



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

Case Reference : **BIR/00FN/HIV/2024/0002**

Property : **2, Noel Street, Leicester LE2 0DS**

Applicant : **Imran Bilimoria**

Representative : **None**

Respondent : **Leicester City Council**

Representative : **Mr Rainbow Leicester City Council
Legal Services**

Type of Application : **Appeal against Improvement Notice.
Schedule 1 Paragraph 10(1) Housing Act
2004**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member Mr A McMurdo**

Date of Hearing : **11 October 2024**

Date of Decision : **31 October 2024**

DECISION

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The Improvement Notice Ref: 23/04846/SLPRIV on 12th February 2024 is confirmed.

Introduction

1. By an application dated 3 March 2024 the Applicant Imran Bilimoria issued an appeal against an Improvement Notice (the Notice) served upon him and his agent Smooth on 12 February 2024 by the Respondent, Leicester City Council.
2. The Notice described six category 2 hazards identified by the Respondent at 2 Noel Street Leicester LE2 ODS owned and let by the Applicant. The hazards were:
 - a. Damp and Mould. The shower was leaking causing damage to the kitchen and ground floor back room. Kitchen window does not open causing excess steam and mould in the kitchen. Rising damp on the walls in the ground floor back room and ground floor front room. The front door letter box was ill fitting, the door was not weatherproof and was letting in water.
 - b. Personal Hygiene, Sanitation and Drainage. The kitchen sink was broken and leaking and cannot be effectively cleaned. The under-sink cupboard unit was rotten and the cupboard doors do not shut. The sink in the bathroom was cracked requiring replacement or repair. The toilet seat was missing.
 - c. Falling between levels. The means of escape window in the back bedroom was without a restrictor, increasing the risk of accidental falls (in the case of young children under 5 years of age; the vulnerable group for this hazard)
 - d. Electrical Hazards. There was a loose socket plate in the ground floor front room and there was a screw loose in the socket on the landing. The light in the bathroom did not have a cover.
 - e. Fire. The doors were ill fitting to bedroom 1, bedroom 2 and the bathroom. The smoke alarm on the first-floor landing was not working.
 - f. Structural Collapse. The coping stones to the boundary wall in the garden

3. Directions for service of statements of case and evidence were given on 3 March 2024. The matter came on for hearing on 11 October 2024. The Tribunal inspected the property before the hearing which took place at the Nottingham Justice Centre. At the hearing Mr Bilimoria represented himself. The Respondent was represented by Mr Rainbow, an employed barrister with the Respondent. Tracey Sharpe Property Inspector employed in the Selective Licensing Team and Louise Wilkins another employee of the Respondent were also present. The Applicant's agent Smooth & Company took no part in the proceedings.

The Improvement Notice

4. By the time of the hearing the Applicant had carried out works which satisfied some of the requirements specified by the Respondent in the Notice. Required work outstanding at the time of the hearing was:

a. Damp and Mould.

- i. Replace Shower and cubicle in the first floor bathroom, ensuring the shower tray is properly sealed using a waterproof sealant. Ensure the waste pipe is properly connected to the drainage system.
- ii. Rectify resultant damage to the plaster and skirting boards in the back bedroom, kitchen and ground floor back room.
- iii. Remove all black mould from the kitchen and ground floor back room by cleaning using a fungicidal cleaner and then redecorating using a washable ant-mould paint
- iv. Resolved
- v. The rising damp issue in the ground floor front and back room should be treated appropriately and the resultant damage to plaster and skirting boards resolved.
- vi. Resolved

b. Fire

- i. Adjust or replace the bathroom and bedroom doors in order that they fit correctly. The doors should fit tightly into their frames and engage the latch when closed. The gaps should be 4mm or less between the door and the frame.

5. The hearing was concerned with these remaining requirements.

The Property

6. 2 Noel Street is a two-bedroom mid-terrace house constructed pre 1914 of brick and slate construction. The front door opens into the front room. A door off leads to the second room described as the back room. The kitchen is off the back room. A door from the kitchen leads to the garden. A staircase is off the back room. The upper floor has a front and back bedroom. A third bedroom at the rear of the upper floor has been converted to a bathroom at some time.

