



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

Case Reference : **MAN/00FD/HIN/2023/0033**

Property : **23 MANCHESTER SQUARE, NEW HOLLAND**

Applicant : **ANDREW CHARLES CHEYNE**

Respondent : **NORTH LINCOLNSHIRE COUNCIL**

Type of Application : **Appeal against Improvement Notice, Housing Act 2004**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member P Mountain**

Date of Decision : **25 March 2024**

DECISION

DECISION

1. Schedules 1 and 2 to the Improvement Notice dated 23 June 2023 issued to the Applicant under section 11 of the Housing Act 2004 shall be varied to read:

“Schedule 1 – Hazards and Deficiencies

The deficiencies giving rise to hazards are detailed below:-

1.1 Damp and Mould (Category 1 Hazard)

Damp affecting plasterwork to all chimney breasts and ground floor walls throughout.

1.2 Excess Cold (Category 1 Hazard)

1.2.1 Broken window catch in main bedroom

1.2.2 Heating system lacking sufficient controls.

Schedule 2 – Remedial Action Required

The required remedial action shall (save for paragraph 2.1.3) be completed within 28 days after the current tenants have vacated the property.

The remedial action required at paragraph 2.1.3 shall be completed within 2 months after receipt of the specialist damp proof contractor's report.

The required remedial action is as follows:

2.1 Damp and Mould (Category 1 Hazard)

2.1.1 Apply pepper pots to all chimney pots

2.1.2 Replace existing air vents in all chimney breasts with vents that open and close

2.1.3 (a) Employ a specialist damp proofing contractor to identify whether, following removal of the sources of condensation, there is evidence of rising damp in the property and
(b) follow his recommendations in relation to any rising damp that is identified.

2.2 Excess Cold (Category 1 Hazard)

2.2.1 Repair or replace the broken window catch in the main bedroom

2.2.2 Install a thermostat to the heating system to ensure a minimum level of background heat throughout the property.

Save for item 2.2.1 (which may be carried out by an unqualified person), provide evidence that a suitably qualified competent work-person has checked the deficiencies and completed the required remedial works. Make good all disturbed surfaces and leave the property in sound, clean and tidy condition.

Carry out such additional work as may be found necessary during the course of works to enable completion of the specified works. Properly refix all disturbed fittings and make good all areas disturbed during works.”

2. The Respondent's costs of the Improvement Notice in the sum of £518.12 are reasonable and payable by the Applicant.

REASONS

BACKGROUND

1. In October 2022 the Applicant's tenants reported that the gas central heating boiler had stopped working at 23 Manchester Square. The Applicant promptly had it replaced. The tenants also complained that the old windows were draughty, and these were replaced by uPVC double glazed units towards the end of November 2022. In order to address damp at the property which was affecting the plasterwork on the chimney breasts the Applicant arranged for a roofer to repair and cap the chimneys. The start date for the roof repair was delayed through injury, and the roofer did not return to the property to carry out the agreed work.
2. Meanwhile the tenants had contacted the Respondent housing authority about damp and cold in the house. Ms Hunt, the Respondent's Technical Officer, Environmental Health and Housing, inspected the property on 16 December 2022. She reported to the Applicant on 27 January 2023 that she had noted health and safety hazards in the house. She set out a schedule of the deficiencies at the property and the work that should be done to alleviate them. In relation to the damp and cold, the Respondent asked the Applicant to obtain a report from a damp proof specialist and to undertake such works as the specialist recommended. Other hazards noted at the time related to electrical faults, removal of brickwork in the roofspace, lack of a handrail on the staircase, defects in the upper floor windows, and a missing weather board at the back door.
3. On 23 June 2023 the Respondent, having concluded that the Applicant was not ensuring that necessary repair works were completed within a reasonable time, issued Improvement Notices under sections 11 and 12 of the Housing Act 2004. The section 12 notice was subsequently revoked, and the Applicant appealed to this Tribunal against the section 11 Improvement Notice.

