



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

Case Reference : CHI/00HB/HIN/2023/0013

Property : First Floor Front Flat, 4 Sunningdale,
Bristol, BS8 2NF

Applicant : Mansel Robin Davies

Representative : Olivia Edwards

Respondent : Bristol City Council

Representative :

Interested Party : David Talbot

Type of Application : Appeal against a Variation of an
Improvement Notice, Schedule 1, para 13
of the Housing Act 2004

Tribunal Member : Regional Judge Whitney
Mr P Turner-Powell
Mr M Jenkinson

Date of Hearing : 31st January 2024

Date of Decision : 28th March 2024

DECISION

BACKGROUND

1. The Applicant seeks to appeal against a varied Improvement Notice dated 22 February 2023. The Tribunal received the appeal on 27 March 2023. Various sets of directions have been issued.
2. An electronic hearing bundle consisting of 276 pdf pages has been received. References in [] are to pages within that bundle. The hearing took place at Bristol Magistrates Court. The Tribunal did not inspect the Property but had viewed it via online resources.

HEARING

3. The hearing was recorded. Below is a precis only of the most salient parts of the hearing.
4. Ms Olivia Edwards appeared alongside Mr David Rowe to represent the Applicant. An email was received by the Tribunal at the start of the hearing confirming that the Applicant wished both to represent him at the hearing.
5. The Respondent council was represented by Mr Mallinson who also had with him Mr Overbury, Ms Treagle and Ms Pring who were all council employees.
6. Mr D Talbot, the tenant also was in attendance at the hearing.
7. Mr Rowe stated that it was difficult to manage the property with Mr Talbot at the Property. He suggested it was not intended for occupation and eviction proceedings were underway.
8. Mr Rowe stated that the properties belonging to the Davies family included 4 flats, a large house at Bishop Sutton, this house and one other. He explained that the Applicant needs Mr Talbot to vacate so that works can be undertaken.
9. It was accepted there was no evidence of court proceedings within the bundle. Ms Edwards confirmed the correct address for service of Mr Mansel Davies was the address in Bath which was given in the application. She explained she would not provide Mr Davies' actual address to the Tribunal as Mr Talbot was present.
10. Ms Edwards then gave evidence. She confirmed her witness statement [259-261] was true.

11. Ms Edwards stated she had no qualifications in property management. Originally she had assisted Mr Talbot when he managed on behalf of the Applicant. The Applicant had asked her to step in to take over. She had been assisting for about a year before she took over.
12. She explained that Mr Talbot ceased managing in or about December 2021 and Mr Talbot was in occupation of the Property. He continued in occupation despite court proceedings for possession. A hearing had taken place in April 2023. Since then a mediation had taken place which she understood had not resulted in an agreement and so the Applicant awaited a hearing date. Ms Edwards referred to the fact the Applicant did not accept there was a tenancy.
13. On questioning by the Tribunal she explained that Mr Davies was not present as his visa would not let him return to the UK. She did not believe Mr Davies had taken any advice on this application.
14. She accepted all the works requested by the Council were required. Equally she accepts that the notice was served on the address she had provided to the Council on Mr Davies' behalf. She doesn't know how long the works will take but it would be preferable for them to be done once Mr Talbot has vacated.
15. Ms Edwards explained she did not feel comfortable arranging for contractors to attend the Property with Mr Talbot there. She explained he has videoed her when she attends at the Property and she has faced further harassment. Supposedly contractors have spoken of feeling uncomfortable when they attend the Property.
16. Ms Edwards confirmed the police had not taken any further action against Mr Talbot as a result of her previous complaint. They had suggested she may wish to take out an injunction herself. She had made a further complaint of harassment to the police. She confirmed she had not applied for an injunction.
17. She confirmed she manages for Mr Davies 22 Sunningdale (4 Flats), another property consisting of 5 flats, a 5 bed house and one other property. Other properties owned had been now sold.
18. She explained she lives overseas and returns to the UK when required such as for renovations. The post is collected for her from the address given and she has various contractors upon whom she relies. She is also looking to manage properties for 2 other landlords.
19. In cross examination Ms Edwards confirmed she is not a member of a redress scheme. She requests a three month extension to get the works done. She accepted the flat had been tidied up which would make the work easier to do.

20. Mr Mallinson on behalf of the Council indicated that Mr Overbury would be able to visit to observe the conduct of works.
21. Ms Edwards accepted the Council's evidence and did not wish to cross examine any of the Council's witnesses.
22. Mr Mallinson made submissions. He went through the various category 1 and 2 hazards identified within the notice [18-24] dated 16th December 2022 and as varied [30] on 28th February 2023.
23. Mr Mallinson suggested that Mr Davies had known about the issues since December 2021 and even now had not completed the works. The suspension on the notice was lifted by the variation in February 2023. The works should be prioritised.
24. In his view the sash windows may not require full replacement to remedy the defect. He accepted if full replacement was required then a longer period may be required.
25. Mr Mallinson invited the Tribunal to vary the notice to include further hazards as identified in the most recent statement of Mr Overbury. He suggested it was appropriate to include these.
26. The Tribunal then invited Mr Talbot to make any comments he wished.
27. He explained he had helped Mr Davies in the past. He suggested he had reported all of the issues a long time ago. He was not aware that the mediation was unsuccessful and as far as he was concerned he has a tenancy.
28. At the conclusion all parties confirmed they had nothing further to add.