7. A tenant with her family has occupied the property since 2017. The Applicant asserted that there are six people living in the property including at least one child. The Tribunal met the tenant and two other adults at the time of the inspection which was conducted in the presence of the Applicant, Mr Rainbow, Ms Sharpe, and Ms Louise Wilkins employed by the Respondent. During the inspection Ms Sharpe confirmed the Respondent was satisfied that the work undertaken by the Applicant met the requirements of the Notice save for the remaining work the subject of this hearing and decision.

The Statutory and Regulatory Framework

8. The Housing Act 2004 (the 2004 Act) at Chapter 2 created a risk-based assessment of housing conditions (the Housing Health and Safety Rating System). The 2004 Act provides for hazards to be prescribed which will be categorised by calculating their seriousness as a numerical score. A hazard is defined in s. 2(1) 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).”

9. Assessment is scored on scale divided into Category 1 (high level) and category 2 (lower level) hazards. Section 7(1) confers a power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential

premises. S7(2)(a) and s12 empower a local housing authority to serve an improvement notice in respect of the hazard. S12(2) provides that an improvement notice under s12 is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with further provisions in the section and the Act.

10. By s29 of the Act the local housing authority may serve a hazard awareness notice under this section in respect of the hazard. By Subsection 2a hazard awareness notice under this section is a notice advising the person on whom it is served of the existence of a category 2 hazard on the residential premises concerned which arises as a result of a deficiency on the premises in respect of which the notice is served.

11. By s30 of the Act, where an improvement notice has become operative the person on whom the notice was served commits an offence if he fails to comply with it.

12. Part 3 Schedule 1 of the Act sets out provisions for appeals relating to improvement notices. By paragraph 10(1) the person on whom an improvement notice is served may appeal to this Tribunal against the notice. By paragraph 15(2) the appeal is to be by way of a re-hearing, but may be determined by matters of which the housing authority were unaware. On the hearing of an appeal paragraph 15(3) empowers the tribunal by order to confirm, quash or vary the improvement notice.

13. The Housing Health and Safety Rating System (England) Regulations 2005 (the Regulations) prescribe the scoring system for use in making a risk assessment. More serious hazards are classed as category 1 hazards, whilst lesser hazards are in category 2. The hazards with which this appeal is concerned are in category 2. Paragraph 3(1) of the Regulations provides that a "hazard is of a prescribed description for the purposes of the Act where the risk of harm is associated with the occurrence of any of the matters or circumstances listed in Schedule 1" Item 20 of Schedule 1 is

“Falling on any level surface or falling between surfaces where the change in level is less than 300 millimetres.”

14. Section 9 of the Act requires the local housing authority to have regard to any guidance for the time being given by the appropriate national authority about the exercise of their functions in connection with the HHSRS. In 2006 Housing Health and Safety Rating System Enforcement Guidelines were published. Part 4 of the Enforcement Guidelines directs housing authorities to follow the principles of the guidelines before taking enforcement action.

15. Sections 12 and 13 of the Housing Act 2004 provide:

s12.(1) If–

(a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.

(3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

(4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

13.

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates–

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,²

(c) the deficiency giving rise to the hazard,

(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,

(e) the date when the remedial action is to be started (see subsection (3)), and

(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

(4) The notice must contain information about–

(a) the right of appeal against the decision under Part 3 of Schedule 1, and

(b) the period within which an appeal may be made.

(5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard

The Parties’ Submissions

16. The Applicant admitted that the work required by the Respondent to satisfy the stipulations set out in the Notice was necessary. His submission was that the work was invasive. It could not be carried out with the tenant and her family in residence. He could not make alternative arrangements for their accommodation. Moreover, the tenant complained that a grandchild living with her suffered with asthma. Invasive work would create dust exacerbating the condition.

