



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

Case reference : **BIR/00CR/HIN/2023/0053**

Property : **2 Halewoven Road, Halesowen**

Applicant : **Hardip Singh Chana
Satman Chana**

Respondent : **Dudley Metropolitan Borough Council
(Glen Cooper 202322128/GC)**

Type of application : **Application under Paragraph 10(1) of
Schedule 1 to the Housing Act 2004 to
appeal against an Improvement Notice
in respect of the subject Property**

Tribunal members : **Judge C Payne (Chair)
Mr R Chumley Roberts**

Date of Inspection : **9 May 2024**

Date of decision : **3 February 2025**

DECISION

Decision Summary

The Tribunal determines that:

1. The Respondent is entitled to serve an Improvement Notice
2. The Improvement Notice was correctly served on the Applicant
3. The Schedule to the Improvement Notice is varied in accordance with paragraphs 34 and 38 of this Decision.

Background

4. The Property a self-contained 4 bedroom flat, provided by conversion, substantially on the first floor of the original two storey, semi-detached property. The majority of the ground floor is used as a shop premises, which are also owned and occupied by the Applicant.
5. The Applicant is the registered freehold proprietor of the Property, and manages the tenancy of the Property.
6. The Property is let to a tenant, who has been in situ since January 2021.
7. On 22nd September 2023, following an inspect of the Property, the Local Authority served Improvement Notice together with Demand for Recovery of Expenses in the sum of £807.50. On 10th October 2023 the Applicant applied to the Tribunal.
8. The Tribunal was told that the current tenant has been in situ since January 2021. She is now in arrears and possession proceedings are underway to recover the Property from her. The Improvement Notice identified one Category 1 Hazard and 8 Category 2 Hazards. The Applicant advised the Tribunal the further works to the Property had not been undertaken as there were issues with gaining access.

Inspection

9. During the Inspection, the tribunal noted that the dwelling comprised of a front stairway up to first floor level, providing access to a front living room, an (internal) middle room, a middle bathroom, a rear (left) bedroom, a rear (right) bedroom and a rear stairway. The rear stairway provides access down to the ground floor rear kitchen which is present in a single storey extension. The first floor bathroom contains a water closet, wash hand basin and bath and hot and cold water was provided to the kitchen sink and bathroom amenities.
10. Space heating was provided by a gas fired “wet” central heating system with radiators in all rooms and the first-floor landing. The windows were all double-

glazed PVC casement units. Mechanical extract ventilation device were absent from the bathroom and kitchen.

11. The tribunal noted that some of the works set out in the Improvement Notice had been done. However, a number of Category 1 and Category 2 Hazards were still apparent upon inspection of the Property.

The Law

12. The Respondent is responsible, under statute, for the operation of a regime designed to evaluate potential risks to health and safety from deficiencies in dwellings, and to enforce compliance with the standards required. The scheme is called the Housing Health and Safety Rating System (“HHSRS”). It is set up in the Housing Act 2004 (“the Act”), supplemented by the Housing Health and Safety Rating System (England) Regulations 2005 (“the Regulations”).
13. The scheme set out in the Act is as follows:
 - (a) Section 1 (1) provides for a system of assessing the condition of residential dwellings and for that system to be used in the enforcement of housing standards in relation to such premises. The system (which is the HHSRS system) operates by reference to the existence of Category 1 or Category 2 hazards on residential premises.
 - (b) Section 2 (1) defines a Category 1 hazard as one which achieves a numerical score under a prescribed method of calculating the seriousness of a hazard. A Category 2 hazard is one that does not score highly enough to be a Category 1 hazard. The scoring system is explained later.
 - (c) "Hazard" means 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.
14. Under section 9(1)(b) of the Act, the local authority is required to have regard to the HHSRS guidance when carrying out their functions in relation to improvement notices, prohibition orders or hazard awareness notices.
15. The HHSRS Enforcement Guidance at paragraph 5.4 states: -

An improvement notice under section 11 or 12 of the Act is a possible response to a category 1 or a category 2 hazard. Under section 11, action must as a minimum remove the category 1 hazard but may extend beyond this. For example, an authority may wish to ensure that a category 1 hazard is not likely to reoccur within 12 months, or is reduced to category 2, or both. Such work would need to be reasonable in relation to the hazard and it might be unreasonable to require work which goes considerably beyond what is necessary to remove a hazard.

16. Section 4 of the Act provides the procedure to be followed by a local authority before commencing any enforcement action. If the local authority becomes aware that it would be appropriate for any property to be inspected with a view to determining whether a hazard exists, it must carry out an inspection for that purpose.

17. The right to carry out the inspection is derived from section 239 of the Act. This section gives the local authority a power of entry for the purposes of carrying out a section 4 inspection. The inspector must have been properly authorised to carry out that inspection, and (in sub-section 5), the authorised officer must have given at least 24 hours' notice of his (her) intention to inspect to the owner (if known) and the occupier (if any).