DECISION

29. **We affirm the Improvement Notice as varied save that we confirm that all works required under the Notice must be commenced within 14 days of the date of service of this decision and should be completed within 28 days save that if within 14 days the Applicant supplies the Respondent with a report from a specialist sash window contractor confirming that a replacement window is required the time for replacement of the window shall be extended until 42 days from the date of service of this decision.**
30. We are grateful to the parties for their submissions. The Applicant by his representatives did confirm that the requirement for all works identified within the Improvement Notice were required. Further they conceded Notice had been given to the address for service on

Mr Davies given by Ms Edwards to the Council. The issue for determination was whether or not the time allowed was reasonable.

31. The Tribunal considered carefully all the evidence within the bundle including the witness statements made by Mr Overbury and Ms Tregale which were unchallenged. We also considered the evidence of Ms Edwards.
32. We are satisfied that the service of an Improvement Notice was appropriate and that the Category 1 and 2 hazards were properly classed as such. Whilst it was conceded we record that the notice was served upon the address given by Mr Davies agent, Ms Edwards, to the Council and being the address in England and Wales it was accepted he uses as his correspondence address.
33. We would remind the Applicant and Ms Edwards that Mr Talbot as a tenant and the Council may be entitled to request Mr Davies' actual address. As was explained at the hearing all would be well advised to take independent legal advice.
34. We are satisfied that the appeal was made in time and we are entitled to consider the same.
35. We turn to the evidence of Ms Edwards. The Tribunal was concerned that she appeared to have little real knowledge of her obligations in acting as an agent. She suggested that it was not accepted Mr Talbot was a tenant and yet the court proceedings to which she made reference were on the basis of a notice having been given under the Housing Act 1988. Such notices pre-suppose that there is a tenancy governed by that Act.
36. We had no evidence as to the status of the possession proceedings. It is unclear as to when any final hearing may take place. Mr Talbot is plainly defending such proceedings. We are not satisfied that the existence of these proceedings provide any good reason why the Improvement Notice should be suspended pending any requirement for Mr Talbot to leave his home. Various serious hazards have been identified which affect Mr Talbot, including the lack of heating and hot water which is frankly unacceptable.
37. Ms Edwards makes reference to harassment by Mr Talbot but on her own evidence the police are taking no action. She was able in giving evidence to refer to one contractor feeling uncomfortable and another who did not welcome the fact Mr Talbot tried to tell him about his dispute with Mr Davies. No statements were provided from any contractor. In our judgment there is nothing that should prevent Ms Edwards instructing contractors to attend and undertake the works required.
38. As the Tribunal explained to Mr Talbot he should co-operate in allowing access and leave contractors to get on with completing the

works they are instructed to undertake. Again if he is unclear as to his rights he should take independent legal advice.

39. The Council has offered that, subject to them having prior notice, Mr Overbury would attend to observe the works being undertaken.
40. We are satisfied the works can and should be undertaken promptly. The one area of concern to us is that works are required to the sash window to the Property. Having viewed the photographs we can see that it may be said such windows are beyond repair. We note however if all other works required under the notice are undertaken these will ameliorate the effects of the defective windows.
41. We accept Mr Davies should have got on and completed these works. However he has appealed and we are satisfied that a short further period of time should be given to him. We consider that Mr Davies ought to be able to begin all the works required under the notice (save for repairs to the sash windows) within 14 days of the date of service of the notice. Such works can then all be completed within 28 days. These periods of time are short but Mr Davies has accepted the works need undertaking.
42. In respect of the sash windows the repairs should be commenced within 14 days or alternatively the Applicant should supply to the council a report from a specialist window company confirming the windows are beyond repair. If such report is provided the window should then be replaced within 42 days of the date of service of this decision.
43. We remind Mr Davies as the owner it is for him to ensure compliance. If he fails to do so he may commit a criminal offence. The items identified as requiring repairs are serious and matters a prudent landlord would simply have got on and addressed when they accepted the works were needed.
44. Finally the Council invited us to add further matters to the Notice. We decline to do so. These were raised in the Second Witness statement of Mr Overbury dated 25th January 2024. Whilst we allowed the statement to be admitted and have taken account of the recent inspection he undertook we are not satisfied that it is appropriate given the late notice of these matters to amend the current notice. Mr Davies should however be under no doubt he would be wise to undertake all the works the council have identified as it is open to the Council to serve a further notice upon him for the new items of disrepair identified.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.