



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

**Case Reference** : **LON/00AS/HIV/2024/0001**

**Property** : **81b Park Way, Ruislip, Middx. HA4 8NS.**

**Applicants** : **Perl Equity (Ruislip) 2 Limited.**

**Representative** : **Avi Dubiner (Asset Manager)**

**Respondent** : **London Borough of Hillingdon.**

**Representative** : **Merill Mitchell (Private Sector Housing Officer)**

**Type of Application** : **Appeal in respect of an Improvement Notice: Sections 11 and/or 12 and paragraphs 10-12 of Schedule 1 to the Housing Act 2004.**

**Tribunal Members** : **Judge Robert Latham  
Steve Wheeler MCIEH CEnvH**

**Date and venue of Hearing** : **29 November 2024  
at 10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **23 December 2018**

---

**DECISION**

---

- (1) The Tribunal allows the appeal and quashes (i) the improvement notice dated 20 June 2024 and (ii) the demand for payment of £532, namely the expenses incurred by the Respondent in serving the notice.

- (2) The Tribunal determines that the Respondent shall pay the Applicants £330 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

### **The Application**

1. On 3 July 2024, the Applicant issued this appeal which had been imposed by the London Borough of Hillingdon, the Respondent, on 20 June 2024. The Grounds of Appeal state:

“We were not aware of the extent of the damages as the tenant is difficult to communicate with. Attached is a list of 8 items the improvement notice highlights, of which only points 1, 4, 6 and 7 were ever reported to us. Points 1 and 4 were highlighted by us as the main concern and therefore we began our works rectifying these issues. Over the last few months, we have had specialists attend the roof to find the root cause of the damp. It is only once the root of the issue is found, that we can then complete the rest of the work.”

The Applicant attached a number of invoices in respect of works which had been executed.

2. On 1 August 2024, the Tribunal has issued Directions (amended on 6 November) pursuant to which:

(i) The Applicant has filed a Bundle of Documents (53 pages). Reference to this Bundle will be prefixed by “A.\_\_\_\_”.

(ii) The Respondent has filed their Bundle (45 pages) containing the material on which they seek to rely in support of his appeal. Reference to this Bundle will be prefixed by “R.\_\_\_\_”.

(iii) The Applicant has filed a brief Reply (1 page).

3. The Directions alerted the parties to the procedure for the appeal. The appeal would be by way of a re-hearing, but could be determined having regard to matters of which the council were unaware. The Tribunal would need to consider the following issues:

- Has the LHA gone through the necessary steps prior to issue of the improvement notice?
- Do hazards exist and if so what category?
- Should the Council have taken enforcement action?

- If so, what enforcement action is appropriate?
- If an improvement notice is the correct action, should the terms be varied (e.g. specified remedial works and/or timescale)?

### **The Hearing**

4. The Applicant was represented by Mr Avi Dubiner. He is employed as the Applicant's Asset Manager. However, he only took up his employment in May 2024. He concluded his submissions by stating that Hillingdon's approach "severely lacked due diligence".
5. The Respondent was represented by Mr Merrill Mitchell, a Private Sector Housing Officer employed by the Respondent. He was accompanied by Mr E Bruce, a legal executive, and Mr Islam, his Team Leader.
6. Both Mr Dubiner and Mr Mitchell gave evidence.

### **The Background**

7. This application relates to 81B Park Way, Ruislip. This is a two bedroom flat above commercial premises. There is also a living room, kitchen and bathroom. Access is via an external staircase at the rear. The flat had been occupied by a tenant, Ms Sophie Yeeles. On 6 July 2024, Ms Yeeles surrendered her tenancy, owing arrears of £7,804. She has not provided a witness statement and did not give evidence.
8. In May 2023, Perl Equity Limited acquired the freehold of a block in Park Way which consists of 14 commercial units with 18 flats above. Flat 81B is part of this block. It seems that Ms Yeeles was already a tenant when the freehold was acquired. The freeholder engaged KMP to manage the Building.
9. On 18 October 2023, the freeholder granted the Applicant a 999 year lease of Flat 81B for a term of 999 years from 1 June 2023. The Applicant thereupon became Ms Yeeles' landlord. The Applicant engaged Coppers Residential Estate Agent ("CRAE") to manage the flat.
10. The Respondent treated the freeholder and the Applicant as the same legal entity. This is not correct in law. Whilst the companies are linked, they are separate legal entities. They each engaged separate managing agents. The freeholder would be liable to keep the building, including the roof, in a good state of repair. The Applicant's liability would be to keep the flat in repair. The Tribunal was not provided with a copy of the lease. However, we are willing to accept that the Applicant would be liable to keep the windows and the front door in repair.

