



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

Case Reference : **CHI/00LC/HIN/2023/0044**

Property : **36 Stanhope Road, Strood, Rochester,
Kent, ME2 3EJ**

Applicant : **Harpreet Khatkar**

Respondent : **Medway Council**

**Type of
Application** : **Appeal against an Improvement Notice,
section 11 Housing Act 2004**

Tribunal Members : **Tribunal Judge H Lumby
Mr B Bourne MRICS
Ms T Wong**

Venue : **Havant Justice Centre**

Date of Hearing : **23 July 2024**

Date of Decision : **9 September 2024**

DECISION

Decisions of the tribunal

- (1) The Tribunal confirms the Improvement Notice dated 6 November 2023 subject to the following variations:
 - (a) The Category 2 - Damp and Mould Growth hazards and the related works should be removed from the Improvement Notice, being section 1 of both Schedule 1 and Schedule 2 of the Improvement Notice.
 - (b) The Category 2 – Falls on level surfaces hazards and the related works should be removed from the Improvement Notice, being section 3 of both Schedule 1 and Schedule 2 of the Improvement Notice.
 - (c) The Category 2 – Electrical Hazards should be amended by the removal of the first two bullet points in section 5 of Schedule 1 and the first four bullet points in section 5 of Schedule 2 of the Improvement Notice.
 - (d) The period within which the remedial action must be completed should in each case be 18 November 2024.

- (2) The Tribunal confirms the Payment Notice dated 6 November 2023

Introduction

1. This is an application by the Applicant to appeal against an Improvement Notice (the Improvement Notice) and a Notice of Demand for Payment (the Payment Notice), both dated 6 November 2023 and served pursuant to sections 11 and 12 of the Housing Act 2004 (the Act) and Part 3 of Schedule 3 to the Act. The notices were served by the Respondent. The application to appeal was received by the tribunal on 27 November 2023, within the 21 days permitted to appeal.

2. The Applicant is the owner of the Property, being a terraced house built in early 1900s, with two bed rooms and extending over four floors, including the basement and open loft space.

3. The Improvement Notice identifies one Category 1 hazard and five Category 2 hazards, all requiring works. The Payment Notice relates to the cost of enforcement and is for £727.32.

4. The Category 1 hazard relates to Excess Cold. The Category 2 hazards relate to Damp and Mould Growth, Falls on a Level of Surface, Falling on Stairs etc, Electric Hazards and Fire.

5. The Applicant's appeal against the Improvement Notice is on the grounds that the notice is incorrect and excessive in the context of the works required, arguing that a Hazard Awareness Notice is more appropriate. The appeal against the Payment Notice is on the grounds that reasonable progress was being made on the basis of informal notices and that the required works schedule was varied by the Respondent after each visit without any communication, justification or clarification of the works required.
6. The Property was let to Ms Sara Jane Ives and occupied by herself and her family. On 17 April 2023, Ms Ives notified the Respondent that the Applicant as her landlord was not undertaking remedial works at the Property. On 17 May 2023, a schedule of works was sent by the Respondent to the Applicant, with a deadline for completion of 30 June 2023. Works were undertaken by the Applicant who also requested an extension of time; an extension to 14 July 2023 was agreed with an inspection confirmed for 17 July 2023.
7. On 14 August 2023 a further schedule of works was sent by the Respondent to the Applicant following the 17 July 2023 and requiring completion by 21 September 2023. The Applicant confirmed completion of the works on 18 October 2023, with the Respondent booking an inspection for 31 October 2023. Following this inspection, the Respondent served the Improvement Notice and the Payment Notice on 6 November 2023 on the Applicant.
8. The tribunal was provided with a bundle running to 645 pages. The contents of all these documents were noted by the tribunal.
9. The hearing was conducted in person. The Applicant was in attendance and represented herself. Mr Venky Krishnan appeared for the Respondent together with Mr Michael Coward (the Respondent's Senior Private Sector Housing Technical Officer).
10. The hearing took the form of a re-hearing of the Applicant's application, as required by paragraph 15(2) of schedule 1 of the 2004 Act. In doing so, the tribunal applied the requirements of the 2004 Act and the Respondent's Enforcement policy and considered the submissions of both parties.
11. The tribunal was satisfied that the Improvement Notice and the Payment Notice were both valid notices properly served on the Applicant and the Applicant's appeal was also served within the required time limit.

Law

12. Part 1 of the Act provides for a system of assessing the condition of residential premises, and the way in which this is to be used in enforcing

housing standards. It provides for a Housing Health and Safety Rating System (HHSRS) which evaluates the potential risk to harm and safety from any deficiencies identified in dwellings using objective criteria.

