.
- 6 The Appellant objected and appealed to the First-tier Tribunal for the Notice to be revoked or varied under paragraph 13(b), Part 3, to Schedule 1 of the Housing Act 2004.

The Law

- 7 Under section 11(1) the Housing Act 2004 ('the Act'), a local housing authority has a duty to serve an improvement notice if it considers a category 1 hazard exists in relation to residential property to which the Act applies and no management order is in place. If the authority considers category 2 hazards exist they have 'power' but no 'duty' to serve a Notice under section 12(2) of the Act.
- 8 The categories of hazard are listed in Schedule 1 to the Housing Health and Safety Rating System (England) Regulations 2005.
- 9 On receipt of an Appeal, the Tribunal is required to reach its Decision by way of re-Hearing under section 15(2)(a) of Schedule 1, Part 3 of the Act and may by order confirm, quash or vary an improvement notice under section 15(3) of the Act.
- 10 The Notice issued by the Respondent identified category 1 hazards of excess cold and fire risk and category 2 hazards of damp and mould growth, domestic hygiene, electrical risk, collision / entrapment and structural collapse. Full descriptions of the hazards and remedial action required are listed in the Respondent's Bundle for the Hearing at pages 69-82. The Respondent was required to commence works to remedy all items by 1 July 2022 and complete them within 12 weeks of that date.

- 11 In this Decision, references to the Appellant's bundle are prefixed 'A' and the Respondent's bundle 'R', followed by the page number and item number.

Facts Found

- 12 The Tribunal inspected the property on 14 December 2022 in the presence of the Appellant Mr M.Wright and his son Mr N.Wright, and for the Respondent Mr S. Matthews and Mr G.Pickering, Environmental Health Officers to Rushcliffe Borough Council.
- 13 The Tribunal inspected the property internally and externally in relation to the hazards identified in the Notice.

Issues

- 14 By the date of Hearing, some items had been conceded by the local authority but the following issues remained live:

Issue	Hazard	Bundle page	Item	Summary Description
<u>Category 1</u>				
1	Excess cold	R74	3	Rotten window frames
2	Fire	R75	1	Doors not FD30 compliant
3		"	2	Compartmentation
4		"	5	Rear passage escape route
5		"	6	Room 10 door edge chipped
6		"	7	Gaps around doors over 4mm
7		"	8	No current Fire Risk Assessment
<u>Category 2</u>				
8	Damp / mould	R78	3	Rotten window frames
9	Domestic hygiene	R79	4	Passage door removed
10	Electricity	R80	1	External power socket
11	Collision	R81	1	Poorly sited consumer unit.

The Parties' Submissions on each point

Issue 1

- 15 Category 1

Excess cold – Rotten Window Frames

Appellant

- 16 Mr Wright had instructed a firm of Building Surveyors, Peter Tyres Associates, to report on the condition of the window frames who reported on 17 June 2022. The Report was in evidence (A56) and identified numerous defects with some specific recommendations such as 'replace the missing section of bottom rail' relating to Room 12, and numerous generalised statements such as 'overhaul to ensure securely fixed including replacement of missing glazing'.
- 17 At the Hearing, Mr Wright admitted that the window to Room 10 needed maintenance and there were gaps in places but they were not causing a hazard to the occupants. He said that maintenance work was ongoing and that all the listed issues had been addressed.

- 18 Mrs Uppal for Mr Wright advised that her client could not afford to replace the windows and asked for details of the remedial work required by the local authority.

Respondent

- 19 Mr Matthews for the Respondent had inspected all the windows on each site visit and was present when the Tribunal inspected on 14 December. He said there were problems of excess cold caused by excessive gaps around windows and that some casements would not close. There was rot in frames and cills, missing putty and a risk of glazing falling out. Furthermore, while there were numerous defects, his duty was to consider the risk posed by the defective windows over the following 12 months and to make an assessment of the potential for further deterioration. He acknowledged some repairs had been carried out by Mr Wright but the recommended action on page R74 item 3 was necessary to remove the category 1 hazard.

Issue 2

Category 1

- 20 Fire - Doors not FD30 compliant (i.e. 30 minute Fire Doors)

Appellant

- 21 Mr Wright advised that he had applied a DIY product known as 'Envirograf' manufactured by Intumescent Systems Ltd. to improve the doors to each letting room to the required standard. The product was a paint that had been used elsewhere in the UK. He had applied it personally and was able to certify its use and offered to provide a certificate by a contact, Dr Cumming, a chemical engineer, to confirm that the product was effective. He had also located a 'Fire Consultant', Mr John Hammond from Dover, who supplied a specification to use Envirograph paint to achieve FD30 standard. However, Mr Hammond was unable to certify it had been correctly applied in this case having not been present when it was applied and was unwilling to attend the Hearing to give evidence.
- 22 Mr Wright said he had complied with the requirement for intumescent strips and fire protection to the door hinges.
- 23 He also said the doors dated from 1908, they were not modern but in keeping with the character of the house and he wished to retain them.