17. He proposed that the Notice be quashed because it was his intention to carry out improvement works to the property when the tenants leave. Proceedings were on foot to recover possession of the property for that purpose.

18. In addition, he contended that the tenant was opposed to the required work because of the disruption and the risk of exacerbating the asthma suffered by a grandchild who is ordinarily resident in the property.

19. He had relied on his agent, Smooth to manage the property but he was misled by their statements to him regarding their attempts to gain access to the property. He had never met the tenant during the period it was managed as all arrangements concerning the tenancy were handled by the agent. He terminated their agency after he lost confidence in their ability to manage the property. However, he was unfamiliar with the implications of service of an Improvement Notice.

20. After terminating the agency's contract, he visited the property where he met the tenant for the first time. He was shocked by the appearance of the property. He agreed there were issues relating to the smoke alarms and a step at the front entrance door. The issues which did not involve invasive work or disturbance to the tenants were resolved by him appointing suitable contractors. It was not practical to deal with the issues remaining when six people are in residence.

21. As far as the mould was concerned, the Applicant contended the tenant was substantially responsible by failing to ensure sufficient ventilation when cooking or drying washing. It appeared that a curtain was permanently drawn across the window in the front bedroom which limited ventilation.

22. The shower was not in use. Eliminating escape of water from the shower unit will require a lot of work causing disturbing the tenant. Any invasive work whether to the shower or the kitchen risked harm to the children who

might attempt to play with materials or interfere with workmanship if left unattended.

23. Any work required by the Notice is a patchwork of repairs rather than a thorough work of refurbishment which he intended to undertake as soon as he has possession.

24. The Applicant described his conversations with the tenant were substantially concerned with her expressing an expectation of being rehoused by the council. If he carried out the required work, it would reduce the tenant's prospects for rehousing.

25. The Applicant asserted that facts were not known to the Respondent council in February 2024 when the Notice was served. The misleading behaviour of the agent including misrepresenting the position of alleged possession proceedings. He produced evidence that he had put the agent in funds to fix doors and some electrical work as required but the work had not been carried out.

26. Proceedings for possession of the property should have been issued before February. He was told they had been but on thorough enquiry of the county court he learned no proceedings had been issued. He was wrongly informed by his agent the proceedings were issued in August 2023. Proceedings were issued after service of the Notice. At a directions appointment in September 2024 the court directed that a schedule of works be prepared as he is relying on ground 6 (property redevelopment) as his reason for seeking possession. He estimates the cost of the work he proposes is £30,000.00 for which he will need a mortgage.

27. He was unaware of the state of the property until the Notice was served as he had relied on the agent. He was unaware of the outcome of the inspection arranged by the Respondent with the agent although he was aware an inspection was arranged. He was advised work similar to that

described in the Notice was required but he did not realise how serious the issues were.

28. Smooth had told him they had not been able to visit the property because of a lack of cooperation from the tenant.

29. He had prepared an action plan for the agent, but it had not been followed.

30. He wanted to carry out extensive work at the property much greater than specified in the Notice.

31. The tenant has a lot of clutter in the house which makes access difficult. He has asked the tenant to move some of her belongings especially when against the walls but the tenant states there is nowhere for it to go.

32. The Applicant has other properties, but they are not in Leicester. He does not have funds to offer the tenant alternative accommodation.

33. He has not spoken to a plumber in detail about the work required to the shower but stated that in a discussion with a contractor who carried out some of the agreed work he was told the required work is difficult. Also, for the duration of the work access to the bathroom will be very difficult.

34. Mr Rainbow for the Respondent relied on the written submission and the statement of Tracey Sharpe. Mr Bilimoria had no questions for them.

35. The statement of Tracey Sharpe described the first contact with the property on 5 May 2023 in response to a service call from the Respondent's social services office. An inspection was arranged with a representative of Smooth Agents, a person known as Emma and Louise Wilkins her colleague. According to Ms Sharpe the tenant had sent numerous emails the agent regarding the condition of the property without response. The emails may have been addressed to an employee who had left Smooth Agents. At the

inspection Ms Sharpe observed various wants of repair, defects and hazards. Photographs were taken and presented as evidence.

