



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

Case Reference	LON/00BJ/HIN/2024/0002
Property	114 Roehampton Vale, London, SW15 3RX
Applicant	Benjamin Paul Williams
Representative	In Person
Respondent	London Borough of Wandsworth
Representative	Ms Laura Curror (ref WK 202396110)
Type of Application	Appeal in respect of an Improvement Notice: Sections 11 and paragraphs 10-12 of Schedule 1 to the Housing Act 2004.
Tribunal Members	Judge H. Carr Mr Andrew Lewicki
Date of Determination	12th June 2024
Date of Decision	9th July 2024

Decision

1. The Improvement Notice for 114 Roehampton Vale is confirmed.
2. The Respondent's costs of £619 are not to be paid by the Applicant.

Background

5. This is an appeal by Mr Benjamin Paul Williams ("the Applicant") in respect of an Improvement Notice relating to 114 Roehampton Vale London SW15 3RX.
6. The Improvement Notice is dated 13th November 2023.
7. The Respondent to the application is the London Borough of Wandsworth.
8. The Improvement Notice that is the subject of the appeal states there is a Category 1 hazard existing at the property. The Category 1 hazard arises from the risk of falls on stairs to the third storey of the property. The deficiency giving rise to the Hazard is described in Schedule 1 to the notice as follows:-

The stairs to the second floor are inadequate, it is an alternating tread staircase (paddle). The property is operating as an HMO and as such, the route of escape including the stairs to the second floor should be of a solid sound and traditional construction.

9. The Respondent has also served upon the Applicant a demand for payment of costs in the sum of £619 relating to the Improvement Notice.
10. By an application dated 1st December 2023, the Applicant filed an appeal against the Improvement Notice.
11. On 14th February 2024 directions were issued providing for both parties to file their statements and documents in support and thereafter for the matter to be listed for a hearing.
12. The application was listed 12th June 2024. The hearing was preceded by an inspection.

The Property

18. The property is a three-storey bedsit style HMO comprising

The inspection

19. The inspection was attended by the Applicant and Mr Paul Williams. For the Respondent Laura Curror, the EHO who had charge of the case and her manager Ms Lola Adejju were in attendance.
18. The inspection was concerned only with the staircase to the second floor which is an alternating tread (paddle) staircase. The staircase leads to a bedroom and a further room which the Applicant told the Tribunal was a store room.
19. The inspection found that the paddle staircase remained and was at a steep gradient. The Tribunal was concerned that there were uneven treads to the staircase.

The background

20. The safety issues relating to the staircase, the subject of the improvement notice, has been considered previously by the tribunal. The details of this are set out below as the withdrawal of the previous improvement notice on terms, is relevant to the Applicant's arguments.
21. The chronology of the previous application is as follows:
 - (a) On 10 January 2023, the tribunal received an application from the Applicant by way of an appeal against an Improvement Notice in respect of the property 114 Roehampton Vale, London SW15 3RX (The Property).
 - (b) The Improvement Notice was dated 21 December 2022 and had been served by the Respondent Council.
 - (c) That appeal was withdrawn on terms agreed between the respondent and the application and set out by the tribunal in a withdrawal dated 28th March 2023.
 - (d) Those terms were as follows:
 - i Within 6 months from the date hereof the Applicant Benjamin Paul Williams agrees to undertake and complete the following schedule of works to the Property:
 - 1 Replace the paddle steps or remove a step to create a gradient that is compliant, with standard staircase steps of sound construction that will allow a safe passage of escape for the occupant residing on the 2nd floor.
 - 2 Add a grip rail to the wall side of the staircase to provide additional support on descending to the first-floor landing
 - 3 Underboard the staircase with fire resisting plasterboard to create a minimum 30-minute protection.

- 4 Install plasterboard (30 minutes minimum) to the side of the staircase covering the spindles to banister.
 - 5 Once installed, add carpet to the steps to give any residing tenants additional grip when descending in an emergency situation.
 - 6 The staircase must be fully compliant with Approved Document K and be acceptable to the Council's Building Control Department.
22. It is an important aspect of the Applicant's case that he considers that he has complied with all of these actions and therefore considers that the current Improvement Notice served by the Respondent should be quashed.