18. Section 5(1) of the Act provides that

“If a local authority consider that a category 1 hazard exists on any residential premises, they have a duty to take the appropriate enforcement action in relation to the hazard”.

19. Section 5(2) says that the appropriate enforcement action means whichever of the following courses of action is indicated. Those courses of action are:

(a)Improvement notice

- (b) Prohibition order
- (c) Hazard awareness notice
- (d) Emergency remedial action
- (e) Emergency prohibition order
- (f) Demolition order
- (g) Declaration of a clearance area

20. Section 5(3) of the Act says that if only one course of action within Section 5(2) is available to the authority in relation to the hazard, they must take that course of action. Section 5(4) says that if two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.

21. Section 11 of the Act sets out the duty of the Respondent to serve notice and states the following: -

(1)If—

(a)the local housing authority are satisfied that a category 1 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,

then serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(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 subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

(a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

(b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;

(c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a) that the deficiency from which the hazard arises is situated there, and

(b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) The remedial action required to be taken by the notice —

(a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but

(b) may extend beyond such action.

(6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

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

(8) In this Part “remedial action”, in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

22. Section 12 of the Act sets out the powers of the Respondent to serve notice and states the following: -

(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.

23. Paragraph 2 of Schedule 1 of the Act states: -

2(1) This paragraph applies where the 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 not a flat.

(2) The local housing authority must serve the notice—

*(a) (in the case of a dwelling) on the **person having control** of the dwelling;*

(b) (in the case of an HMO) either on the person having control of the HMO or on the person managing it.

24. Section 263 of the Act defines 'person having control' as follows:-

263 (1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

25. Paragraph 10 of Schedule 1 of the Act states: -

(1) The person on whom an improvement notice is served may appeal to the appropriate tribunal against the notice.

(2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

26. Paragraph 11 of Schedule 1 of the Act states: -

(1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—

(a) take the action concerned, or

(b) pay the whole or part of the cost of taking that action.

(2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

27. Paragraph 12 of Schedule 1 of the Act states: -

(1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.

(2) The courses of action are—

(a) making a prohibition order under section 20 or 21 of this Act;

(b) serving a hazard awareness notice under section 28 or 29 of this Act; and

(c) making a demolition order under section 265 of the Housing Act 1985 (c. 68).

28. Under paragraph 15 (3) of Schedule 1 of the Act a tribunal may by order, confirm, quash or vary an improvement notice.

Decision

29. The questions for the Tribunal to answer in respect of this appeal are: -

(a) Is the Respondent entitled to serve an Improvement Notice and is this the most appropriate course of action?

(b) Has the notice been served on the correct party?

(c) Does the Tribunal confirm, quash or vary the Improvement Notice?

Is the Respondent Entitled to serve an Improvement Notice and is it the most appropriate course of action?

30. Sections 11 and 12 of the Act entitle the Respondent to serve an Improvement Notice where they are satisfied a Category 1 or Category 2 Hazard exists at the Property. The HHSRS Enforcement Guidance also confirms that the issue of an Improvement Notice is an appropriate response to the presence of Category 1 or Category 2 hazards at a property.

31. The Tribunal has concluded from its own inspection that the Category 1 and Category 2 Hazards were present at the time the Property was inspected.

32. Given the serious nature of the range of hazards identified during the inspection and the fact that in the six months since the Applicant was served with the Improvement Notice, they have not been addressed, the Tribunal considered that the issue of an Improvement Notice is a proportionate and reasonable action for the Respondent to take.

Has the notice been served on the correct party?

33. The Applicant did not dispute being the correct party on whom the notice should be served and the registered proprietor. The Applicant did not dispute managing the Property or to be the person entitled to rent from the tenants. The Applicant is entitled to dispose of the fee simple and as such, is the appropriate person to whom a notice should be addressed.

Variation of the Improvement Notice

34. The Improvement Notice was served under sections 11 and 12 of the Act, as it contained details of one Category 1 Hazard and eight Category 2 Hazards. The Tribunal determined, as a result of the information provided by the parties and the observations made during the inspection that, the Schedule should be varied in accordance with the revised Schedule 1 and Schedule 2 of the Notice set out in the Appendix of this Decision.
35. The Category 1 Hazard of Excess Cold was still present. The Category 2 Hazards of Entry by Intruders, Collision and Operability of Amenities have been resolved. Issues with Damp & Mould, Food Safety, Falls on Stairs, Electrical Hazards and Fire risks were all evident during the inspection.
36. As only some of the Hazards had been resolved at the time of the inspection, the tribunal determined that the Improvement Notice should be varied to reflect the altered condition of the Property.
37. Appended to this Decision is an amended Schedule 1 to the Improvement Notice setting out the Hazards that were noted as still being present during the inspection and an amended Schedule 2 to the Improvement Notice setting out the works required to remedy the Hazards identified.

