



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

**Case Reference** : **BIR/00FY/HIN/2022/0017**

**Property** : **307, Woodborough Road,  
Nottingham NG3 4JT**

**Applicant** : **Serco Limited**

**Representative** : **None**

**Respondent** : **Nottingham City Council**

**Representative** : **Nottingham City Council Legal Services**

**Type of Application** : **Appeal against Improvement Notice.  
Schedule 1 Paragraph 10(1) Housing Act  
2004**

**Tribunal:** **Tribunal Judge P. J. Ellis  
Tribunal Member Mr A McMurdo**

**Date of Hearing** : **16 May 2023**

**Date of Decision** : **27 June 2023**

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**DECISION**

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***The Improvement Notice issued 29 September 2022 under s12 Housing Act 2004 identifying a category 2 hazard namely Falling on Level Surface is quashed.***

**REASONS**

**Introduction**

1. In this case, Serco, (the Applicant) appeals an Improvement Notice (the Notice) served on it by Nottingham City Council Environmental Health Community Protection (the Respondent) on 29 September 2022 under s12 Housing Act 2004 (the Act). The Notice identified three category two hazards existing on residential premises namely 307 Woodborough Road, Nottingham NG3 4GT (the Property).
2. The Applicant issued these proceedings on 20 October 2022. Directions were issued by the Tribunal on 11 November 2022 providing for an inspection. The matter was heard in person at the Nottingham Justice Centre after the inspection on 16 May 2023.
3. The Applicant is a substantial provider of public services including the provision of housing and welfare support services for asylum applicants. It has an agreement with the UK Home Office which governs its supply of housing to meet the needs of asylum seekers. At the hearing the Applicant was represented by Mr Paul Thorpe a Senior Licensing Officer who is an Environmental Health Officer with 20 years' experience. He is responsible for 6000 properties owned or managed by the Applicant throughout the Northeast and Midland regions of England. The Respondent was represented by Mrs Mills a solicitor in the legal services department of the Respondent council.

**The Property**

4. The subject property is a three-storey semi detached house built probably in the late 19<sup>th</sup> century. The front door leads to a hallway and staircase to the upper floors. On the ground floor two rooms are used as bed-sitting rooms.

There is a communal kitchen at the rear of the building. The relevant electricity consumer unit is situated on the wall of the hallway outside the second bedroom. There is a cellar accessed by a door off the hallway. The cellar has several compartments. It is substantially unused.

5. The first floor has three further bed-sitting rooms and two bathrooms. The upper floor has two more bed-sitting rooms. All the bed-sitting rooms are fitted with locks. The Tribunal was able to enter two bed-sitting rooms. Both were sparsely furnished single rooms.
6. A noticeboard is fixed to the wall by the front entrance door. Emergency lighting is installed in the common parts.
7. The Applicant is a leaseholder. The owner of the Property took no part in the proceedings.

### **The Improvement Notice**

8. The Notice the subject of these proceedings is dated 29 September 2022, served under s12 Housing Act 2004. It identified three category two hazards namely
  - Category 2: Falling on Level Surfaces. The deficiency giving rise to the hazard was described as:  
“The consumer unit is positioned above a doorway at a height where a person standing on the floor cannot reach it. If an RCD or the MCB for a lighting circuit trips it cannot be reset by the occupants. If the lighting circuit is tripped there will be some light in the escape route provided by the emergency lighting but not elsewhere in the house. In particular the letting rooms will have to be used in the dark until the circuit can be re set leading to an increased risk of falls taking place”

The remedial action required was the appointment of a suitably qualified person to re position the consumer unit in a suitable location in the communal parts of the house at a height between 1350 and 1450mm

- Category 2: Falling on stairs. The deficiency giving rise to the hazard was the absence of suitable handrails on the staircases. The Respondent required the fitting of suitable handrails.
  - Category 2: Fire. Six deficiencies relating to fire separation were identified in the Notice together with required remedial action.
9. The Tribunal has not fully particularised the hazards of Falling on Stairs and Fire because the deficiencies were remedied to the satisfaction of the Respondent by the time of the Tribunal subject only to the provision of information regarding the materials used in remedying the deficiencies. The relevant information was supplied after the hearing and before the preparation of this Decision.
10. Category 2 Hazard Falling on Level Ground was not accepted by the Applicant. As the parties had reached substantial agreement on the other hazards, the hearing was concerned only with this hazard.