Respondent

- 24 Mr Matthews noted that many of the existing doors were not FD30 compliant because there was no evidence that the paint had been applied to the required standard, there were gaps around doors of up to 10mm, some doors were warped leaving potential for fire to track between risk rooms and the means of escape and that the door sets also needed protection. The local authority would accept a Certificate that all the doors complied with FD30 requirements (i.e. BS476 Parts 6 & 7 or EN13501-1) provided by an independent source approved by the authority but to date, no such certificate had been provided by the Appellant. He stated that the doors should be replaced to the standard required by the improvement notice at R75 item 1.

Issue 3

Category 1

- 25 Fire - Compartmentation

Appellant

- 26 Mr Wright said compartmentation between rooms was not an issue as several holes had been filled and those remaining were planned to be filled. For example, there was a hole in

the passage ceiling that Mr Wright said he would fill, floor boards removed from the first floor landing would be replaced and work to Room 5 was planned to be completed by the end of the week of the Hearing. The work comprised replacement of plasterboard to exposed timber studding separating Room 5 from the landing and work around the door frame. Mr Wright said extra protection was provided by a fire alarm.

Respondent

- 27 Mr Matthews pointed out several gaps in partitions between rooms that presented a fire risk. On behalf of the local authority he required a competent building contractor to carry out a full survey and undertake any work found necessary to improve the property to the standard required by the improvement notice at R75 item 2.

Issue 4

Category 1

- 28 Fire – Rear Passage Escape Route

Appellant

- 29 The local authority had instructed the Appellant to remove white goods from the rear passage as this was a primary escape route for the tenants of rooms 11 and 12 that could make escape difficult in the event of fire.
- 30 Mr Wright said the chances of this were remote and that in the event of fire, the tenants could escape through their bedroom windows. One of the windows was higher from the floor than usual but fixed steps had been provided to allow escape.

Respondent

- 31 Mr Matthews confirmed his view that the escape route could be compromised and that the passage should be left clear as required by the improvement notice at R76 item 5 which also included a requirement for the consumer unit to be boxed in using fire proofed materials.

Issue 5

Category 1

- 32 Fire – Room 10 door edge chipped.

Appellant

- 33 Mr Wright acknowledged that it was chipped and said it would be repaired.

Respondent

- 34 Mr Matthews required the repair detailed in the improvement notice at R76 item 6 to be carried out.

Issue 6

Category 1

- 35 Fire – Gaps around doors over 4mm

Appellant

- 36 Mr Wright said the gaps around the doors were acceptable. He had provided fire proof strips where required and the risk had been addressed.

Respondent

- 37 Mr Matthews advised that the gap around the doors should be no more than 4mm to all sides. He produced in evidence emails (R101) from N.Gawden-Bone of Nottingham Fire &

Rescue (NFRS), Fire Safety Inspector, advising that there should be a maximum of 10mm tolerance to the bottom of doors which was generally due to a change from carpet to hardwood flooring, but otherwise the gap should be no more than 3-4 mm.

- 38 At this property the problem was made worse as some doors were warped and chipped which increased the fire risk to the occupants.

Issue 7

Category 1

- 39 Fire – No current Fire Risk Assessment

Appellant

- 40 Mr Wright had provided a Fire Risk Assessment.

Respondent

- 41 Mr Matthews said it was out of date. However, he did accept that this requirement was to be enforced by the fire and rescue authority.

Issue 8

Category 2

- 42 Damp / mould – Rotten window frames

- 43 The Applicant's and Respondent's submissions are the same as for Issue 1, excess cold.

Issue 9

Category 2

- 44 Domestic hygiene - Passage door removed

Appellant

- 45 Mr Wright did not consider this an issue. A previous Tribunal had determined the passage to be external space and the fact that a door was missing from the garden end was irrelevant.

Respondent

- 46 Mr Matthews for the authority suggested the missing door would make it easier for vermin to access the accommodation.

Issue 10

Category 2

- 47 Electricity - External power socket

Appellant

- 48 Mr Wright said the socket was now safe as he had fitted a gromit to make it waterproof. Furthermore, the authority's request for IP65 rating was excessive and an IP54 rating would be adequate.

- 49 With regard to the extension cable, he had converted the rating to 12v and anything less than 50v would be safe in this location.

