



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

Case reference : **BIR/00FK/HIN/2023/0021**

Property : **74 Balfour Road, Derby, DE23 8UN**

Applicant : **Kulbant Dheansay**

Respondent : **Derby City Council**

Type of application : **Appeal against an Improvement Notice under paragraph 10(1) of Schedule 1 to the Housing Act 2004**

Tribunal members : **Judge C Payne (Chair)
Mr A McMurdo**

Date and place of hearing : **4 August 2023
(Inspection and Paper Review)**

Date of decision : **3 October 2023**

DECISION

Decision Summary

The Tribunal determines that:

1. The Respondent is entitled to serve an Improvement Notice.
2. The Improvement Notice was correctly served on the Applicant.
3. The Schedule to the Improvement Notice is varied in accordance with paragraphs 36 to 48 of this Decision.

Background

4. The Property is a terraced house with two reception rooms, kitchen and bathroom on the ground floor and three bedrooms and a toilet on the first floor. There is a garden to the rear.
5. The Applicant submitted that he holds and manages the property on behalf of his elderly father. The Applicant is the registered proprietor, who manages the tenancy. No evidence of his father's interest was before the Tribunal.
6. The Tribunal were not provided with a copy of the Tenancy Agreement. The Applicant submitted that the property was let to two adults and two children. There appeared to be between seven and fifteen individuals residing in the Property.
7. In April 2022 the Respondent's Housing Standards Team received a referral from their Housing Options Team regarding the condition of the Property. On 20 April 2022 a letter was sent to the Applicant noting the concerns raised about the condition of the Property. The Applicant responded on 11 May 2022 with evidence of some works having been carried out.
8. In November 2022 the Housing Options Team made contact again with the Housing Standards Team to advise that conditions in the Property had deteriorated further, which led to the Property being inspected on 9 December 2022 by Environmental Health Officer, Oliver Court.
9. On 16 February 2023, the Respondent served an Improvement Notice on the Applicant. A copy of the Improvement Notice was provided to the Tribunal. In the Improvement Notice, the Respondent identified one Category 1 Hazard and nine Category 2 Hazards requiring prompt remedial work. Details of the hazards identified by the Respondent during visits to the Property are contained in Schedule 1 of the Improvement Notice and the remedial action required is prescribed in Schedule 2.
10. On 7 March 2023 the Applicants made an application to the Tribunal to appeal the Improvement Notice on the basis that works were ongoing at the Property, with the Tenants causing damage and a notice had been served to end the tenancy.

Inspection

11. The Tribunal inspected the Property on the morning of 4 August 2023. The Applicant attended. Oliver Court and Emma Muir attended on behalf of the Respondent. During the inspection an elderly lady, man and child were present. Their identities were not disclosed to the Tribunal, but they appeared to be residing at the Property.

The Law

12. The Respondent is responsible, under statute, for the operation of a regime designed to evaluate potential risks to health and safety from deficiencies in dwellings, and to enforce compliance with the standards required. The scheme is called the Housing Health and Safety Rating System (“HHSRS”). It is set up in the Housing Act 2004 (“the Act”), supplemented by the Housing Health and Safety Rating System (England) Regulations 2005 (“the Regulations”).

13. The scheme set out in the Act is as follows:

- (a) Section 1 (1) provides for a system of assessing the condition of residential dwellings and for that system to be used in the enforcement of housing standards in relation to such premises. The system (which is the HHSRS system) operates by reference to the existence of Category 1 or Category 2 hazards on residential premises.

- (b) Section 2 (1) defines a Category 1 hazard as one which achieves a numerical score under a prescribed method of calculating the seriousness of a hazard. A Category 2 hazard is one that does not score highly enough to be a Category 1 hazard. The scoring system is explained later.

- (c) "Hazard" means 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.

14. Under section 9(1)(b) of the Act, the local authority is required to have regard to the HHSRS guidance when carrying out their functions in relation to improvement notices, prohibition orders or hazard awareness notices.

15. The HHSRS Enforcement Guidance at paragraph 5.4 states: -

An improvement notice under section 11 or 12 of the Act is a possible response to a category 1 or a category 2 hazard. Under section 11, action must as a minimum remove the category 1 hazard but may extend beyond this. For example, an authority may wish to ensure that a category 1 hazard is not likely to reoccur within 12 months, or is reduced to category 2, or both. Such work would need to be reasonable in relation to the hazard and it might be unreasonable to require work which goes considerably beyond what is necessary to remove a hazard.

16. Section 4 of the Act provides the procedure to be followed by a local authority before commencing any enforcement action. If the local authority becomes aware

that it would be appropriate for any property to be inspected with a view to determining whether a hazard exists, it must carry out an inspection for that purpose.