36. After the inspection Ms Sharpe assessed the hazards against the HHSRS Operating Guidance. Her assessment and scoring were presented.

37. A letter was sent to the agent on 5 May 2023. Emma had informed Ms Sharpe the agent was authorised to represent the landlord who was not involved. On 19 June 2023 the agent notified Ms Sharpe that certain work included in the letter of 5 May 2023 had been completed. On 4 July 2023 the agent informed the Respondent proceedings to recover possession had commenced with the issue of a S8 Notice on the grounds that work required would cost over £20,000.00 which required the property to be vacant.

38. The property was reinspected on 20 July 2023 with the agent. The purpose of the inspection was to agree a solution to the hazards identified. On 21 July 2023 the Respondent wrote to the agent suggesting the shower be replaced and the walls in the kitchen, behind the shower and in the living-room be cleaned.

39. On 21 August 2023 the agent wrote to the Respondent advising the tenant had removed items ready for work to be done but on 18 September 2023 the agent notified the Respondent the work would not be carried out as a court appointment was fixed for the following week without explaining the relevance of the appointment to the required works.

40. On 4 October 2023 Ms Sharpe was told the court appointment was cancelled. It was to be refixed. In the meantime, the work specified could not be done because substantial redevelopment was planned at a cost of £30,000.00 and could not be done while the tenant and family was in occupation.

41. A further inspection took place on 29 November 2023 with a contractor GAP Property and Electrical Services (GAP).

42. The Respondent produced the quotation from GAP for works relating to the shower, *“Remove shower and tiles make good wall, replace with wall panels and new shower like for like”*. The next item was *“Make good to all three walls bedroom, kitchen and dining room”*.

43. Work for the alleged rising damp followed *“Attend to the rising damp on the adjoining walls, this would be to remove the defected plaster to 1.2m high, inject the walls with a chemical gel such as dry zone, then renovate the walls and skim to finish, once dry fit 100mm soft wood skirting boards making sure to prime both sides”*,

44. Other works include in the quotation were electrical works, replacing kitchen window, removing and replacing work top sink unit and taps, replacing three doors, replacing bathroom sink and taps, supply restrictor to bedroom window and other minor works for the sum of £10,679 plus VAT. The quotation did not expressly include the remedial work to the damp and mould-stained kitchen walls.

45. GAP advised they could carry out the work with the tenant and family in occupation.

46. In answer to questions from the Tribunal Ms Sharpe admitted she had not assessed the cause of the rising damp. She had relied on the assessment of the builder. No further investigation had been carried out.

47. On 8 February 2024 Ms Sharpe spoke to the landlord having traced him through His Majesty’s Land Registry and council tax records. According to Ms Sharpe the Applicant was sympathetic to the tenant but he wanted to carry out more works than the council required, and he needed the property empty for that purpose although he gave no information about the position

reached in the supposed court proceedings. The Notice was served on 12 February 2024. The work was to be completed by 22 April 2024.

48. In answer to a question from the Tribunal about the Respondent's enforcement policy, Ms Sharpe stated she reviews the application of the Respondent's enforcement policy on a case-by-case basis. The Notice was not suspended but had she known proceedings were underway more time might have been allowed but suspension now is not suitable because of the time the proceedings are likely to take. At the date of the Notice the Respondent's requirements to reduce hazards had been outstanding for nine months.

49. The Respondent relied on the evidence of GAP to support the contention that the work could be done with minimal intrusion at a reasonable price. Further, the Respondent had not encountered difficulty in gaining entrance to the property nor had there been any indication of resistance to works being undertaken from the tenant.

Discussion and Decision

50. The Tribunal makes its decision having regard to some introductory points. It is satisfied that the Applicant was not well served by his agent who misled the Respondent about the existence of possession proceedings. Also, the tenant is storing a large volume of various items from clothing to food stuffs throughout the property piled against walls in every room seen by the Tribunal.

