



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

Case Reference : **MAN/ooCH/HIN/2024/0037**

Property : **2 Gainsborough Crescent, Gateshead NE9 5NX**

Applicant : **Provider (Investments) Limited**

Respondent : **Gateshead Council**

Type of Application : **Appeal against Improvement Notice: Schedule 1, paragraph 10, Housing Act 2004**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member J Platt FRICS**

Date of Decision : **19 February 2025**

DECISION

The Improvement Notice issued by the Respondent to the Applicant on 14 June 2024 is quashed.

REASONS

BACKGROUND

1. The Applicant, represented in these proceedings by its director Mr Walters, owns 2 Gainsborough Crescent, Gateshead which was occupied by tenants at all relevant times until 1 October 2024. On 14 June 2024 the Respondent Council, acting by its Environmental Health Officer Mr Armstrong, sent the Applicant an improvement notice under section 12 of the Housing Act 2004 ("the Act").

2. On 2 July 2024 the Applicant applied to the Tribunal to set aside the improvement notice on the ground that it was unnecessary because
 - (a) the deficiencies identified by the Respondent were not reported in writing by the tenants. The Applicant said that the only disrepair they had been made aware of was a leak in the conservatory roof as a result of storm damage in October 2023.
 - (b) the conservatory was made watertight promptly once the Applicant was aware of it, and the storm damage was reported to the building's insurers.
 - (c) it had proved difficult to find a contractor willing to take on the job of repairing the conservatory, the insurers having left this task to the Applicant.
 - (d) the tenants had failed to keep the gutters and downpipes in good order and may have failed to follow the Applicant's instructions to ventilate the conservatory to enable it to dry out.

THE LAW

3. Under section 12 of the Act a local housing authority, once satisfied that one or more category 2 hazards exist on any residential premises, may serve an improvement notice requiring the responsible person to take such remedial action as it specified in the notice.
4. Section 13 of the Act provides that an improvement notice must specify the nature of the hazard, the deficiency in the property giving rise to the hazard, the required remedial action, and the date by which the remedial action is to be completed.
5. Schedule 1 to the Act contains provisions relating to appeals against improvement notices. Paragraph 15 provides that the appeal is to be by way of a re-hearing and that the tribunal may have regard to matters of which the housing authority was unaware when the improvement notice was issued. The tribunal may confirm, quash or vary the improvement notice.

THE IMPROVEMENT NOTICE

6. The notice served on the Applicant describes the hazards as Damp and Mould, and Structural Collapse caused by the following deficiencies:
 - high levels of humidity in the conservatory "*probably from leaking window seals and a lack of ventilation*";

- broken guttering on the exterior of the conservatory; and
- a springy floor in the conservatory, perhaps “*affected by rot due to dampness in the room*”.

7. In its statement of reasons for the decision to serve an improvement notice, the Respondent provided standard wording as follows “*In determining the most appropriate action regard has been given to the following: conduct of the person in control/owner/manager/licensee etc; views of the occupier(s); impact the course of action would have on the local environment; consideration of Listed Building status.....The decision to serve an Improvement Notice is the most appropriate action to deal with the category 2 hazards identified in the Premises because it requires the owner of the Premises to take remedial action by way of improvements in respect of the hazards identified.*”

8. The reasons given for serving an improvement notice did not specifically address issues at the Property. Other than under the headings (not relevant to the Applicant) “*The making of a Prohibition Order*” and “*The taking of Emergency Remedial Action or making an Emergency Prohibition Order*”, the improvement notice did not mention any risk to the health or safety of the occupiers of the property. Health and safety was not mentioned in the accompanying letter from the Respondent, or in the email exchange between Mr Armstrong and Mr Walters on 21 December 2023.

INSPECTION

9. The Tribunal inspected the property on 19 February 2025 in the presence of Mr Walters, Mr Armstrong and the Respondent’s counsel Ms Dawson. At the time the property had been unoccupied for some months and was unfurnished. The heating had not been left on. The Tribunal noted that, apart from the conservatory, there were no indications of damp or other hazards elsewhere in the property.

10. The conservatory, accessed via sliding doors from the living room, is rectangular, with a side door to an area of decking. Steps lead down to a garden at a considerably lower level. The conservatory is built on a brick base which extends to the ground some 2.5 metres below. The Tribunal did not see any ventilation provision in the structure below the conservatory or in the brick walls of the conservatory. Bricks

below the conservatory windows had spalled, especially at the corners where they were particularly damaged. The gutter at each of the corners above the spalled bricks had been broken and showed evidence of repairs.

