FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Property	**22 Thornton Road Manchester M14 7WT**
Applicants	**Mr Dhugal Clark**
Respondents	**Manchester City Council**
Case number	**MAN/00BN/HIN/2021/0014**
Date of Application	**6 July 2021**
Type of Application	**Appeal against improvement Notice Housing Act 2004 – Schedule 1 Paragraph 10(1)**
Tribunal Members	**K M Southby (Judge)** **N Swain (Valuer Member)**
Date of Decision	**19 December 2022**
Date of Determination	**23 February 2023**

DECISION

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1. This is a decision by the Tribunal in relation to an appeal by Mr Dhugal Clark ("the applicant") against the decision by Manchester City Council ("the respondent) to serve an Improvement Notice on him in relation to a property at 22 Thornton Road. Manchester M14 5LE.

Background

2. The applicant is the Landlord of 22 Thornton Road which is a three-bedroom terraced property of traditional construction, probably built in the late 19th or early 20th century. It is let by the applicant as a house in multiple occupation (HMO) and has been the subject of a Selective Licence issued by the respondent on 27 January 2020. The property currently has building work taking place to a room in the basement, accessed from the ground floor hall. It also has three other bedrooms in use, the original back bedroom, and the two front bedrooms which are a subdivision of what would originally have ,been one front bedroom, but which now each contain a narrow staircase to a mezzanine sleeping area, and the original lower bedroom section containing storage.

3. On 8 and 23 April 2021 the respondent carried out two inspections of the property following which the respondent served an Improvement Notice dated 21 May 2021 which identified two Category 1 hazards and three Category 2 hazards within the Housing Health and Safety Rating System (HHSRS).

4. This was followed up on 16 June 2021 with a demand notice for payment of a charge for taking enforcement action under Part 1 of the Housing Act 2004, through which the respondent sought payment of £300 from the applicant. This notice stated 'this demand will become operative if no appeal is made against the underlying improvement notice at the end of the period of 21 days beginning with the date of service of this demand.

5. The applicant appealed pursuant to paragraph 10(1) of Schedule 1 of the Act by an application dated 6 July 2021.

6. The respondent queries in their skeleton argument whether therefore the applicant's appeal is therefore out of time being more than 21 days after the date of service of the original improvement notice. I am satisfied by the representations from Mr Clark that he did not appeal the original notice because he believed that he had complied sufficiently with it and that the property was in his mind compliant and he was in correspondence with the respondent to this effect during the relevant period. He appealed in a timely fashion after receipt of the demand for payment of a charge for enforcement action, and within the timescales specified in that notice, but the only way to do so was to appeal against the substantive notice, the deadline for which had already expired by the time the enforcement charge reached him.

7. Whilst Mr Clark's belief in his compliance may or may not have been correct I am satisfied that his conduct is sufficient to justify my exercising

discretion to allow his appeal against the underlying improvement notice itself to be considered out of time, and therefore I have considered both aspects of the appeal – namely the underlying improvement notice and the charge for enforcement in the decision and reasons below.

8. The Category 1 hazards at 22 Thornton Road were identified as Excess Cold and Falls on Stairs, where the deficiencies are listed as follows:
    a. The 1st floor front left and right bedrooms have been extended into the attic space with no additional heating provided. Evidence of tenants using portable heaters identified
    b. The stairs leading to the upper section of the 1st floor front right bedroom are narrow which is exasperated [sic] by the protruding handrail increasing the likelihood of a fall. There is no guard to the stairs other than the handrail.

9. The Category 2 hazards at 22 Thornton Road were identified as Fire, Falls on a level surface and electrical, where the deficiencies are listed as follows:
    a. The staircase spandrel within the living room does not provide adequate fire separation between the living room and escape route.
    b. The living-room fire door …does not stay closed flush to the frame and is not self-closing
    c. The suspended clothes drying rack on the escape route may block the means of escape in the event of a fire
    d. The 1st floor middle bedroom – fire [door] does not provide adequate fire separation as there is a hole in the door where the lock has been removed
    e. The 1st floor middle bedroom – has no self-closing device fitted to the fire door
    f. The 1st floor middle bedroom – smoke detector head has been removed
    g. The 1st floor front left bedroom – fire door does not provide adequate fire separation. Alterations to the door mean it no longer meets the manufacturers fitment specification.
    h. There is no door handle on the first-floor front bedroom doors which may impede escape in the event of a fire
    i. The 1st floor front bedroom – fire doors do not stay closed flush to the frame as they have no latch
    j. The living room has been fitted with a heat detector and the fire door to the ground floor hallway fitted with cold smoke seals increasing the likelihood of a small fire going undetected
    k. The floorboards in the ground floor hallway on entrance to the living-room and on the 1st floor landing are loose, increasing the likelihood of a fall
    l. The is no evidence of an Electrical Inspection Condition Report for the property.