17. The right to carry out the inspection is derived from section 239 of the Act. This section gives the local authority a power of entry for the purposes of carrying out a section 4 inspection. The inspector must have been properly authorised to carry out that inspection, and (in sub-section 5), the authorised officer must have given at least 24 hours' notice of his (her) intention to inspect to the owner (if known) and the occupier (if any).

18. Section 5(1) of the Act provides that:

“If a local authority consider that a category 1 hazard exists on any residential premises, they have a duty to take the appropriate enforcement action in relation to the hazard”.

19. Section 5(2) says that the appropriate enforcement action means whichever of the following courses of action is indicated. Those courses of action are:

(a)Improvement notice

(b) Prohibition order

(c) Hazard awareness notice

(d) Emergency remedial action

(e) Emergency prohibition order

(f) Demolition order

(g) Declaration of a clearance area

20. Section 5(3) of the Act says that if only one course of action within Section 5(2) is available to the authority in relation to the hazard, they must take that course of action. Section 5(4) says that if two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.

21. Section 11 of the Act sets out the duty of the Respondent to serve notice and states the following: -

(1)If—

(a)the local housing authority are satisfied that a category 1 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,

then serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(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 subsections (3) to (5) and section 13.

(3)The notice may require remedial action to be taken in relation to the following premises—

(a)if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

(b)if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;

(c)if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4)The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a)that the deficiency from which the hazard arises is situated there, and

(b)that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5)The remedial action required to be taken by the notice —

(a)must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but

(b)may extend beyond such action.

(6)An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

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

(8)In this Part “remedial action”, in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

22. Section 12 of the Act sets out the powers of the Respondent to serve notice and states the following: -

(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.

23. Paragraph 2 of Schedule 1 of the Act states: -

2(1)This paragraph applies where the specified premises in the case of an improvement notice are—

(a)a dwelling which is not licensed under Part 3 of this Act, or

(b)an HMO which is not licensed under Part 2 or 3 of this Act, and which (in either case) is not a flat.

(2)The local housing authority must serve the notice—

(a)(in the case of a dwelling) on the **person having control** of the dwelling;

(b)(in the case of an HMO) either on the person having control of the HMO or on the person managing it.

24. Section 263 of the Act defines ‘person having control as follows:-

263 (1)In this Act “person having control”, in relation to premises, **means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.**

(2)In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

25. Paragraph 10 of Schedule 1 of the Act states: -

(1)The person on whom an improvement notice is served may appeal to the appropriate tribunal against the notice.

(2)Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

26. Paragraph 11 of Schedule 1 of the Act states: -

(1)An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—

(a)take the action concerned, or

(b)pay the whole or part of the cost of taking that action.

(2)Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

27. Paragraph 12 of Schedule 1 of the Act states: -

(1)An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.

(2)The courses of action are—

(a)making a prohibition order under section 20 or 21 of this Act;

(b)-serving a hazard awareness notice under section 28 or 29 of this Act; and

(c)making a demolition order under section 265 of the Housing Act 1985 (c. 68).

28. Under paragraph 15 (3) of Schedule 1 of the Act a tribunal may by order, confirm, quash or vary an improvement notice.

Decision

29. The questions for the Tribunal to answer in respect of this appeal are: -

(a) Is the Respondent entitled to serve an Improvement Notice?

(b) Has the notice been served on the correct party?

(c) Does the Tribunal confirm, quash or vary the Improvement Notice?

Is the Respondent Entitled to serve an Improvement Notice?

30. Sections 11 and 12 of the Act entitle the Respondent to serve an Improvement Notice where they are satisfied a Category 1 or Category 2 Hazard exists at the Property. The HHSRS Enforcement Guidance also confirms that the issue of an Improvement Notice is an appropriate response to the presence of category 1 or Category 2 hazards at a property.

31. The Respondent is satisfied that there are hazards present at the Property. The hazards identified are set out in detail in the Schedule to the Improvement Notice. The Applicants do not contest that works are required to remedy the hazards identified.

32. Given the serious nature of the range of hazards identified during the inspection, the Tribunal considered that the issue of an Improvement Notice is a proportionate and reasonable action for the Respondent to take.

Has the notice been served on the correct party?

33. Paragraph 2(2)(a) of Schedule 1 of the Act requires that the Improvement Notice be served on the person having control of the dwelling. Section 263 (1) of the Act states that “*person having control*”, *in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*

34. The Applicant is the registered proprietor. He confirmed he manages the Property and collects the rent from the tenants. As such, he is the appropriate person to whom a notice should be addressed.

Variation of the Improvement Notice

35. The Improvement Notice was served under sections 11 and 12 of the Act, as it contained details of one Category 1 Hazard and nine Category 2 Hazards. The Tribunal determined, as a result of the information provided by the parties and the observations made during the inspection that, the Schedules should be varied. The variations determined are set out in paragraphs 36 to 48.