11. On 25 March 2024, the Respondent received a complaint from Ms Yeeles of damp and mould. On 26 March (at R.24), the Respondent wrote to the Applicant stating that complaints had been received in respect of “Damp and Mould; Disrepair”. The letter stated that the Respondent believed that the Applicant was the “owner” of the flat. The Applicant was asked to respond within 10 days stating what action it intended to take. The Respondent (at R.22) also wrote to CREA in similar terms as “agent/person managing” the flat.
12. On 28 March 2024 (at R.26), CREA responded. They stated that the main problem seemed to be the roof. This was not their responsibility, but rather that of KMP who managed the building on behalf of the freeholder. The agent suggested that the mould growth was due to lack of ventilation. However, roof repairs were to be carried out next day. The tenant had mentioned a hole above the front door. A photo had been requested, but this had not been provided. The front door had been refurbished in October 2023. Here was also reference to the tenant being unable to afford the rent and requesting a section 21 Notice, so Hillingdon would rehouse her.
13. On 12 April 2024 (at R.1-11), Mr Mitchell telephoned the tenant who stated that the issues had not been resolved. On 18 April 2024, Mr Mitchel inspected the flat. He took a number of photographs (at R.27-33).
14. On 20 June 2024, the Respondent served the Improvement Notice on the Applicant which is subject to this appeal:
  - (i) A Category 1 hazard was found to exist in respect of excess cold. There were three factors to this: (a) uncontrolled draught from the front door due to lack of draught excluder from the front door due to lack of draught excluder around the letter box and door frame; (b) a large hole in the fascia board above the rear staircase; and (c) a broken catch to a window.
  - (ii) Category 2 Hazard in respect of damp and mould. Three factors were identified: (a) penetrating damp on the walls in two rooms; (b) extract fan in bathroom; (c) extract fan in kitchen; (d) damp mark in ceiling.
  - (ii) Category 2 Hazard in respect of electrical hazards: the fuse tripped when the cooker was used.
15. On 1 July 2024 (at A.23), Mr Dubiner responded and stated that the Applicant was addressing them as a matter of priority. However, there were problems in arranging access as the tenant was only at home in the evenings. On 3 July (A.22), Mr Dubiner wrote that the tenant had cancelled an appointment as she had a medical appointment. On 3 July, the Applicant issued its appeal. On 6 July (A.37), Ms Yeeles vacated the flat.

16. On 26 July (A.24), Mr Dubiner asked the Respondent to suspend the Improvement Notice. The Directions had urged the party to consider mediation. Mr Mitchell was away between July and August due to an emergency. He was unable to respond.
17. In his statement of case (at A.2-4), dated 20 September 2024, Mr Dubiner states that the outstanding works had been completed. He gave details of the dates on which works had been completed. Most of these had been completed on 12 September. The external works had been completed on 11 April. An invoice was provided at A.5. These works had been done before the Improvement Notice had been served.
18. The Respondent had not returned to check the works. Mr Mitchell accepted that the required works had been completed.

### **The Law**

19. Part I of the Housing Act 2024 introduced a new system of assessing housing conditions under the Housing Health and Safety Rating System. The Act gives a local housing authority a range of enforcement action that may be appropriate which includes informal action.
20. Particular difficulties arose in this case, because the freeholder was responsible for repairing the exterior and structure of the building, whilst the Respondent was responsible for the repair of the flat.
21. Part 1 of Schedule 1 addresses the person on whom an improvement notice should be served.
22. Paragraph 3 provides for the service of improvement notices in respect of flats which are not licensed under Part 2 or 3

“(1) This paragraph applies where any specified premises in the case of an improvement notice are–

(a) a dwelling which is not licensed under Part 3 of this Act, or

(b) an HMO which is not licensed under Part 2 or 3 of this Act, and which (in either case) is a flat.

(2) In the case of dwelling which is a flat, the local housing authority must serve the notice on a person who–

(a) is an owner of the flat, and

(b) in the authority's opinion ought to take the action specified in the notice.”

23. Paragraph 4 provides for the service of improvement notices in respect of common parts:

(1) This paragraph applies where any specified premises in the case of an improvement notice are–

(a) common parts of a building containing one or more flats; or

(b) any part of such a building which does not consist of residential premises.

(2) The local housing authority must serve the notice on a person who–

(a) is an owner of the specified premises concerned, and

(b) in the authority's opinion ought to take the action specified in the notice.

(3) For the purposes of this paragraph a person is an owner of any common parts of a building if he is an owner of the building or part of the building concerned, or (in the case of external common parts) of the particular premises in which the common parts are comprised

24. Section 262(7) defines owner:

“In this Act “owner”, in relation to premises–

(a) means a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion; and

(b) includes also a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds 3 years.

### **The Tribunal's Determination**

25. The Tribunal is allowing the appeal and quashing the Improvement Order because it considers that the Respondent served the Improvement prematurely.

26. First, the Respondent did not have regard to the respective repairing obligations of the freeholder and the Applicant, leaseholder. The Respondent treated them as the same legal entity. They were not. On 28 March, CREA had alerted the Respondent to this issue.
27. Secondly, any recipient of the Respondent's letters, dated 26 March, would reasonably have assumed that the significant concern was the water penetration. The freeholder had remedied this when Mr Mitchell inspected on 18 April.
28. Thirdly, the Category 1 hazard was "excess cold". This had not been raised in the Respondent's letter of 28 March. Excess cold is a problem in many dwellings in the UK (See the HHSRS Operating Guidance at p.59). There were three particular problems at this flat:
  - (a) uncontrolled draught from the front door due to lack of draught excluder from the front door due to lack of draught excluder around the letter box and door frame: This was a particular problem at this flat because there was an exterior staircase to the front door at first floor level. This would be much more exposed than a ground floor entrance door. The proposed solution was a draught excluder. This had not been suggested to the Applicant. This measure could have been implemented at modest cost.
  - (b) a large hole in the fascia board above the rear staircase: Again, the Respondent had not alerted the Applicant to this defect. This measure could have been implemented at modest cost.
  - (c) a broken catch to a window: Again, only a modest repair was required.
29. It was unclear who had provided the cooker. The tenancy had been granted before either the freeholder or the Applicant had acquired their interests in the flat.
30. There was a gap of two months between Mr Mitchell's inspection and the service of the improvement notice. This period should rather have been used to alert the Applicant to the works that were required, to give it the opportunity to resolve them without formal action. The Tribunal was not provided with a copy of the Respondent's enforcement policy.
31. Given our decision to quash the improvement notice, we are satisfied that the Respondent should refund to the Applicant the tribunal fees of £320 which he has paid.

**Judge Robert Latham**  
**23 December 2024**

## **RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.