## **The Parties Submissions**

### **The Applicant**

11. Mr Thorpe for the Applicant stated he has been engaged in environmental health for 20 years. He is a member of the Chartered Institute of Environmental Health. He holds a BSc in Environmental Health. He worked for local authorities in London and Liverpool before joining the Applicant 13 months ago. He relied on his experience as an environmental health officer to assert that scoring indicated a hazard awareness notice was sufficient for this alleged hazard.
12. He emphasized that the policy of his company is to prevent access to the consumer unit in order to avoid the risk of interference with it or attempts to override tripping. Residents are advised to contact a help line which will arrange for the attendance of an engineer. The target time for attendance is four hours. It is guidance given by the Home Office.

13. Tenants are given an information pack in their own language explaining the way to contact engineers in the event of need including tripping in the consumer unit. In addition to the information pack the Applicant arranges monthly meetings of the tenants with a housing officer employed by it. The officer attends to inspect the Property each week. In cross examination he accepted that there is no regular inspection of the consumer unit (in particular testing of the RCD protection) but he did not consider one necessary.
14. There are up to 50,000 licensees residing in the Applicant properties. Many of them have no experience of the consumer units installed in their properties. Occupiers should contact the Applicant's Migrant Help service when necessary rather than attempt to re set the switches. He was strongly against any occupier doing anything themselves.
15. Mr Thorpe further contended that in the event of lighting failure, there is enough background or borrowed light to enable residents to leave their rooms safely in the event of lighting failure. The light comes from computer screens, televisions which are controlled by another switch at the consumer unit, or mobile phones.
16. He agreed there is a hazard associated with lighting failure but relocating the consumer unit will not reduce the hazard because residents are not required to reset it. In his opinion the hazard was not high enough to justify the required relocation. His assessment of risk using the scoring method of the Respondent indicated a score below that which would justify service of an Improvement Notice.
17. In answer to a request from the Tribunal the Applicant produced the EICR certificate which was issued on 3 May 2023, it did not note any deficiency arising from the location of the consumer unit. He then answered questions from the Tribunal. He has seen consumer units in various places. His view was that this unit did not need scoring. The unit has been in its present position at

least for as long as the applicant has been responsible for the Property which was 10 years.

18. A call to Migrant Help is passed to the Applicant's head office in Warrington which in turn passes the call to the maintenance officer for that property. Any out of hours call is routed to the "Out of Hours Team" who refer it to a maintenance person if the call involves a category 1 fault as defined by the Home Office service standards. Anything tripping in the consumer unit is a category 1 fault. The response time for such a fault is four hours.

### **The Respondent**

19. Evidence for the Respondent was given by Mr Richard Brooks the Regulatory Compliance Officer in the form of a written statement and his oral testimony. By his written submissions Mr Brooks described the history of and background to the service of an Improvement Notice. A number of deficiencies requiring remedial work were noticed on inspections which took place before and after the Applicant was granted an HMO licence in July 2020. An inspection occurred on 2 February 2022 when defects and deficiencies were found to be contributing to hazards of excess cold, entry by intruders, personal hygiene, sanitation and drainage, falls on level, falls on stairs and fire were observed.
20. Following that inspection, a Housing Report and covering letter were sent to the Applicant on 18 February 2022 setting out the defects and deficiencies which were contributing to the hazards and the work required to reduce the hazards. The Report included the position of the consumer unit as well as the other hazards specified in the Notice. The work required to address the defect was "*Relocate the consumer unit for the electricity supply in a position where it can be reached by a person while standing on the ground*" A further inspection was carried out in July 2022. Although some deficiencies were satisfactorily resolved, three hazards were unresolved. The consumer unit had not been relocated.

