



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

Case reference	:	CAM/00KF/HIN/2023/0005
Property	:	279A London Road, Westcliff-on-Sea
Applicant	:	Gary Watts
Respondent	:	Southend-on-Sea City Council
Representative	:	Adam Jones, Counsel
Type of application	:	An appeal against an Improvement Notice under Schedule 1 to the Housing Act 2004
Tribunal members	:	Judge K Seward Mr R Thomas MRICS
Venue	:	The Court House, Southend-on-Sea
Date of hearing	:	16 April 2024
Date of decision	:	30 April 2024

DECISION

- 1. Pursuant to rule 35(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal considers it appropriate, at the request of the parties, to make a consent order disposing of the proceedings by varying the Improvement Notice in the terms attached.**
- 2. The Respondent must reimburse the Applicant £150 in total within 28 days of the date of this Decision in reimbursement of 50% of the Tribunal fees paid by the Applicant.**

REASONS

The background

1. No 279A London Road, Westcliff-on-Sea (“the Property”) is a mid-terrace, two storey maisonette, located above a shop. It was built circa 1930’s. The Applicant owns the freehold of the building. The maisonette is accessed at the rear of the building via an external staircase. The Property is let to a tenant who indicates occupation over 5 years or so.
2. On 3 March 2023, Southend-on-Sea City Council (“the Council”) issued an Improvement Notice (“the Improvement Notice”) in relation to damp and mould growth, excess cold and fire hazards at the Property. By application dated 24 March 2023, the Applicant appealed against the Improvement Notice pursuant to paragraph 10 of Schedule 1 to the Housing Act 2004

The Hearing

3. At the Hearing, the Council was represented by Counsel. The Applicant, Mr Watts, attended without legal representation. There was a delayed start whilst the Council awaited the arrival of one of its witnesses.
4. During the morning session, the Tribunal heard evidence from Mr Paul Oatt, the Council’s Chartered Environmental Health Practitioner. He confirmed that the Council is satisfied that there has been compliance with the requirements of the Improvement Notice with regard to the external staircase and balcony.
5. A site visit had been arranged for 10am on the morning of the Hearing. It did not proceed at the appointed time as the tenant was not present and consent for the Tribunal to enter the Property in their absence had not been secured. Consent from the tenant was subsequently obtained over the course of the morning. An accompanied site visit in the presence of the Applicant and Council representatives took place during the extended lunch adjournment.
6. Following the site visit, the Tribunal granted the Council’s request for a further adjournment pending opportunity to discuss settlement with the Applicant. This resulted in the Council’s representative announcing amended terms for the Improvement Notice upon resumption of the Hearing, which the Applicant confirmed were agreed. The Tribunal directed that the Council provided revised wording for the Improvement Notice within 7 days of the date of the Hearing so that a consent order may be issued.
7. On 19 April 2024, the Applicant confirmed in writing his agreement to the variations prepared by the Council. Given the agreement reached

between the parties, the Tribunal considers it appropriate to make a consent order disposing of the proceedings on the terms of the attached varied Improvement Notice. Whilst the covering letter headed 'Notice of Variation' purports to be a variation on the Council's own initiative, the variations are those agreed between the parties during the hearing.

8. No agreement was reached on settlement of the Tribunal fees paid by the Applicant in bringing these proceedings. The Applicant orally requested reimbursement of the £300 fees paid in total claiming that the proceedings could have been avoided with better engagement by the Council. The Council resists the application for fees on the basis that the issue of an improvement notice remained valid and the Applicant could have engaged earlier but he had not done so.
9. Fee orders are entirely discretionary. The Tribunal notes that concessions have now been made by both sides. The agreed terms are less onerous than before. In the circumstances, the Tribunal considers it fair and just that the amount of fees be shared equally between the parties. Accordingly, an order to that effect shall be made under rule 13.

Name: Judge K Seward

Date: 30 April 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).