Respondent

- 50 Mr Matthews agreed these were technical issues but requested compliance with the improvement notice.

Issue 11

Category 2

51 Collision - Loose consumer unit cover

Appellant

52 This related to the cover of a consumer unit fitted in a top floor kitchen that the authority considered presented a risk to occupants. Mr Wright had secured it by fitting elastic between the box and cover to keep the cover in position and out of the way. He considered it highly unlikely that a resident would walk into it causing injury.

Respondent

53 Mr Matthews said its position near the entrance to the kitchen presented an unnecessary risk, particularly bearing in mind the type of vulnerable persons occupying the building who may not see it in the dark. He also mentioned the risk that an occupier may mistake the fuse switches for the light switch. The elastic was a temporary measure and a permanent solution would be better, by re-fixing the unit in a nearby cupboard. He required the remedial action in R81 item 1 to be carried out.

Decision

54 The Tribunal, comprising a Chartered Surveyor and Environmental Health Officer, inspected the property, considered all the evidence presented and finds as follows:

Issue 1

55 The Tribunal found on inspection there were several gaps around windows that would make it difficult to keep some of the rooms warm and a risk that occupants could suffer from excess cold.

56 Mrs Uppal's comment that her client was unable to afford to replace the windows was inapplicable to remedy this category 1 hazard. Accordingly, the Tribunal upholds the requirement in the improvement notice.

Issue 2

57 The Tribunal was not satisfied that the Envirograf paint had been applied to the standard required by the manufacturer or by Mr Hammond, the Appellant's Fire Consultant. There was no proof of coverage and while the local authority had offered to accept the treatment if it had been certified by an independent suitably qualified party in this location, no such certificate had been provided.

58 The Tribunal treats fire hazards with the utmost priority, particularly in light of Grenfell Tower and bearing in mind the vulnerability of the occupants on this property, and confirms the requirements in the improvement notice.

Issue 3

59 On inspection, the Tribunal noted gaps between rooms that could allow fire to spread, particularly gaps caused by the removal of floor boards between the first floor landing and ground floor rooms, but also elsewhere. The Tribunal noted that some gaps had been filled but the whole property needed a thorough check by an independent suitably qualified building contractor able to remedy any defects. Accordingly the Tribunal confirms the requirements in the improvement notice.

Issue 4

60 The Tribunal agrees with Mr Wright that the risk is likely to be low and quashes the requirements of the improvement notice.

Issue 5

- 61 Mr Wright acknowledged at the Hearing that the door was chipped.
- 62 The Tribunal finds this is similar to issues 2 and 3 as the chipped door could allow spread of fire and accordingly confirms the requirements of the improvement notice.

Issue 6

- 63 The Tribunal noted gaps measuring up to 10mm during the inspection which it finds unacceptable for doors requiring 30 minute fire resistance. Several doors were warped which would make it difficult to provide compliant seals. The Tribunal therefore confirms the requirements of the improvement notice.

Issue 7

- 64 The requirement for a current Fire Risk Assessment arises under Section 9 of The Regulatory Reform (Fire Safety) Order 2005 and is enforced by Fire and Rescue authorities. Accordingly the Tribunal quashes the requirement in this improvement notice.

Issue 8

- 65 On inspection, the Tribunal noted several external cills that were rotten. There was cracked and missing putty, insufficient support for glazing in places and a risk of damp ingress to living accommodation. The potential risk to the health of tenants caused by mould in rented accommodation has been highlighted by a recent well publicised case and in the subject property the risk needs to be addressed. The Tribunal therefore confirms the requirements of the improvement notice.

Issue 9

- 66 The Tribunal finds the passage to be external space and the door's removal leading to an increased risk of vermin entering living accommodation from this cause to be remote. The Tribunal therefore quashes the requirement in the improvement notice.

Issue 10

- 67 The Tribunal accepts the evidence of Mr Wright and quashes the requirement in the improvement notice.
- 68 However, the Tribunal noted on inspection that there were what appeared to be live 13 amp power sockets at 220v supply in a non-watertight box secured to the side wall of the extension with potential for water ingress. This was not included in the improvement notice but it would be advisable for this to be inspected by an NICEIC qualified electrician and any recommendations undertaken.

Issue 11

- 69 The Tribunal finds the risk of collision with the consumer unit cover to be low as it would have to be free whereas it is currently secured, albeit by elastic, and would also have to be unseen by an occupant entering the kitchen, which is unlikely. The Tribunal therefore quashes the requirement in the improvement notice.
- 70 The Tribunal requires the improvement notice to be varied to require commencement of all work required by this Decision by 20th March 2023 and completion by 12 June 2023.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).