Timing

38. The timing set out in the Improvement Notice is amended to require remedial action to start within 28 days of the Tribunal's decision and completed within two months.

Appeal

39. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Payne
Chair
First-tier Tribunal (Property Chamber)

Appendix- Amended Schedules to the Improvement Notice

Section 11 and 12 Housing Act 2004

Schedule 1

Address 2 Halesowen Road, Halesowen, Dudley, West Midlands. B62 9AA. (Residential Accommodation to the first floor and rear ground floor).

Note all directions are referenced as if the reader is facing the front elevation to the property.

Category 1 Hazard

- 1 Excess Cold (Hazard Profile 2)

Deficiencies Resulting in the Category 1 Hazard

First Floor Front Landing

- 1 Ill-fitting opening window light to the landing window unit.

First Floor Front Living Room

- 2 Grossly ill-fitting opening window light to the living room window unit.

First Floor Rear (Left) Bedroom

- 3 Holed ceiling giving direct access into the roof space (where an electrical light fitting has been removed).

First Floor Rear (Right) Bedroom

- 4 Ill-fitting opening window light and missing cockspur wedges to the window unit.
- 5 Entrance door ill-fitting and incapable of being latched.

Ground Floor Rear Kitchen

- 6 Outer pane of glass to the deadlight in the window unit cracked, so thermal efficiency of the glazing unit compromised.
- 7 Ill-fitting top opening window light and missing cockspur wedges to the window unit.

Category 2 Hazards

- 1 Damp and Mould Growth (Hazard Profile 1).
- 2 Food Safety (Hazard Profile 16).
- 3 Falling on Stairs etc. (Hazard Profile 21).

- 4 Electrical Hazards (Hazard Profile 23).
- 5 Fire (Hazard Profile 24).

Deficiencies Resulting in the Category 2 Hazards

Ground Floor Front Entrance Lobby

- 1 Evidence of dampness to the plasterwork on the right hand wall, under the stairway. Affected plasterwork appears perished in areas and the surface paintwork is flaking.
- 2 Sections of skim plaster missing around the front door and plaster missing by the stairway.

First Floor Landing

- 3 Smoke detection present not interlinked with ground floor commercial premises.

First Floor Front Living Room

- 4 Missing, uneven and loose keyed plasterwork on the front wall over the window head. Wall plaster cracked and damp stained to the right hand side of the window.
- 5 Bulged, damp affected and slightly loose keyed plasterwork to the ceiling over the front wall.

First Floor Rear Bathroom

- 6 Absence of any means of natural or artificial ventilation (direct to the external air) in this internal bathroom.

First Floor Rear (Left) Bedroom

- 7 Missing handles to opening window sashes (sash jammers installed as handles).
- 8 Visually poor electrical wiring to electrical light circuits serving the roof space.

First Floor Rear (Right) Bedroom

- 9 Unopenable side hung sash to the left hand window unit.

First Floor Rear Stairway

- 10 Evidence of damp staining to the ceiling plasterwork adjacent to the roof light.
- 11 Previously exposed surface electrical wiring on the left hand wall, poorly blanked off.
- 12 Handrail surface damaged, providing a section which is unlikely to be used.

Ground Floor Rear Kitchen

- 13 Missing section (350mm) of work surface in front of the cooking appliance.

- 14 Missing waterproof sealant between work surfaces and the adjacent wall surfaces.
- 15 Missing doors to the corner base unit (in front of the cooking appliance hob) and to the 500mm base unit on the front wall. Doors to the sink base unit ill-fitting.

Section 11 and 12 Housing Act 2004

Schedule 2

Remedial action which would result in the Authority revoking the notice.

Address 2 Halesowen Road, Halesowen, Dudley, West Midlands. B62 9AA. (Residential Accommodation to the first floor and rear ground floor).

Works to Remedy the Category 1 and Category 2 Hazards

General

- 1 Provide a full electrical installation condition report (EICR) from a competent electrical engineer registered with an approved Government accreditation scheme e.g. ECA, NICEIC, NAPIT etc. with regard to the condition of the existing electrical installation. Ensure that all remedial works identified in the report are carried out in full and provide the Private Sector Housing section of Dudley M.B.C. with copies of the EICR and any completion or minor works certification upon completion of works.

Ground Floor Front Entrance Lobby

- 2 Engage a specialist PCS registered damp proofing contractor or RICS registered building surveyor to carry out a detailed damp survey of the premises and specifically the right hand wall of the ground floor entrance lobby (under the stairway). Carry out all works as may be required or recommended to leave the premises structure free from dampness.
- 3 Carry out all works as may be necessary to provide new skim plaster where missing around the front entrance door and to fill and skim over as required, the rear wall under the stairway, ensuring a minimum of 30 minutes fire compartmentation is provided between the residential and commercial units.