THE LAW

4. Following receipt of an Improvement Notice, a landlord may appeal against it to the tribunal, which may confirm, quash or vary the notice. The tribunal's decision is made by way of a re-hearing but may be determined having regard to matters of which the housing authority was unaware when the initial Improvement Notice was prepared (paragraph 15 of Schedule 1 to the Housing Act 2004).

INSPECTION AND HEARING

5. The Tribunal visited the property on 25 March 2024, accompanied by the Applicant and Mr Holsgrove, counsel for the Respondent. The tenant was present with her children.
6. The property is a 4 bedroomed mid-Victorian terraced property, an amalgamation of two original adjacent houses. It is built of brick under a tiled roof. The fireplaces have been removed but the chimneys remain in place.

7. The Tribunal noted large areas of plasterwork damage caused by damp on the lower parts of the ground floor internal walls. There were no obvious signs of rising damp, and some of the worst damage was situated behind items of furniture etc set against the walls. This indicated to the Tribunal that condensation was likely to be, or to have been, a contributing factor.
8. The property felt warm and dry during the inspection. The tenant informed the Tribunal that she was packing with the intention of vacating the property shortly.
9. A hearing was held later the same morning in Hull Magistrates Court. The Applicant represented himself, and Mr Holsgrove was accompanied by Mr Page, the Environmental Health and Housing Officer who, with Ms Hunt, had been communicating with Mr Cheyne regarding the condition of the property since early 2023.

THE APPLICANT'S CASE

10. Mr Cheyne objected to the Improvement Notice on the ground firstly that it was open to the Respondent to use other means to ensure that any hazards in the property were addressed. In particular, Mr Cheyne said that he had been keeping the Respondent informed about the delays and difficulties he was experiencing in obtaining access to the property for his workmen and contractors. For example on 6 March 2023 he had written to the council "This level of obstruction may mean that further works cannot proceed." He had elicited the Respondent's help once it was clear that the tenants were becoming obstructive, and some of his communications with them had taken place via the council's liaison officer. The Improvement Notice was dated and delivered on 23 June, but arrangements for further repairs had already been made. The roofer completed work to the roof on 27 June as scheduled. The weatherboard for the back door was installed on 22 June, after the tenants had several times refused access to the contractor. Mr Cheyne acknowledged that he was seeking to recover vacant possession of the property, and that he had intended to delay some of the repair work until the tenants had left, in view of the difficulties they had been causing.
11. Further, Mr Cheyne said that he had been following the advice of the damp proof specialists who had told him orally that after capping the chimneys and arranging for the tenants to leave the air vents open he should wait for 6 months for the humidity in the house to stabilise before carrying out further investigation. This advice did not appear in the specialist's written report, but it was referred to by Mr Cheyne when he sent a copy of the report to Ms Hunt on 13 February and wrote "The report recommends that the below is carried out and 6 months after a further damp report is commissioned." His letter listed the recommended work that he intended to undertake and the actions required of the tenants. These included the provision of a dehumidifier for the tenants to use. He asked the Respondent to help arrange this with the tenants but in the event the provision of a dehumidifier was not progressed. Some of the work recommended by the experts was to be carried out "in summer when brickwork has dried out". Mr Cheyne's case was that all the work that he undertook to do prior to the summer would have been done except that he was unable to find a

roofer to start work before June, and the tenants did not allow access to his contractors for other repairs. He did, however, manage to complete the electrical repairs and to carry out the required work to the staircase and upper windows. Mr Cheyne said that in the circumstances he had done all he could and had kept the Respondent fully informed.