13. Local Authorities apply HHSRS to assess the condition of residential property in their areas. HHSRS enables the identification of specified hazards by calculating their seriousness as a numerical score by a prescribed method. Hazards that score 1000 or above are classed as Category 1 hazards, whilst hazards with a score below 1000 are classed as Category 2 hazards.
14. Section 2(1) of the Act defines hazard as *‘any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)’*
15. Section 2(3) provides *‘regulations under this Section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur’*.
16. Those regulations are the Housing Health and Safety Rating System (England) Regulations 2005.
17. Under Section 5 of the Act, if a Local Authority considers that a Category 1 hazard exists on any residential premises, it must take appropriate enforcement action. Section 5(2) sets out seven types of enforcement action which are appropriate for a Category 1 hazard. The types of enforcement action that a Local Authority may take following identification of a Category 1 hazard include Emergency Remedial Action (under section 40) and service of an Improvement Notice (under section 11 to 19).
18. Section 7 of the Act contains similar provisions in relation to Category 2 hazards. Power is conferred on a Local Authority to take enforcement action in cases where it considers that a Category 2 hazard exists on residential premises and those courses of action include in Section 7(2) service of an Improvement Notice.
19. Section 9 of the Act requires the Local Authority to have regard to the HHSRS operating guidance and the HHSRS enforcement guidance.
20. Sections 11 to 19 of the Act specify the requirements of an Improvement Notice for Categories 1 and 2 hazards. Section 11(2) defines an Improvement Notice as a notice requiring the person on whom it is served to take such remedial action in respect of the hazard as specified in the Notice.

21. Section 11(8) defines remedial action as action (whether in the form of carrying out works or otherwise) which in the opinion of the Local Authority will remove or reduce the hazard. Section 11(5) states that the remedial action to be taken by the Notice must as a minimum be such as to ensure that the hazard ceases to be a Category 1 hazard but may extend beyond such action. Section 12 of the Act deals with an Improvement Notice for a Category 2 hazard and contains similar provisions to those in Section 11.
22. An Appeal may be made to the Tribunal against an Improvement Notice under Paragraph 10, Part 3, Schedule 1 of the Act. Section 14 of Schedule 1 provides that an appeal '*...must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule*'
23. Section 14 (3) provides: '*The appropriate tribunal may allow an appeal to be made to it after the end of the period mentioned in subparagraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delays since then in applying for permission to appeal out of time)*'
24. Part 1 of Schedule 1 provides that the improvement notice must be served on the owner of the property and on every other person who to the knowledge of the local authority has a relevant interest in the premises or is an occupier thereof.
25. The Appeal is by way of a rehearing and may be determined by the Tribunal having regard to matters of which the Local Authority is unaware. The Tribunal may confirm, quash or vary the Improvement Notice. The function of the Tribunal on an Appeal against an Improvement Notice is not restricted to a review of the Authority's decision. The Tribunal's jurisdiction involves a rehearing of the matter and making up its own mind about what it would do.
26. Section 28 of the Act gives power to a Local Housing Authority to serve on the owner of residential properties a Hazard Awareness Notice relating to Category 1 hazards. The notice advises the recipient of the existence of the hazard(s), the deficiency giving rise to it, the reason for serving the notice and details of remedial action if any which the local authority considers would be practical and appropriate to take in relation to the hazard. Section 29 contains like provisions for the service of a Hazard Awareness Notice in relation to Category 2 hazards. The Act does not provide for a right to appeal against the service of a Hazard Awareness Notice.

Consideration of the Hazards

27. The tribunal received representations from the parties on each of the identified hazards in turn.

Category 1 – Excess Cold

28. The hazard in question related to the attic room, the Improvement Notice requiring this to be insulated and heating installed.
29. The Applicant argued that she was not permitted to use that room as a bedroom and the house was marketed as having two bedrooms, not three. As such, heating was not needed. In addition, the insulation had been carried out. She also argued that, even if the works were done, the room would still be a Category 1 hazard.
30. The Respondent contended that the use of the room as a bedroom was not relevant, it was a “habitable room” to which the occupiers could gain access by stairs. As such, it needed to be heated and have proper insulation. The works required included the installation of some sort of heater and completion of the plastering. The Respondent accepted that, even if the room would still be a Category 1 hazard after the completion of the works, they would be satisfied and not take further action.
31. The tribunal considered the parties’ submissions and concluded that the attic space was a habitable room, due to the stairs giving access and the dormer window. It therefore concluded that the remaining required works to the attic room should be included in the Improvement Notice and carried out by the Applicant.