First Floor Front Landing

- 4 Overhaul, repair or replace the hinges to the ill-fitting opening sash to the window unit and leave the opening light capable of being fully and tightly closed against the rubber gaskets. The opening light must be capable of being easily used by the occupiers and left sound, secure and draught proof upon completion.

- 5 Engage a competent electrical engineer to provide and fit a new Grade D1, LD3 hard wired interlinked heat detection system in accordance with BS5839:6-2019. This entails installing a hard-wired tamper-proof heat detector to the first floor landing, interlinked to a heat detector in the ground floor commercial premises, ensuring all are in full working order upon completion.

First Floor Front Living Room

- 6 Overhaul, repair or replace the hinges to the ill-fitting opening sash to the window unit. Install suitable handles and leave the opening light capable of being fully and tightly closed against the rubber gaskets. The opening light must be left sound, secure and draught proof upon completion.
- 7 Hack off all loose keyed, perished or bulged plaster to the front wall, window head and ceiling. Prepare for and replaster wall and ceiling surfaces floated off to a smooth and even finish, flush with adjacent surfaces.

First Floor Rear Bathroom

- 8 Instruct a competent NICEIC, NAPIT or equivalent registered electrician to install mechanical extract ventilation to the bathroom. The fan should be capable of extracting at least 15 litres of air per second and have a 15 minute over-run device and ensure the device is venting to the outside air. An Electrical Installation Certificate (EIC) must be provided on completion.

First Floor Rear (Left) Bedroom

- 9 Provide and fit a new electrical light fitting to the holed section of ceiling or alternatively (as an alternative light fitting is available) remove the casing and prepare the ceiling to receive new plasterboard and scrim and finish with a coat of good quality skim plaster floated off to a smooth and even finish, flush with adjacent surfaces.
- 10 Instruct a competent NICEIC, NAPIT or equivalent registered electrician to assess the visually poor electrical wiring in the roof space. Ensure all wiring is properly connected and left in a sound and safe condition on completion.
- 11 Remove sash jammers applied to the opening light to the window unit and install suitable window handles, leaving the opening light capable of being easily opened and closed by the occupiers.

First Floor Rear (Right) Bedroom

- 12 Overhaul, repair or replace the hinges to the ill-fitting opening sash to the right hand window unit. Provide and fit cockspur wedges to the frame and

leave the opening light capable of being fully and tightly closed against the rubber gaskets. The opening light must be left sound, secure and draught proof upon completion.

- 13 Carry out all works as may be necessary to open the sealed large opening window light in the rear wall. Overhaul, repair or replace the hinges to the ill-fitting opening sash and leave the opening light capable of being fully and tightly closed against the rubber gaskets. The opening light must be left sound, secure and draught proof upon completion.
- 14 Adjust and overhaul the entrance door furniture, frame and lock keep as may be necessary to ensure the door catch engages with the keep. Leave the door close fitting in the frame, capable of being closed firmly and securely and able to open and shut freely on completion.

First Floor Rear Stairway

- 15 Thoroughly assess the roof finish and skylight and carry out all such works as may be necessary to ensure the structure is watertight. Cut out all damp affected plasterwork to the ceiling and prepare the underside of the ceiling joists to receive new plasterboards. Finish with a smooth set coat of good quality skim plaster, floated off to match the existing levels and the adjacent surfaces.
- 16 Instruct a competent NICEIC, NAPIT or equivalent registered electrician to assess the poorly blanked off and previously exposed surface electrical wiring on the left hand wall. Fully remove the wiring and make good to all surfaces on completion.
- 17 Replace or plane down to a smooth surface the damaged handrail to the balustrade, along its entire length, to ensure it can be safely used.

Ground Floor Rear Kitchen

- 18 Renew the broken sealed glazing unit, to the deadlight in the window unit, to match the existing.
- 19 Overhaul, repair or replace the hinges to the ill-fitting top opening sash to the window unit. Provide and fit cockspur wedges to the frame and leave the opening light capable of being fully and tightly closed against the rubber gaskets. The opening light must be left sound, secure and draught proof upon completion.
- 20 Provide and install a suitable waterproof sealant at the junction between the walls and the food preparation surfaces and leave fully cleansable on completion.

- 21 Carry out all such works as necessary to make good the gap in the kitchen work surfaces and finish with a waterproof seal between the new work surface section and the adjacent wall surface.

- 22 Renew the missing doors to the corner base unit (in front of the cooking appliance hob) and to the 500mm base unit on the front wall.
Overhaul/repair or replace the hinges to the sink base unit doors and leave all wall and base unit cupboards with properly fitting and working doors.
Leave units sound, secure and in full working order on completion.