12. Mr Cheyne told the Tribunal that he informed Ms Hunt in a telephone conversation that he would not be able to meet the 3 month time limit she proposed for completion of all the work, as at that time a damp proof specialist's report was still awaited and he did not know what repairs would be necessary or how long they might take. In view of the access difficulties faced by his contractors, he was also unable to give a definite timescale for completion of the work when he spoke with Mr Page on 14 June 2023, but he did confirm that all the work would be done within a short time once the tenants had vacated the property.
13. Finally, Mr Cheyne objected to the Improvement Notice itself in several respects:
 - (a) He queried how "cold damp external walls...damp and defective plaster work....gaps around the back door and external walls cold to the touch" could be classified as hazards.
 - (b) He objected to being asked to provide evidence that the roof was adequately insulated and the extractor fans were humidistat fans, when the Respondent had not identified any defect either in the insulation or the fans. He indicated that he was not willing to pay for further experts to prepare reports on items which he already knew were satisfactory. He told the Tribunal that he had been in the loft to check on the depth of the insulation, which was 270mm, and he produced at the hearing confirmation that the fans he had had installed in the kitchen and bathroom of the property were humidistat type fans.
 - (c) The notice required him to obtain a report on the location and size of radiators which had been installed by a heating firm, and stated that the heating was to be "affordable". Mr Cheyne said that this requirement was meaningless.

THE RESPONDENT'S CASE

14. The Respondent's case was that sufficient time had been allowed for the work identified in February 2023 to be carried out. Specifically, when Mr Page spoke to Mr Cheyne by phone on 14 June 2023 seeking clarification that all the outstanding work was in the course of completion, Mr Cheyne was unable to give that assurance and stated that he would have to wait for the tenants to move out before finalising the scheduled repairs.
15. Mr Page told the Tribunal that the Respondent preferred to avoid issuing Improvement Notices where possible because of the amount of work and expense involved, but that in this case they had no choice but to take steps to protect the tenants from cold and damp in the property. He acknowledged that he had largely copied, in the Improvement Notice, the recommendations set out in the expert damp proof report, which Mr Cheyne had had some 4 months to complete but which remained outstanding.

FINDINGS

16. After considering all the documents supplied and listening to the parties' evidence and submissions, the Tribunal found that the contractors' difficulties in obtaining access to the property had been caused not only by the attitude of the tenants but also by some of the actions of Mr Cheyne himself. It was unfortunate that the relationship between landlord and tenant had broken down entirely after December 2022 . Nevertheless Mr Cheyne had encountered unforeseen difficulties in that his first roofer had failed to return and the contractor who capped the chimneys failed to add pepper pots although Mr Cheyne had bought them and asked for them to be installed.
17. The remedial work identified at paragraph 2.1.1.8 in the Improvement Notice: "Ensure the central heating radiators are in an ideal location and of a suitable size for the room they are providing heat and the heat is affordable" is imprecise and unhelpful. The heating in the house was installed by heating engineers and there is no reason to suppose that there is a fault with the radiators. The provision of constant background heating by means of a thermostat control on the gas boiler was identified by the expert damp proof specialist as a helpful supplement to improved ventilation in the property.
18. The loft insulation is adequate and the fans are humidistat fans.
19. Ventilation and background heating are the key to managing condensation in the property. Once the level of humidity is under control a final check should be made to ensure that there is no rising damp which might also need to be addressed.
20. The broken catch on the first bedroom window, while not referred to in the Improvement Notice, prevents the window being closed and must be addressed in order to avoid heat loss.
21. The air vents in the chimney breasts are old and appear at least partially blocked. The property will benefit from the installation of new air vents which can be opened and closed.
22. The pepper pots bought by the Applicant should be installed to allow for ventilation in the unused chimneys.
23. The tenants indicated to the Tribunal that they intend to move out of the property. The Applicant also understands that this is their plan. A recent possession hearing was adjourned but has been relisted for May 2024. In the circumstances, and as the weather is improving, it is reasonable to allow the Applicant to carry out the remaining work once vacant possession has been given.
24. The Respondent's claim for the costs of the Improvement Notice is reasonable and payable by the Applicant.