10. The improvement Notice stated that the remedial action specified in the notice was to commence by 22 June 2021 and be completed within 30 days.

Inspection

11. The Tribunal carried out an inspection of the property on 19 December 2022, which was attended by the applicant and Mr Allwood, Neighborhood Compliance Officer on behalf of the respondent.

12. It was common ground between the parties and apparent to the Tribunal upon inspection that all of the work listed in the improvement notice has been carried out with the exception of:
    a. The 1st floor front left and right bedrooms have no additional heating provided.
    b. A latch has not been fitted to the first-floor front bedroom doors
    c. The living-room fire door ...does not stay closed flush to the frame and is not self-closing

The Law

13. The Housing Act 2004 ('the Act") 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.

14. 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.

15. Section 5(1) of the Act provides that if a Category 1 hazard exists then a local authority must take the appropriate enforcement action which can be an improvement notice, prohibition order, a hazard awareness notice, emergency remedial action, demolition order or declaring the area in which the premises are situate, a clearance area. The Act further provides that if only one course of action is appropriate, that course must be taken, or if there are two or more courses available, then the local authority must take the one deemed to be most suitable.

16. 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.

17. 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.

18. 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.

The Hearing

19. The Hearing was attended by Mr Clark, the applicant. Ms McHugh represented the Respondent, and their witness was Mr Allwood, Neighbourhood Compliance Officer.

20. The Tribunal heard oral evidence from Mr Clark that at the first inspection on 8 April 2021 Mr Hixon of the LA attended the property and carried out an inspection. Mr Clark states that he did not take notes of what Mr Hixon said but that he recalls being told about the rear bedroom door not closing, the clothes drying rack which he had taken down, accessibility to the kitchen window, a door gap to bedroom 1. He states that he did all of the work requested from the first inspection prior to inspection 2 on 23 April 2021, which was a return visit to carry our more detailed measurements of the two front bedrooms due to their unusual layout.

21. He stated that floorboards and handrails were not mentioned to him at either inspection and therefore the first notification he had about the list of issues was when he received the improvement notice.

22. Mr Clark gave evidence that he has carried out all of the work listed in the Improvement Notice with the exception of the latches and the heaters. He stated that when the inspections were done the rooms were not cold, and they do not become so – there is a radiator on the lower level and the roof is insulated and he stated that there was no evidence that excess cold was an issue in these rooms.

23. He disputed the need for latches as specified by the LA stating that they were unnecessary in a house of this type. He also stated that bedroom doors have thumb turn locks and tenants lock their doors. He also stated that the lounge door does not close perfectly every time due to changes in humidity, but it does close sufficiently for fire safety purposes and that the manner in which the door opens is such that were a fire to break out in the kitchen the pressure caused by any fire would create pressure pushing the door more firmly closed.

24. Mr Allwood gave oral evidence in addition to his written statement. He confirmed that he had attended the second inspection with Mr Hixon, but this had been solely to take measurements and that no consideration was given by himself or Mr Hixon as to whether any works had been carried out, and no additional communication of concerns was given, other than a concern around the alarm which he was aware Mr Clark has resolved.

25. He stated that the process following an inspection was to give the property owner the opportunity to rectify any defects, with the main objective to resolve things informally.

26. Mr Allwood confirmed that neither he nor Mr Hixon had measured the size of the radiators in the front bedrooms, or the volume of the rooms. He stated he could not remember what the temperature in the room was. When asked how one would generally go about assessing the risk of excess cold he stated that one could guess, if for example there was no heating provided, or come back at a later time when it was colder and see if that led to amended scoring. He confirmed that this had not been done by him in this case and he had not seen any such measurements from Mr Hixon.

27. Mr Allwood confirmed that upon returning to remeasure it was confirmed that the rooms were over the minimum 6.5m2. As the television was in the top mezzanine space this was considered to be the living area and access to the radiator thermostatic valve was on the lower level and therefore having access to the thermostatic valve in the living area would be more ideal than having to go down the steps.

28. Mr Allwood confirmed that at the inspection conducted by the Tribunal he accepted that all work had been done other than the latches and heating to the front bedrooms.

29. The notes from Mr Hixon's inspection on 8th April 2021 [exhibit DA3] list a number of items of disrepair including a lack of self-closers on doors, access to the kitchen Velux window, clothes drying rack on the landing, spindles to the front bedroom stairs, absence of door handles, heat detector in living room

30. Mr Hixon's HHSRS calculations [Exhibit DA4] include 4 assessed hazards, Falling on stairs, falling on level surfaces, fire and electrical hazards.

Determination

31. The Tribunal considered both the written and oral submissions of both parties. We noted that Mr Hixon was not available to provide evidence as he no longer worked for the Respondent.

