



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

Case Reference : **MAN/30UN/HIN/2022/0008**

Property : **13, Armstrong Street, Preston PR2 2LB**

Applicant : **Mr Andrew Stewart and Mrs
Beverley Stewart**

Respondent : **Preston City Council**

Type of Application : **Housing Act 2004 – Sections 40-45 and
Schedule 1 Paragraph 10 (1)**

Tribunal Members : **Mr J Rimmer
Mr I James**

Date of Decision : **21st November 2022**

Order : **The improvement notice in relation to
23, Armstrong Street, Preston is
confirmed with the variations
as set out in paragraph 22 herein.**

A. Application.

1. The Appellants appeal under Section 18 and Schedule 1, Paragraph 10 of the Housing Act 2004 (“the Act”) against an improvement notice applying to 13, Armstrong Street, Preston. The notice relates to a number of issues identified by an officer of the Respondent, following an inspection of the property. The notice was served by Preston City Council, the local housing authority (the Authority”). It is dated 15th February 2022 and is made under section 12 of the Act, requiring certain works to be carried out to the property to remedy certain identified category 2 hazards (within the meaning of the Act) referred to in the Notice. The authority has a discretion under Section 12 to serve an improvement notice in cases where category 2 hazards have been identified. The Appeal against the notice lodged by Mr and Mrs Stewart is dated 3rd March 2022 and was received by the Tribunal the following day.
2. The provisions of Paragraph 10 of Schedule 1 provide for the person on whom an improvement notice is served to have the right to appeal to a Residential Property Tribunal and although setting out certain specific grounds of appeal they do not restrict the overall generality of the paragraph. Thereafter a combination of Paragraphs 12 and 15 envisage an appeal by way of re-hearing, admitting if necessary matters not previously considered, to allow the Tribunal to confirm, vary, or quash the Notice.
3. Directions as to the future conduct of the appeal was given by a Deputy Regional Valuer of the Tribunal on 28th April 2022 and the matter then listed for the consideration of the Tribunal on 28th October 2022 with a hearing and inspection fixed for that date.
4. The Appellants are the freehold owners of 13, Armstrong Street, Preston. This is a terraced house in a cul-de-sac of similar properties, situated in that part of the Ashton-on-Ribble area of Preston known as “Lane Ends”. It is constructed of brick under a slate roof and comprises an entrance vestibule leading to a lounge and then a dining room in the former kitchen from which a stairway leads to the upstairs floor. Beyond the former kitchen is a large single-storey kitchen extension of modern construction. There is a yard to the rear leading to a gateway to a back alleyway. At the front the property is flat and flush to the pavement.
5. As the Tribunal understands the situation, the attention of the Local Housing Authority had been drawn to the property as a result of a referral by a third party. It was following that referral that an inspection took place and a number of hazards, within the meaning of the Act, were apparently identified.

- 6 The Authority was satisfied that those hazards constituted category 2 hazards and they are detailed in some detail in Schedule 1 to the notice of 15th February, with Schedule 2 identifying the work which in the opinion of the authority was required to remedy them.
- 7 The matters identified were particularly:
 - Extensive black spot mould growth (evidencing considerable damp and issues with excess cold)
 - Entry by intruders through front door: this having a defective locking mechanism
 - Food safety concerns arising from the poor state and condition of the kitchen fittings and seals, together with the tenant's allegation of a lack of hot water.
 - A broken cistern which would compromise personal hygiene.
 - The lack of a handrail at the bottom of the stairs which could contribute to a fall on the stairs.
 - Electrical hazards from the elderly electrical system and defective electric fittings.
 - A fire risk also perceived from the electrical system.
 - Missing and broken plaster in the main bedroom which suggested the possibility of injury if further falls occurred.

B The Law

- 6 The law relating to the service and content of Improvement Notices as they relate to category 2 hazards is set out in Sections 12-13 Housing Act 2004 and appear below. If a category 2 hazard is identified, in the absence of any category 1 hazard, the authority may issue an improvement notice.
- 7 Improvement notices relating to category 2 hazards: power of authority to serve notice
 - (1) If—
 - (a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and
 - (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may serve an improvement notice under this section in respect of the hazard.
 - (2) An improvement notice under this section 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 subsection (3) and section 13.
 - (3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.
 - (4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

8 Contents of improvement notices

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,

(c) the deficiency giving rise to the hazard,

(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,

(e) the date when the remedial action is to be started (see subsection (3)), and

(f) the period within which the remedial action is to be completed or the
Periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

(4) The notice must contain information about—

(a) the right of appeal against the decision under Part 3 of Schedule 1,
and

(b) the period within which an appeal may be made.