21. Assessments under the Housing Health and Safety Rating System (HHSRS) were undertaken for the remaining three hazards. HHSRS Guidance was reviewed having regard to the occupiers of the Property and the turnover. The Property is used by the Applicant to administer the Asylum Accommodation and Support Contract (AASC). Mr Brooks had regard to the period of unfamiliarity with the house and the evacuation procedures for each new occupant; the probability of occupiers being of varying ages and the fact that some could be vulnerable. Taking these various factors into account he decided service of an Improvement Notice was an appropriate course of action.
  
22. In relation to the consumer unit, Mr Brooks asserted in his written submission and during the hearing that the Applicant's reliance on a 24 hour call out service was not an adequate solution to a poorly sited unit. He presented his scoring assessment of the hazard associated with the position of the unit. He had deduced a score of 324 equivalent to band E, a category 2 hazard. In making his calculation he had assessed the likelihood of the event happening at 1:56 because of the increased likelihood of an injury occurring over the next 12 months due to poor lighting. The national average is 1:87. No variation away from the national averages was made for the harm outcomes.
  
23. He asserted the scoring system is independent of the Home Office guidelines in AASC contracts. The proposed re-siting of the consumer unit would enable residents to be trained or issued with guidelines in how to re set the unit in the event of lighting failure. He pointed out that the fire alarm instructions on the notice board were in English.
  
24. He rejected the suggestion by Mr Thorpe that a Hazard Awareness Notice was sufficient because it is of little practical use. The Respondent considers the removal of the hazard is necessary rather than desirable.
  
25. The Tribunal referred Mr Brooks to the EICR which made no mention of the position of the consumer unit. He responded by asserting the EICR check and the HHSRS check are two separate issues. He contended the unit should be

placed between 1350 and 1450mm from the floor in accordance with current building regulations. He did not regard the present position of the unit as a breach of any previous building regulations. His assessment was by reference to the HHSRS alone.

26. He did not agree that borrowed light from other installations or equipment an adequate solution. He suggested they make matters worse because of the risk of pools of darkness. He did not consider a set of steps with two treads appropriate.
27. In his written submission Mr Brooks stated that the parties respective positions are not too dissimilar. The disagreement is centred on what the most appropriate course of action is.

### **The Statutory and Regulatory Framework**

28. The Housing Act 2004 Chapter 2 created a risk based assessment of housing conditions (the Housing Health and Safety Rating System). The 2004 Act provides for hazards to be prescribed which will be categorised by calculating their seriousness as a numerical score. A hazard is defined in s. 2(1) as “any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).”
29. Assessment is scored on scale divided into Category 1 (high level) and category 2 (lower level) hazards. Section 7(1) confers a power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential premises. S7(2)(a) and s12 empower a local housing authority to serve an improvement notice in respect of the hazard. S12(2) provides that an improvement notice under s12 is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with further provisions in the section and the Act.



30. By s29 of the Act the local housing authority may serve a hazard awareness notice under this section in respect of the hazard. By Subsection 2a hazard awareness notice under this section is a notice advising the person on whom it is served of the existence of a category 2 hazard on the residential premises concerned which arises as a result of a deficiency on the premises in respect of which the notice is served.
31. By s30 of the Act, where an improvement notice has become operative the person on whom the notice was served commits an offence if he fails to comply with it.
32. Part 3 Schedule 1 of the Act sets out provisions for appeals relating to improvement notices. By paragraph 10(1) the person on whom an improvement notice is served may appeal to this Tribunal against the notice. By paragraph 15(2) the appeal is to be by way of a re-hearing, but may be determined by matters of which the housing authority were unaware. On the hearing of an appeal paragraph 15(3) empowers the tribunal by order to confirm, quash or vary the improvement notice.
33. The Housing Health and Safety Rating System (England) Regulations 2005 (the Regulations) prescribe the scoring system for use in making a risk assessment. More serious hazards are classed as category 1 hazards, whilst lesser hazards are in category 2. The hazards with which this appeal is concerned are in category 2. Paragraph 3(1) of the Regulations provides that a *"hazard is of a prescribed description for the purposes of the Act where the risk of harm is associated with the occurrence of any of the matters or circumstances listed in Schedule 1"* Item 20 of Schedule 1 is *"Falling on any level surface or falling between surfaces where the change in level is less than 300 millimetres."*
34. 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 2006

Housing Health and Safety Rating System Enforcement Guidelines were published. Part 4 of the Enforcement Guidelines directs housing authorities to follow the principles of the guidelines before taking enforcement action.

