



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

Case reference : **BIR/00CW/HIN/2023/0017**

Property : **31A Bushbury Lane, Wolverhampton,
WV10 9TN**

Applicant : **Jasbinder Kaur**

Respondent : **City of Wolverhampton 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 Lavender**

**Date and place of
hearing** : **16 October 2023
(Inspection and Paper Review)**

Date of decision : **28 December 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 35 and 36 of this Decision.

Background

4. The Property is a semi-detached house converted into ground and first floor self-contained flats.
5. The Applicant is the registered freehold proprietor of the Property, and manages the tenancy of the Property. The property was initially bought jointly with her husband, Mr Jasbinder Singh in 2007, who passed away in October 2021.
6. The Tribunal was provided with an incomplete copy of an Assured Shorthold Tenancy Agreement, which lets to the Property to a tenant, Mrs Allen, who lived there with her two adult children, Mr Arthur Green and Mr Kierran Allen, until she passed away in December 2022. Since December 2022, Mr Green and Mr Allen have remained in occupation of the Property.
7. The Respondent undertook an inspection of the Property on 7 February 2023 following a report being made about the condition of the Property. The Respondent emailed the Applicant on 27 February 2023 notifying her of a number of hazards that were identified during the inspection.
8. The Applicant submits that she responded to this email on 7 March 2023 requesting clarification on the urgency of the various works. The Respondent has no record of receiving that email.
9. The Respondent, feeling that the Applicant was unlikely to carry out the works, served an Improvement Notice on 13 March 2023, which required works to be undertaken to address two Category 1 Hazards and three Category 2 Hazards that were identified during the inspection in February. The notice required works to have started by 11 April 2023 and completed by 8 May 2023.

Inspection

10. Mr Lavender inspected the Property on behalf of the Tribunal on the morning of 16 October 2023. The Tenants, who stated they had not been advised by the Applicant of the inspection, allowed access. The Applicant and Respondent's representatives did not attend.
11. During the course of the inspection Mr Lavender noted the following:

- (a) Alarms were evident in the common hallway and kitchen but there was no evidence available that they are interlinked, and it was not possible to establish during the inspection.
- (b) An alarm was evident in the first floor flat, but it was not possible to tell if it was mains wired.
- (c) The entrance door off the shared hallway did not have an effective door closers fitted.
- (d) The exit doors required a key and there was no provision of a thumbturn to enable occupiers to exit without a key.
- (e) The hob and oven remained defective. These are built into the kitchen and provided with the flat by the Landlord. As such, it is the Landlord's responsibility to maintain and replace them. The tenant indicated that they never installed or replaced the oven and hob.
- (f) The roof space above the bathroom had no insulation installed
- (g) No extractor fan had been installed in the kitchen.
- (h) The mould growth in the Property and shared hallway had not been addressed. The shelf in the base unit had deteriorated and had not been replaced.
- (i) The bathroom basin tap remained insecure.
- (j) The radiator on the landing was detached and unsupported against the wall.
- (k) It was not possible to inspect the ground floor flat to see whether the underside of the stairs had been enclosed with 30 mins fire resistance. However, the requirement of ensuring the stairs is provided with 30 mins fire resistance is reasonable.

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 and is this the most appropriate course of action?

(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 and is it the most appropriate course of action?

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 Tribunal has concluded from its own inspection that the Category 1 and Category 2 Hazards identified by the Respondent remain present in the Property.

32. Given the serious nature of the range of hazards identified during the inspection and the fact that in the eight months since the Applicant was first notified of the need to address them, they have not been addressed, 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. The Applicant did not dispute that she was the correct party on whom the notice should be served. She is the registered proprietor. She manages the Property and has confirmed that she is entitled to rent from the tenants. She is entitled to dispose of the fee simple and as such, she is the appropriate person to whom a notice should be addressed.

Variation of the Improvement Notice

34. The Improvement Notice was served under sections 11 and 12 of the Act, as it contained details of two Category 1 Hazards and three 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 Schedule should be varied. The variations determined are set out in paragraphs 35 and 36.

Installation of mains wired interlinked alarms

35. The Tribunal noted Schedule 2, paragraphs 1 & 2 of the Improvement notice required installation of mains wired interlinked alarms. Although alarms were evident during the Tribunal's inspection, it was not possible to assess whether they were mains connected or interlinked. As such, the Improvement Notice is varied to require the alarms specified in Schedule 2, paragraphs 1 & 2, and to provide evidence that they have been mains wired and are interlinked.

Timing

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

Appeal

37. 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)