(5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

9 Schedule 1, Part 3 of the Act then sets out extensive provisions relating to the right to appeal against the making of the notice and paragraph 15 of that Schedule provides:

(1) This paragraph applies to an appeal to the appropriate tribunal under paragraph 10

(2) The appeal-

(a) Is by way of re-hearing and

(b) May be determined by having regard to matters of which the authority were unaware

(3) The tribunal may by order confirm, quash, or vary the improvement notice

B. Inspection

- 8 On the morning of 28th October 2022 the Tribunal inspected 13, Armstrong Street. It was accompanied by the tenant, together with a borough solicitor, Mr Carrera, and two officers from the Housing Standards Team, Mr Crosbie and Mr Halsall, the latter being the officer of the Authority with direct responsibility for this matter. Insofar as it is necessary to record the general description of the property, this is set out in paragraph 4, above. The inspection enabled the Tribunal to see, and in due course consider those matters that had been identified by the original inspection and had prompted the making of the notice.
- 9 The Tribunal was not able to inspect the upper floor of the property due to the presence of a large dog in that part of the house; this belonged to the tenant's son who had absented himself from the premises shortly before the arrival of the Tribunal.
- 10 The Tribunal must state that on entry to the premises it was struck by the poor state and condition of the property and its internal fittings; this observation being reinforced during the ensuing inspection which in clear terms entirely confirmed the findings in the Authority's own inspection. The Tribunal was not however, able to inspect the main bedroom and confirm the plasterwork issue identified by the earlier inspection.
- 11 It will however state that the bare wording of Schedule 1 of the notice does not indicate the extent of the mould growth identified, nor the exceedingly poor state and condition of the kitchen and its fittings. At the same time the Tribunal is satisfied that it saw (with the exception of the bedroom plaster) almost precisely what the Authority's inspecting officer had identified in the Schedule.

C. The evidence and the hearing

- 12 The Tribunal had the benefit of the submissions made by the Authority in support of its case to justify the improvement notice, principally in the form of the improvement notice itself and the statement of reasons accompanying it. This provided a clear overview of the situation from the perspective of the Authority. In support the Respondent was willing to call both Mr Crosbie a Senior Housing Officer and his colleague, Mr Halsall, who had issued the notice.
- 13 Mr Stewart, who attended the hearing alone, relied upon the observations made in the application form submitted to the Tribunal in which both applicants had expressed surprise that the notice had been served in February, given that the Authority had been informed that a notice seeking possession of the property had been served upon the tenant on 31st January.

- 14 Mr Stewart then outlined at some length the very serious difficulties that had been created by the tenant and her adult son at the premises and which had contributed almost entirely to the state and condition found on the inspection. Notwithstanding that conduct, the Applicants had been reluctant to pursue the application for possession of the property in view of the situation that the tenant faced.
- 15 It was clear that Mr Stewart accepted that the condition of the property was as found by the inspection, but was finding it impossible to instruct workmen in view of the tenant's difficulties and a refusal to admit entry even to assess what work would be required. The Tribunal understood that he has felt and continues to feel a moral obligation to avoid making his tenant homeless, notwithstanding the difficulties being created for him.
- 16 The authority, through its solicitor, acknowledged an understanding of the Applicant's position but was concerned to point out:
 - The state and condition of the premises was evidence of the longstanding nature of the issues identified.
 - The Applicants had gained the benefit of a considerable lapse of time since the service of the notice, but had not embarked upon any remedial works.
 - Although the Housing Act regime does not take particular note of difficulties created by the occupant legal remedies were available elsewhere to the Applicants in respect of both repossession and entry into the premises.
 - The seriousness of the defects identified required immediate measures to be taken, notwithstanding any difficult history between the parties.

E Tribunal's Conclusions and Reasons

- 17 The Tribunal reminds itself that it is considering this matter by way of a rehearing and may, if there is such a situation, take into account any factors that have arisen since the notice was issued.
- 18 It takes the view that it must first make a reassessment of the hazards identified by the Authority upon its inspection and which led to the conclusion that hazards existed and the category into which they should be placed.
- 19 In this respect the Tribunal is in no doubt whatsoever that the category 2 hazards identified by the authority on its inspection are clear and apparent. Indeed, it may be the case that the passage of time has worsened the situation since the inspection took place.
- 20 The situation both then and now presents significant threats to the health and well being of the occupiers.

21 **The Tribunal is therefore of the opinion that an Improvement is required, but that it should be varied** to take account of the passage of time inevitably caused by the appeal process and to give adequate time for the Applicants to put in place a regime to carry out the required work to the premises, should they wish to do so. It also acknowledges that the time of the year at which this decision is handed down will be one when the construction and home improvement industry winds down to a winter break.

22 **The Tribunal therefore varies the improvement notice as follows:**

- (1) Paragraph 4 shall read as though the date stated therein shall be 15th January 2023
- (2) The dates referred to in Schedule 2 shall be 7th March 2023 in respect of items numbered 2, 17, 23 and 24 and 7th July 2023 in respect of all other items

J R Rimmer

Chairman