Excess Cold

36. The Tribunal noted that at paragraph 3 of the Improvement notice, that as part of the remedial works, the Respondent requires the Applicant to *Check all roof timbers for damp, rot or infestation and remedy as necessary*. There is no evidence of this defect or that this action is required and, as such, the Tribunal determined that this should be removed.

Food Safety

37. The Tribunal confirmed the presence of the hazard as set out on page 9 of the Improvement Notice but determined that the remedial action contained in paragraphs 5, 6 and 7 was overly prescriptive and afforded the Applicant no opportunity to explore a range of solutions with the advice of contractors. As such, the Tribunal determines that paragraphs 5 and 6 be removed from the Improvement Notice and paragraph 7 be amended to read:

Redesign and install kitchen facilities to allow the safe storage, preparation and cooking of food. All facilities shall be arranged in such a manner so that they can be conveniently, easily and safely used. Ensure all base units, wall units, and worktops are correctly and securely fixed in position. Surfaces of worktops and kitchen units must be readily capable of being cleansed. The junction between the worktops and any sink or wall must be sealed and watertight. Lighting must be provided at such an intensity and in such a position to permit occupiers to safely and prepare meals. Ventilation must be provided to permit the extraction of moisture laden air from cooking. All electrical works must be completed by a competent electrician & comply with BS7671 18th Edition where applicable.

As a minimum, the kitchen must be provided with the following amenities:

- a) A suitable stainless steel sink top and base unit (including a drainer), with hot and cold water supply and all required drainage connections.*
- b) At least two metres of worksurface, of which at least 300mm must be placed either side of the cooker (preferably linking the cooker to the sink where possible). Worktops must not have exposed / raw edges and must be fitted with appropriate edging strips to ensure the entire worktop is capable of being readily cleansed.*
- c) A hygienic splashback to the sink and all worksurfaces.*

- d) *The design must incorporate 600mm of space for a standard size cooker and the provision of a gas or electric cooker point (to be completed by a Gas Safe registered engineer or to comply with BS7671 18th Edition in the case of electrical work). The wall behind the cooker shall be provided with a hygienic splashback.*
- e) *Have a competent electrician install 3 x double sockets at appropriate spacing above the worktop level to permit safe and convenient use of appliances.*
- f) *The floor surface shall be smooth, level, impervious and capable of being readily cleansed.*
- g) *The provision of base and wall units suitable for the size of the dwelling (family of five based on two double rooms and a single bedroom).*
There is no requirement for the fridge freezer to be situated in the kitchen.

Entry by Intruders

38. During the inspection the Tribunal noted that both the front and back doors to the property were in working order and able to be secured. This hazard has been addressed by the landlord. As such, the hazard of *Entry by Intruders* is removed from the Improvement Notice along with paragraph 8 of the remedial actions.

Collision and Entrapment

39. The Tribunal noted during their inspection that the door to the upstairs bathroom had been sealed. The Improvement Notice is amended to add "*There is no handle to the outside of the door to the first floor WC and the door has been sealed shut.* Paragraph 11 of the remedial action is amended to add *Repair/replace the handle to the first floor WC and unseal the door. Correctly fit in position; test and leave in good condition/good working order.*

Fire

40. Fire and smoke detection on the first floor has been addressed. The hazard remains *The doors to the first floor bedroom are unable to be adequately closed* and the remedial action remains appropriate.

Domestic Hygiene , Pests and Refuse

41. The hazard is amended to remove the sentence *The door architrave has become detached to the first floor front bedroom* as this has been addressed. Paragraph 18 of the remedial action is deleted.
42. Paragraph 15 of the remedial actions is deleted. The plaster finish is an aesthetic matter and would not be considered to be a safety concern.
43. Paragraph 19 of the remedial action is deleted. Removal of waste is a tenant responsibility and accumulation of waste is a matter to be taken up with the

occupier. There was no evidence before the Tribunal that the waste was in place when the tenancy commenced.

44. Paragraph 21 of the remedial action is excessive and is varied to read *Repair the existing bath and seal between the bath and splashback with proprietary sealant.*

Damp and Mould Growth

45. The hazard is varied to note that *There is mould growth to the wall in the kitchen. There is no mechanical extract ventilation within either the kitchen or bathroom. There is no splashback to the kitchen sink. There is no tiling to the window sill in the bathroom. The end cap is missing from the gutter to the rear of the property and the downpipe is becoming detached from the wall. The flashing is missing from the rear pitch of the bathroom roof.*

46. The Tribunal removed the following section from paragraph 22 *Particular attention must be given to the following;* and points e and f, which are replaced by *Overhaul the roof to the rear bathroom, ensuring it is wind and water tight.*

Flames and Hot Surfaces

47. Paragraph 24 is varied to remove reference to paragraphs 5 and 6 of the Improvement Notice.

Timing

48. The timing is amended to require remedial action to start within 28 days of the Tribunal's decision and completed within six months.

Appeal

49. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Payne
Chair
First-tier Tribunal (Property Chamber)