FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AB/HIN/2023/0016.**
Property	:	**35 Harris Road, Dagenham, Essex RM9 5DT.**
Applicant	:	**Juliana Babatunde & Sabirudeen Babatunde**
Representative	:	**In person.**
Respondent/Council	:	**London Borough of Barking and Dagenham.**
Representative	:	**Ms Ayesha Omar Counsel with** **Mr.Gurmeet Singh Rehal** **Ref: NOU/584284.**
Type of application	:	**Appeal in respect of an Improvement Notice:** Sections 11 and/or 12 and paragraphs 10-12 of Schedule 1 to the Housing Act 2004.
Tribunal	:	**Judge Dutton** **Mrs L Crane MCIEH CEnvH**
Date of Decision	:	**22 March 2024**

DECISION

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DECISION

The tribunal determines that the appeal against the Improvement Notice dated 7 September 2023 by Juliana Babatunde & Sabirudeen Babatunde (the Applicants) is allowed in part in that the Improvement Notice shall be varied as provided for below. In all other respects it is upheld, and the remedial works set out therein shall be completed within 3 months of the date this decision is sent to the parties.

BACKGROUND

1. The applicants are the freehold owners of 35 Harris Road, Dagenham. Essex RM9 5DT (the Property) and seek to appeal the imposition of an Improvement Notice dated 7 September 2023 (the Notice) served on them by London Borough of Barking and Dagenham (the Council). The application to the tribunal is dated 11 September 2023. Directions were issued by the tribunal on 20 October 2023.

2. The matter came before us for hearing on 21 March 2024. We were supplied with a bundle from the Council running to 65 pages which contained a statement of reasons and a witness statement from Mr Gurmeet Singh Rehal, a Housing Enforcement Officer with the Council, a copy of the Notice and correspondence relevant to the matter before us. We shall refer to such documents as necessary in the course of this decision.

3. By contrast the Applicants had not complied with the direction and the only document before us was the grounds attached to the original application. It seems appropriate to set out the grounds, which are as follows:

   "The grounds for our appeal are as follows; In Terms of the repairs and maintenance, we have been constantly proactive in attending to and repairing and reported conditions within the property. And, we never received any report of new issues from the tenant prior to the 18th August 2023. Prior to us starting the eviction process, the tenant had constantly denied us and the authorised tradespeople access to the property for necessary repairs and remedial work. The incident that resulted to her not paying rent, was that she told myself and the engineer that was there to do the electrical work to get out of her house, otherwise, she would call the police. Address each section separately.
   In Terms of the:
   Crowding & Space – Category 1 – Band C+*: When you initially rented the property to the tenants, their family composition did not include as many children as it does now. This change in circumstances may have contributed to the issues raised. And, we have since served her a notice to look for a more conductive space to accommodate the amount of occupancy.*
   Damp and Mould – Category 2 – Band G*: The property was rented to the tenant in an excellent condition. I noticed during our initial visitation,*

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that she has refused to open up the windows to let some fresh air in, I advised her of this and warned her it would result in a mouldy and damp looking place.

Personal Hygiene, Sanitation and Drainage – Category 1 – Band C

***Location: First Floor Bathroom**: There has been several work done in the bathroom and again, these damages are caused by the overcrowded of the property. There are 3 adults and 5 children using one bathroom. We did warn her of the damages caused by her lack of care and the overcrowding. Neighbours have also complained of her noise and dirtiness caused by the tenant.*

Falling on stairs etc – Category 2 – Band D

***Location: Staircase:** This again has been reported several times and repaired. The last repair guy that went in had to re-establish it and did and extra work to make it firmer but warned was these damages are caused by children jumping on it. So, if this continues, it would keep occurring and would eventually cost us a lot. Again, I brought this to the attention of the tenant to keep an eye on the kids, as this would not only cost us, but it's a hazard for the children. This was another reason why the notice of eviction was issued (Overcrowding causing damages every few weeks)*

Domestic Hygiene, Pest and Refuse – Category 2 – Band H

***Location: Ground Floor Kitchen**: The kitchen was recently renovated before the tenant moved in, and having been there a few times, we advised her several times to open up the windows and use the vent facilities when cooking, as this would damage the kitchen walls, also inhaling a lot of fumes can be quite dangerous. And, it terms of the kitchen sink, new sink were installed and this must have been caused and damaged by the tenants*