Category 2 – Damp and Mould Growth

32. This related to roof tiles on rear extension and guttering work on main roof. It was agreed that all required works had been completed on 19 January 2024.
33. On the basis that the works were completed, the tribunal concluded that these works should be removed from the Improvement Notice.

Category 2 - Falls on Level Surface

34. This related to some external works. It was agreed that all required works had been completed.
35. On the basis that the works were completed, the tribunal concluded that these works should be removed from the Improvement Notice.

Category 2 – Falling on Stairs etc

36. This related to the staircase from the top floor. The Applicant argued that the Respondent required a continuous handrail but could not see how this could be done, contending that two separate handrails should be

sufficient. The Respondent explained that either a continuous handrail or separate handrails that joined on the corners were required; these must be capable of being gripped so dado type rails would not be sufficient.

37. The tribunal considered the parties' submissions and concluded that the handrail needed to be installed in accordance with the Respondent's requirements. It therefore concluded that the required works to install handrails should be included in the Improvement Notice and carried out by the Applicant.

Category 2 – Electrical Hazards

38. It was agreed that these works have all been completed except the double socket to be relocated in the second floor bedroom. Movement of this was required to comply with British Standard BS7671, according to the Respondent.
39. The tribunal considered the parties' submissions and concluded that the only work required was the relocation of the socket in the second floor bedroom in accordance with the Respondent's requirements. It therefore concluded that these were the only works to be included in the Improvement Notice and carried out by the Applicant in relation to Category 2 – Electrical Hazards. All other works within that section should be removed from the Improvement Notice.

Category 2 - Fire

40. This relates to the fire detection system, which the Respondent requires to be extended to the second floor and made fully interlinked in accordance with the relevant British Standard and an appropriate certificate provided to the Respondent.
41. The tribunal considered the parties' submissions and concluded that the works listed in the Improvement Notice for this category should be carried out by the Applicant in accordance with the Improvement Notice.

Hazard Awareness Notice

42. The Applicant argued that the service of an Improvement Notice was excessive and a Hazard Awareness Notice would have been more appropriate. She contended that the works were largely completed and all that was required was clarity on the remaining works.
43. The Respondent argued that an Improvement Notice was appropriate as this had been continuing for some time and the remaining issues were such that the Respondent needed certainty the works would be done.

Hazard Awareness Notices are advisory only and so inappropriate in this context. The Respondent confirmed that no Financial Penalty would be served on the Applicant or prosecution brought for non-compliance provided she completed the works within the required period.

44. Having considered the parties' submissions and the works required, the tribunal considered that an Improvement Notice was the appropriate way to achieve certainty that the remaining works would be carried out. It therefore determined that the Improvement Notice should remain and not be substituted by a Hazard Awareness Notice, subject to the variations referred to above and determination of the period for compliance. In reaching that conclusion, weight was placed on the Respondent's assurance that no Financial Penalty would be served or prosecution for non-compliance brought provided the works were all completed with the period required by the Improvement Notice.

Period for compliance

45. Accordingly, the tribunal next considered what an appropriate period for compliance by the Applicant should be. The Respondent argued that a period of two months was appropriate. The Applicant argued for longer, on the basis that the Property has trespassers in it; she explained that the trespassers were the partner and daughter of the tenant, who had now sadly died.
46. The tribunal considered these submissions and the nature of the remaining works. It determined that a period of ten weeks from the issue of this judgment was appropriate. It therefore determines that all works in the Improvement Notice are required to be completed by **18 November 2024**.

Costs Notice

47. The Applicant argued that the Payment Notice should not have been issued on the basis that the Improvement Notice should not have been issued. The Respondent contended that it was entitled to recover costs under section 49 of the Housing Act 2004; the amount demanded was a flat fee for every such notice and increased annually
48. The tribunal considered these submissions. On the basis it had agreed that an Improvement Notice should be issued, it also concluded that the Respondent was entitled to issue the Payment Notice. The amount specified to be paid was reached on a reasonable basis and so this amount should be paid by the Applicant. The Payment Notice was therefore confirmed in the terms issued.

Cost applications

49. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £100.00 and the hearing fee of £200.00.
50. As the Respondent has been largely successful in this claim in that both notices were confirmed and the Improvement Notice only varied to remove completed works and set a new period for compliance, the tribunal determines that it is not just and equitable that the Respondent should be responsible for the tribunal fees associated with this case.
51. Accordingly, the tribunal makes no order in relation to costs.

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.