51. Further, the Respondent has alleged that there is rising damp affecting parts of the property. It relied on the observation by GAP to that effect. No other evidence was adduced to support the contention the property was suffering with rising damp. During the Tribunal's site visit, the wall was observed but there was insufficient evidence for the Tribunal to make a conclusion of rising damp.

52. This is an appeal by way of rehearing of an Improvement Notice served on the Applicant on 12 February 2024 nine months after it first wrote to the agent of the Applicant notifying him of the need for work to be carried out. Work carried out shortly after the hazards were identified satisfied some requirements but by February 2024 six category 2 hazards had not been eliminated.

53. Since service of the Notice the Applicant has removed some hazards to the satisfaction of the Respondent leaving the Tribunal to consider the remaining hazards set out in paragraph 4. The approach which the Tribunal must take when rehearing the decision to serve an Improvement Notice is guided by Lady Justice Andrews in *Waltham Forest London Borough Council Appellant - and - (1) Ms Nasim Hussain and others [2023] EWCA Civ 733* “Where a re-hearing on appeal does not involve the appellate tribunal starting afresh, the appellate tribunal may still be required to make up its own mind on the application in place of the original decision maker. But even then, if the decision involves the exercise of a discretion, or judgment, by another person or body, the appellate tribunal will not interfere with the original decision unless, having afforded it what is variously described in the authorities as “great respect”, or “considerable weight”, it is satisfied that the decision was wrong. In making that evaluation the appellate tribunal must pay proper attention to the decision under challenge and the reasoning behind it. If the decision is based on the application of a lawful policy it must ask itself whether the impugned decision, and any different decision that it proposes to make, is in accordance with that policy. The burden lies on the party challenging the decision to satisfy the appellate tribunal that it should take a different view from the primary decision maker.”

That case concerned deciding whether someone was a fit and proper person to hold an HMO licence under Parts 2 & 3 Housing Act 2004. The Tribunal has had regard to the observation of Lord Justice Lewison in the same case that “Some caution must be exercised in reading across decisions on licensing appeals”. However, as the words used in connection with the Tribunal’s duty are substantially the same from the same Act this Tribunal will approach the

appeal as directed by Lady Justice Andrews. It will make up its own mind whether on the facts known at the time the Respondent was entitled to serve the Improvement Notice with the time provided for carrying out the work.

54. The Applicant was entirely frank with the Tribunal. He admitted that all work was required. The Tribunal is satisfied the Applicant was right to make that admission therefore the Notice is upheld in so far as it relates to work required is concerned.

55. There is an issue whether the Notice should be varied to allow more time for the work to be completed. Ms Sharpe conceded that had proceedings been underway then she might have allowed more time. Unfortunately, both the Applicant and the Respondent were misled by Emma from the agents into believing proceedings were on foot but delayed. That was not true. At that time there were no proceedings for possession issued. Even had proceedings been issued the court would enquire into the nature of the property development which would take time as necessary evidence was collated. In that time the tenant would continue to live in the property which needs improvement.

56. The Respondent's contractor advised that the remedial work could be concluded in a day. The Respondent and its contractor had not encountered any difficulty in gaining access to the property.

57. The Applicant offered explanations of what was known or ought to have been known by the Respondent in February 2024, but the Tribunal did not consider they were facts which would have influenced the Respondent in deciding the period within which to complete the work.

58. The Respondent had to act in accordance with the facts known at the time in fixing 22 April 2024 as the expiry date of time to complete the work. The Tribunal is satisfied with that decision. It confirms the Improvement Notice without any variation in the period for compliance nor does it suspend the Notice. The Notice provided the time for compliance expired on

22 April 2024, or ten weeks from 12 February 2024. The Tribunal confirms the compliance time to ten weeks from the date of this decision.

Appeal

59. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Judge PJ Ellis