***Domestic Hygiene, Pest and Refuse**: Any pest infestation that occurred was a direct result of the tenants discarding rubbish in and around the property. When we became aware of this issue, we immediately promptly arranged for pest control services, who fumigated the property. Access to the property was initially denied by the tenants but eventually granted by the tenants to carry out these essential pest control measures. Our contract with British Gas was also cancelled due to the poor hygiene in the property and the number of pest droppings, as they refused any future repairs in the property due to the poor hygiene by the tenant.*

Finally, on a notice that wasn't stated:

***The Garden**: The garden has been left unkept and the grass has grown to a forest. After several complains from the neighbour, we advised the tenant that it is their responsibilities to mown the lawn, which she agreed to. But has refused to do it and stated she lost the garden door"*

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4. At the hearing we received a skeleton argument from Ms Omar, Counsel instructed by Legal Services for the Council, which we have noted. We are grateful to Ms Omar for this skeleton argument.

5. Ms Omar told us there were 8 hazards set out in the Notice, four being category 1 Hazards being excess cold; crowding and space; structural collapse and falling elements and Personal hygiene, sanitation and drainage.

6. Before the hearing started we were told that Mrs Babatunde, who attended on her own, and the Council had reached an agreement that the deficiencies existed and that the schedule of works to correct them was accepted by the Applicants. We sought and obtained confirmation from Mrs Babatunde that this was indeed correct, although she did say some works had been done.

7. A brief chronology taken from Mr Rehal's statement, which was not challenged is as follows.

   On or about 10 August 2023 the Council received a complaint from the applicants' tenant Miss O Adeshina, which indicated that an earlier complaint had been made but she now faced an application for possession made by the applicants. This prompted swift action from the Council for on 11 August 2023 they wrote to the applicants giving them 7 days to undertake works, as listed in the letter failing which the matter may go further. The applicants were given 14 days to respond, but we are not aware they did so. However, on 17 August 2023 a letter notifying applicants of an intention to inspect and giving notice under s239 of the Housing Act 2004 (the Act) was sent by post and email and an inspection took place the next day. Photographs of the hazards were included in the Council's bundle.
   Thereafter an HHSRS assessment was undertaken which led to the Notice being served dated 7 September 2023. The Notice gave the applicants until 27 October 2023 to complete the works on the Schedule attached to the Notice. A subsequent inspection, again following notice, took place on 13 November 2023 by Mr Rehal and photographs of what was seen on that inspection were also included. It was said by Mr Rehal that little had been done, although it seemed the tenant may have carried out some repairs to the balustrade.

8. For the Council it was said that having identified these hazards they were obliged to take the matter further and that the service of an Improvement Notice was considered to be the most appropriate way forward. It was also said that these repairs fell to the applicants by virtue of s11 Landlord and Tenant Act 1985.

9. We asked the Council whether in the light of the overcrowding a suspended prohibition order might not have been a better way forward. The imposition of the Notice meant that the applicants could not seek possession for at least 6

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months, which would make the overcrowding impossible to deal with. The Council asked for time to consider this.

10. After a short adjournment the Council indicated that they would withdraw the entry relating to Crowding and Space but that the other hazards remained and required attention. Mr Rehal thought 2 months should enable the applicants to instruct a surveyor to inspect the Property for damp, issue a report and give recommendations and for the other works to be completed.

11. Mrs Babatunde told us that they had sought possession of the Property through the Court for non-payment of rent, but the arrears had been discharged and no possession order was made. She was of the view that the tenants, who she believed included three adults and five children, had caused damage to the Property and she was being denied access to carry out the work to repair same, although she seemed to be of the opinion that it was in any event the tenants' responsibility. She was not able to produce to us any evidence to support the allegation made against the tenants, nor details of what works she said she had undertaken since the tenants moved in, which was in August 2019. She was not, she said, aware of any complaints by the tenants until the Council attended in August 2023.

12. It appears that the Property is situated in a selective licensing area, but does not have a licence, although we were told an attempt had been made to acquire one.

FINDINGS

13. We are grateful to the parties for narrowing the issues and for reaching agreement that the hazards exist and the scope of work to cure them is reasonable. Indeed, in our finding the scope of works would indicate that this should not take much time and cost, subject to anything discovered when the damp issues are investigated. A damp specialist should be instructed as soon as possible, and the tenants shall allow access. If they fail to do so an application to the Magistrates Court can be made by the applicants under s35(2) of the Act, which is a criminal offence and can lead to a fine.

14. We raised with the Council the chicken and egg case of overcrowding and the prohibition against possession proceedings to remove the overcrowding whilst the Notice remained. This led to their suggestion that the overcrowding hazard was removed, although it remained an issue that needed to be resolved. Mrs Babatunde told us that they were hoping to sell the Property but could give no further details.