The Law

24. The Housing Act 2004 ('the Act') provides the framework for the assessment of the condition of residential properties and the remedies that can be used to enforce standards in respect of them.
25. The Housing Health and Safety Rating System (HHSRS) provides a rating system for hazards. The score will determine which category the hazard falls; a score over 1000 will be a Category 1 hazard and those below 1000 will be a Category 2 hazard.
26. Section 5(1) of the Act provides that if a Category 1 hazard exists then a local authority must take the appropriate enforcement action which can be an improvement notice, prohibition order, a hazard awareness notice, emergency remedial action, demolition order or declaring the area in which the premises are situate, a clearance area. The Act further provides that if only one course of action is appropriate, that course must be taken, or if there are two or more courses available, then the local authority must take the one deemed to be most suitable.
27. Section 12(2) requires the person upon whom the improvement notice is served to take remedial action in respect of any of the hazards that are specified.
28. Schedule 1, paragraph 14 (1) of the Act provides that a person upon whom an improvement notice has been served may appeal to the First-tier Tribunal within 21 days beginning with the day upon which the improvement notice was served. The grounds for the appeal are set out in paragraphs 11 and 12 of the Act. Paragraph 13 provides an appeal may be made against the decision by a local authority to vary or revoke an improvement notice.
29. Schedule 1, paragraph 15 provides for the First-tier tribunal to deal with any appeal by way of re-hearing, thus allowing it to consider the property at the date of the hearing and take into account matters of which the local authority

may not have been aware at the date the notice was served. The Tribunal has the power to confirm, quash or vary the improvement notice.

The hearing

30. The hearing was attended by the Applicant and Mr Paul Williams. They both made submissions. For the Respondent Laura Curror, the EHO who had charge of the case and her manager Ms Lola Adepju were in attendance. Both made submissions on behalf of the Respondent.

Submissions

30. The Applicant appealed against the improvement notice on the following grounds
- (i) He has been a professional landlord of around 50 properties since 2009 and have had no prior safety issues or incidents throughout his time as a landlord/responsible person.
 - (ii) The staircase has been in situ since 2009 when the Applicant received his first HMO license which was cleared by the council and deemed compliant by Wandsworth Council.
 - (iii) The Applicant himself has occupied the room served by the staircase.
 - (iv) . The Applicant has been working with a qualified fire safety consultant, James Howlett to increase the safety of the staircase.
 - (v) Works have been done to ensure that the staircase is compliant with the requirement of a minimum of 30 minutes escape route from the top floor to a place of "ultimate safety", not "relative safety" which he argues is in line with current HMO fully licensed legislation and guidelines under Approved Document B,LACORS guide and The Regulatory Reform Order 2005
 - (vi) He disputes that a Category 1 hazard exists or that the required works are necessary
 - (vii) He complied with all the requirements set out in the withdrawal by consent document drawn up by Judge Dutton. Those works were taken from the recommendations written up by James Howlett.
31. The Respondent filed a statement in response. It disagrees that the works carried out by the landlord to the existing alternating tread staircase reduces the risk to the tenants sufficiently so that it can be considered a category 2 hazard in terms of falls on stairs.
32. The Respondent also asks the Tribunal to note that it can act on a category 2 hazard if it believes it appropriate and justified. In this instance it would consider it appropriate to take action even if it considered the hazard a category 2 hazard.
33. It notes that the Applicant's argument that the staircase does not constitute a category 1 hazard appears to be considering only the fire safety element of the hazard whereas its main concern is Falls on Stairs. .

34. The Respondent considers the service of the improvement notices as the most appropriate course of action to deal with the category 1 hazard identified at the premises, Falls on Stairs.
35. The Respondent considers that the alternating tread staircase is not adequate and not safe. The likelihood of harm is increased substantially for the hazard of Falls on Stairs when considering the pitch of the stairs and the fact that the treads are alternating making these stairs unsafe and inadequate. The staircase is the only way to access the bedroom on the second floor and the stairs are used daily. The steepness of the steps to the bedroom, and the fact that there is a solid wall to the base of the first flight (where there is a second flight of 4 steps) also contributes to the increased likelihood of harm.
36. Whilst the Respondent mainly considers this hazard under Falls on Stairs it has also considered the staircase under the hazard of fire and the means of escape in an HMO.
37. The Respondent has consulted with the London Fire Brigade who have stated that this type of staircase is not considered suitable in an HMO in terms of the route of escape.
38. The Respondent says that it has tried to work informally with the Applicant but has been left with little choice other than to consider formal enforcement action.
39. The Respondent does not dispute most of the points raised by the Applicant but considers most of them of limited relevance. It is only concerned with the alternating tread staircase under the hazard Falls on Stairs and the fire safety risk that it poses.
40. In response to the point that the staircase has been in situ since 2009 when the property was first licensed as an HMO, the Respondent says that it agrees that the issue of the unsuitable stairs was not picked up during previous HMO licensing inspections. However, it is an issue that was identified by the current case officer during the most recent HMO licensing inspection on 9th September 2021. Following HHSRS assessment this was reviewed as a Category 1 hazard and risk assessed again following some works to the stairs when it was still scored as a Category 1 Hazard.
41. The Respondent also notes that the report provided by the fire safety consultant James Howlett who has worked with the Applicant appears to agree with the Respondent with regard to replacing the alternating tread staircase.
42. The Respondent responds to the Applicant's point that there has been no visit from the London Fire Brigade and there has been no measurements of the staircase, and that the Applicant believes that the staircase does in fact adhere to document K as follows:

- (i) The London Fire Brigade have based their assessment on photographs floorplans and having seen the report from the Respondent as well as having sight of the Applicant's fire risk assessment.
- (ii) The type of staircase in situ is the issue. If it had been changed to a traditional style staircase and had not remained an alternating tread staircase the Respondent would have been satisfied.
- (iii) The point is not that the Respondent requires sign off by Building as meeting part K requirements. What the Respondent requires is a traditional staircase which is compliant with part K regulations.

Determination

- 44. The Tribunal considered the submissions made by both parties and its own findings following the inspection.
- 45. It notes that the Applicant has had building control approval and that the Applicant considers that he has complied with all of the conditions which were attached to the withdrawal agreement of the previous improvement notice.
- 46. However, the Tribunal determined that the paddle staircase that is in situ in the property constitutes a Category 1 hazard in connection with Falls on Stairs. It relies on the evidence of the inspection, the evidence of the Respondent and it takes particular note of the advice from the London Fire Brigade.
- 47. The London Fire Brigade letter of 23rd February 2023 says that it is not satisfied with the paddle design staircase. It accepts that it may be acceptable to provide such a staircase in a single private dwelling as a space saving design where space is limited and a compliant staircase is not possible. However the letter goes on to say that it is not a suitable design to ensure adequate means of escape in case of fire for persons to use in a licensed HMO.
- 48. The letter also states that the Assistance Commissioner disagrees with the remedial actions proposed in the report provided by the Fire Safety Consultant engaged by the Applicant.
- 49. The Applicant argued that there had been no inspection by the London Fire Brigade. The Tribunal however considered that there was no need for the London Fire Brigade to inspect. It has sufficient knowledge of the staircase, the HMO context and the risks in such properties, and it has the expertise to decide that paddle staircases are not suitable.
- 50. The Applicant argued strongly that he had done what was required by Judge Dutton in the previous case. The Tribunal however considers that the conditions were not those posed by Judge Dutton but terms upon which the improvement notice was withdrawn by the Respondent. It considers that there was a lack of clarity in those conditions, no doubt because the conditions were copied from the fire expert's report. The fire expert's report states,

“Replace the paddle steps with standard staircase steps...” The tribunal confirms this has not been done.

51. The Respondent reserved in that withdrawal the right for it to issue a new improvement notice in respect of the paddle staircase following inspection after any works. That is what it has done.
52. The Tribunal has reached its decision based on the facts of the case and its assessment of the risks faced by the occupier of the 2nd floor room. It considers that any paddle staircase is not suitable for use in an HMO, is unsafe and poses a Category 1 hazard. It therefore confirms the Improvement Notice.
53. The Tribunal considered the demand for the payment of the Respondent’s costs in the sum of £619. It determines that those costs are not payable by the Applicant. It considers that the Respondent should have been clearer that a paddle staircase was never going to be an acceptable route of escape from the room. The Tribunal understands that the Respondent was trying to reach an agreement with the Applicant and was acting with the best of intentions when it drafted the withdrawal conditions. However the suggestion within those conditions that a paddle staircase might be acceptable was misleading and led to the Applicant expending money in trying to mitigate the risks posed by the paddle staircase when in reality the only acceptable solution was to replace the paddle staircase with a traditional staircase. In those circumstances it exercises its discretion to order that the Respondent’s costs are not payable by the Applicant.

Judge H Carr
9th July 2024