32. As stated above it is common ground between the parties, and confirmed by Mr Allwood, whose evidence we accept, that all works identified in the Improvement notice have been carried out by Mr Clark with the exception of the installation of latches and additional heating to the front bedrooms i.e.

    a. The 1st floor front left and right bedrooms have been extended into the attic space with no additional heating provided.
    b. The living-room fire door …does not stay closed flush to the frame and is not self-closing
    c. The 1st floor front bedroom – fire doors do not stay closed flush to the frame as they have no latch

33. We first considered whether the requirement for the latches was reasonable. We noted upon inspection that, as described by Mr Clark in evidence the living room door on occasions 'bounced' when the self-closing mechanism operated as it has no latch. However, we found that nevertheless it closed consistently to the point where the intumescent strip was inside the door frame and therefore in the event of a fire the door would still seal not withstanding the absence of a latch. We also found the intumescent strip was inside the door frame when the doors closed with the first-floor bedrooms.

34. We concluded that these doors in our view do not constitute category 2 hazards for fire as they would operate adequately as fire doors. We do not dispute that latches would be preferable, but we do not find them to be necessary. These items in the Improvement notice should be quashed.

35. We next considered the requirement for the provision of fixed heating within the upper sections of the first-floor bedrooms which is programmable and controllable.. We found on inspection that these rooms were not without heating, and upon inspection towards the end of December when the heating had been recently on but appeared to have been turned off shortly before the inspection, the rooms were not cold. We were not satisfied that sufficient investigation had been carried out by the Respondent to establish the existence of the purported hazard of excess cold. They had not calculated the capacity of the radiator and compared that with the volume of the room or established the temperature in the room under differing external temperature conditions.

36. We note that the representations of the LA by Ms McHugh were that it was for the LA to determine what works should be done to eliminate the identified hazards and that it was not for Mr Clark to refuse and/or propose alternative solutions such as insulation. We, however, stand in the shoes of the LA and remake the decision afresh and we find that we are not persuaded that there is a Category 1 hazard of excess cold, and we conclude that the works done by Mr Clark in insulating the room are such as to address the perceived hazard satisfactorily. We note that even on the Council's own assessment the excess cold hazard is a band C hazard – the bottom band in category 1, and that assessment in our view given the heating provided in the room, and the insulation installed is likely to be too high. So far from being reasonable to install fixed heating in the upper sections of the 1st floor front bedrooms it would in our judgement be both unreasonable and unnecessary to do so. This item in the Improvement Notice should therefore in our view be quashed.

37. It is agreed that the remaining works have been completed and therefore the remaining items can be deleted from the Improvement Notice

38. The Tribunal believes that Mr Hixon acted with motives which are laudable i.e., he wanted to improve the Applicant's tenant's home environment and make sure that any hazards are reduced or eliminated. The Applicant needs to understand that these laws are designed to protect people's health and safety which sometimes means requiring property

owners to do things they do not want to do. However, in this case what appears to have happened – and we accept Mr Clark's evidence on this point – is that he dealt rapidly with those items which were raised informally with him by Mr Hixon at the initial inspection, but several other items including excess cold were only raised for the first time in the Improvement Notice itself and Mr Clark's attempts to have a conversation about alternative solutions such as insulation to achieve the same objective were not considered and weighed up. This is contrary to the helpful and candid evidence of Mr Allwood, who confirmed that Mr Clark's expectations of an opportunity for informal rectification were reasonable but had not been followed in this case. In our view an Improvement Notice was not necessary in this case and the matter could just as effectively have been dealt with by way of a Hazard awareness Notice which would have set out all of the issues fully and enabled Mr Clark to be aware of them.

39. We therefore considered the charge for enforcement action. The Respondent is entitled to make a reasonable charge as a means of recovering administrative and other expenses pursuant to s49 of the Housing Act 2004, however in this case as set out above, we find that we are not persuaded that Mr Clark was informed of the hazards which appeared on the Improvement notice in advance, and therefore was not given an opportunity to rectify them before further enforcement action was necessary. In addition, we find that the Respondent did not seek to establish what work had already been done by the Applicant between the first inspection on 8th April 2021 and the follow up inspection to measure later that month. We accept Mr Clark's evidence that much of the work ultimately set out in the Improvement Notice had in fact already been done in advance of it being issued. The combination of the failure to notify, failure to check whether works had already been done prior to issuing, failure to consider whether in the light of such works being done a Hazard Awareness Notice was more appropriate, and finally a failure to consider whether there were alternative reasonable approaches to concerns such as that of excess cold lead us to conclude that the charge for enforcement action is not reasonable and we quash this charge accordingly.

Tribunal Judge K Southby
19 December 2022