15. We also raised compliance with s239 of the Act and were shown emails from the Council to the applicants on 17 August 2023 notifying them of the intention to inspect the next day and an email from the applicants confirming

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receipt of the letter. It would have been helpful if these communications had been included in the bundle, but Mrs Babatunde did not raise this as an issue.

16. Whilst the defence of reasonable excuse may have been something that could be advanced and we did explore this with Mrs Babatunde, she had no evidence to support the contention that they were being frustrated by the tenants in their attempts at access. The burden of proof rests with applicants, although as a litigant in person we can, to a point assist. However, it seems that workmen had been able to gain access and it was the personal attendance of Mrs Babatunde that was objected to by the tenants.

17. We find that there are hazards at the Property as set out in the Notice and that the works in Schedule 2 thereto are reasonable, and subject to the damp issues, could be resolved quickly and at potentially no great expense to the applicants.

18. It is for the applicants to resolve the continued occupancy by the tenants, and they should seek legal advice on the way forward. This does not excuse the need for the works that remain to be carried out. The Council thought a period of two months sufficient for this. Mrs Babatunde asked for between 3 and 4 months. We conclude that a three (3) month time limit would be sufficient to undertake all that is required to comply with the Notice, as amended to delete reference to overcrowding, and we so order.

19. We have annexed what we consider to be the relevant sections of the Act.

Judge Dutton 22 March 2024

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case

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number), state the grounds of appeal and state the result the party making the application is seeking.

Relevant Legislation Housing Act 2004

Section 5 Category 1 hazards: general duty to take enforcement action

(1)If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

(2)In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action is indicated by subsection (3) or (4)—

(a)serving an improvement notice under section 11;

(b)making a prohibition order under section 20;

(c)serving a hazard awareness notice under section 28;

(d)taking emergency remedial action under section 40;

(e)making an emergency prohibition order under section 43;

(f)making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);

(g)declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

(3)If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

(4)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.

(5)The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard—

(a)either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or

(b)another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under section 289(2F) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.

(6)To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is "available" to the authority in relation to the hazard, see the provision mentioned in that paragraph.

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(7)Section 6 applies for the purposes of this section.

Section 11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(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,

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 —

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(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.

Section 30 Offence of failing to comply with improvement notice

(1)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.

(2)For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a)(if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b)(if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c)(if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3)A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4)In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5)The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6)In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

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(7)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(8)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

Section 35 Power of court to order occupier or owner to allow action to be taken on premises

(1)This section applies where an improvement notice or prohibition order has become operative.

(2)If the occupier of any specified premises—

(a)has received reasonable notice of any intended action in relation to the premises, but

(b)is preventing a relevant person, or any representative of a relevant person or of the local housing authority, from taking that action in relation to the premises,

a magistrates' court may order the occupier to permit to be done on the premises anything which the court considers is necessary or expedient for the purpose of enabling the intended action to be taken.

(3)If a relevant person—

(a)has received reasonable notice of any intended action in relation to any specified premises, but

(b)is preventing a representative of the local housing authority from taking that action in relation to the premises,

a magistrates' court may order the relevant person to permit to be done on the premises anything which the court considers is necessary or expedient for the purpose of enabling the intended action to be taken.

(4)A person who fails to comply with an order of the court under this section commits an offence.

(5)In proceedings for an offence under subsection (4) it is a defence that the person had a reasonable excuse for failing to comply with the order.

(6)A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding £20 in respect of each day or part of a day during which the failure continues.

(7)In this section “intended action”, in relation to any specified premises, means—

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(a)where an improvement notice has become operative, any action which the person on whom that notice has been served is required by the notice to take in relation to the premises and which—

(a)(in the context of subsection (2)) is proposed to be taken by or on behalf of that person or on behalf of the local housing authority in pursuance of Schedule 3, or

(b)(in the context of subsection (3)) is proposed to be taken on behalf of the local housing authority in pursuance of Schedule 3;

(b)where a prohibition order has become operative, any action which is proposed to be taken and which either is necessary for the purpose of giving effect to the order or is remedial action specified in the order in accordance with section 22(2)(e).

(8)In this section—

- "relevant person", in relation to any premises, means a person who is an owner of the premises, a person having control of or managing the premises, or the holder of any licence under Part 2 or 3 in respect of the premises;
- "representative" in relation to a relevant person or a local housing authority, means any officer, employee, agent or contractor of that person or authority.

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