## **Decision**

35. In this case the Improvement Notice was issued at the end of a period of over two years during which a number of deficiencies were identified by the local housing authority and dealt with by Serco until only three alleged deficiencies were outstanding and unresolved to the satisfaction of the Respondent. By the time of the hearing two of the three category 2 hazards had been resolved subject to verification of materials used (relating to the hazards of fire and falls on stairs). By the time of this decision those issues should have been satisfactorily resolved. For this reason, the only matter for the Tribunal identified by the parties for resolution was the position of the consumer unit. In so far as necessary, the Tribunal revokes the Improvement Notice requiring remedial works to prevent the hazards of falling on stairs and fire.

36. The Tribunal had the benefit of an inspection as well as thorough presentations by Mr Thorpe and Mr Brooks who are both experienced environmental health practitioners. They disagreed over whether the position of the consumer unit was the cause of a hazard itself. If it was the cause of a hazard, they disagreed over the means of lowering the risk of hazard. As this is a rehearing of the assessment of the hazard the Tribunal carried out its own scoring of the alleged hazard.

37. In carrying out the scoring exercise, some assumptions have been made.

These are that:

- Occupiers are likely to have lamps plugged into the power sockets and could use them should the lighting circuit trip.
- It was observed that there were two MCBs for the two lighting circuits, making it unlikely that both would trip simultaneously.
- That the fact that periodic testing (five yearly) is a legal requirement, there is a likelihood that faults would be detected earlier, giving rise to

an opportunity to remedy before a trip occurs. The most recent certificate did not note any defects arising from the testing of the lighting circuit.

- Tripping of a lighting MCB is considered less likely than for that of a power MCB given that faulty appliances are not a relevant risk.
- The risk could only arise during periods of darkness.
- The risk is a multiple of a) the lighting circuit tripping out and b) and occupier falling on the level.

Given the above factors, whilst the Tribunal accepts that were the lighting circuit MCB to trip, there would be an increased likelihood of a fall on the level, the increase in risk is not considered significant enough to move the likelihood into the next relative scale point (1 in 56). Therefore the hazard remains at the national average relative scale point of 1 in 100. The Tribunal can see no reason to deviate from the average harm outcomes. This gives rise to a score of 181, Band F.

38. The Applicant is a substantial provider of housing and accommodation for refugees and asylum seekers. It's duties and obligations are the subject of a contract with the Home Office pursuant to the Asylum Accommodation and Support Contracts. The contract imposes service standards. The company has policies and procedures in place to meet the standards. Mr Thorpe was adamant that residents should not re-set the consumer unit but call the help line. Mr Brooks believed the residents could carry out re-sets if the unit is lowered.

39. The Tribunal did not review the AASC contract nor did it receive evidence of the service standards other than from Mr Thorpe. However, it is reasonable to presume that the Home Office will not expect its standards to prevail over the duties and responsibilities imposed on a landlord by the Housing Acts.

40. The Tribunal's approach is to determine first whether there is a risk of the hazard of "Falling on Level Ground" a hazard identified in Schedule 1 of the

Regulations. The allegation is that a risk of falling is increased because lighting failure will lead to use of let rooms in the dark.

41. The Tribunal's scoring indicates that the likelihood of falling in the event of lighting failure is low. Moreover, it does not consider relocating the consumer unit will reduce the risk in any event. The policy of requiring occupiers to refer any event of tripping of switches to a service engineer is reasonable having regard to the occupiers. It does not consider that the Respondent has made out the case that there is a risk of falling which could be satisfactorily reduced by lowering the consumer unit. Nor does the tribunal consider that the elevation in risk arising from the height of the consumer unit is significant enough to warrant an improvement notice. It orders that the Improvement Notice in relation to this hazard is quashed.

42. As the Applicant has carried out the required work to remedy the defects the subject of the two further hazards to its satisfaction, the Tribunal expects the Improvement Notice to be withdrawn.

### **Appeal**

43. 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).

Judge PJ Ellis Chair