11. Inside, the conservatory had a small wall-mounted heater and a floor of wood laminate with a narrow wooden skirting. In two places near the doors there was a small gap between the floor and the skirting. The floor sloped slightly but the Tribunal did not detect any undue springiness. The conservatory was dry and did not feel humid.

THE RESPONDENT'S CASE

12. At the hearing Ms Dowson represented the Respondent and the Applicant was unrepresented. The Tribunal had written representations and supporting documents from both parties. The Respondent's evidence was taken first, and was supplied by Mr Armstrong.
13. Mr Armstrong told the Tribunal that he had visited the property on 21 December 2023 when he identified hazards or potential hazards to the health and safety of the occupants, using the HHSRS scoring system. Having spoken to Mr Walters, and being aware that an insurance claim had been made, he took the decision not to issue an improvement notice at that time. On 8 March 2024 he visited again at the request of the tenants in order to check the heating in the property. He found that the heating was not defective, and while he was there he checked the conservatory. Finding that no repairs had been carried out, he decided to issue an improvement notice. This was delayed due to administrative reasons, and was eventually issued, without a further inspection of the property, on 14 June 2024.
14. When questioned by Mr Walters and the Tribunal Mr Armstrong confirmed that during the inspection earlier in the day the floor "gave a little" and the conservatory had been dry. He noted that the floor was under less pressure once furniture had been removed, and that the gutter had been repaired since June. He was of the opinion that damaged window seals could cause the conservatory to be damp, and that the floor joists should be checked because they could be affected by rot. He pointed out that this view was supported by a survey report which the Applicant's

insurers had obtained after the date of the improvement notice. Mr Armstrong had not noticed the wall heater in the conservatory.

15. Mr Armstrong said that the property, which dates from between 1945 and 1950, was in average condition, having had double glazing and central heating added. In his view the problems or potential problems in the conservatory raised the likelihood of significant harm to occupants to four times the average. When questioned he stated that his assessment of the likelihood of an occurrence over the next twelve months which could result in harm to a member of the relevant vulnerable group (a child under 14) would probably have been the same had damp and mould been identified as a hazard in a child's bedroom rather than the conservatory. However, he said that even if the risk of harm had been 1 in 200 or 1 in 100 the category 2 hazards would still have been in band H, and he confirmed that Gateshead Council serves improvement notices in case of band H hazards.
16. Finally, Mr Armstrong said that as he had discussed the property with Mr Walters in December 2023, he considered that a Hazard Awareness Notice was not appropriate, given that some months later there was no change in the conservatory.

THE APPELLANT'S CASE

17. It seemed to the Tribunal, both from the contents of his written representations and from his comments at the hearing, that Mr Walters was unaware that the improvement notice was served because of risks to the health and safety of his tenants. His understanding was that he was being asked to carry out work on the Property because of actual or potential items of disrepair. He was not present at either of Mr Armstrong's inspections.
18. Mr Walters referred to his email exchange with Mr Armstrong on 21 December 2023 when he was asked to obtain a survey of the floor to check whether it needed repair. He had put this request to the insurers, because he believed any problems in the conservatory to have been caused by an ingress of water from the plastic ridge tiles which had broken in the storm. The conservatory had been rendered water-tight promptly after he had been notified of the damage, and any further repair was a matter for the insurers. The insurance company had left it to him to find appropriate

contractors and he had been unable to do this, as the contractors he approached wished to replace rather than repair the conservatory.

19. Mr Walters confirmed that Mr Armstrong had telephoned him after visiting the Property on 8 March 2024, but said that nothing was discussed at that time except the central heating. Between that date and receipt of the improvement notice he had been pushing his insurers for progress with cosmetic repair to the conservatory roof and panels, and for the condition of the floor to be checked. Following issue of the improvement notice the insurers appointed a loss adjuster and organised a survey report, which was dated 15 July 2024. Other than a repair to the gutter no other work was carried out on the Property, which is currently being sold.

GROUNDS OF APPEAL

20. Ms Dawson argued that the Tribunal was limited, in making its decision, to consideration of the grounds of appeal submitted by the Applicant, which she described as (1) lack of reporting by the tenants (2) difficulties in finding tradesmen to carry out repairs, and (3) the tenants having failed to keep the gutter clear, causing it to overspill. None of these, she said, were relevant to the decision to issue an improvement notice.
21. Responding to this, Mr Walters said that he disagreed with Mr Armstrong's findings and was unaware of any hazards. He had not been able to inspect the property himself because of difficulties with the tenants, who were withholding rent. He had had the gutter repaired and did not believe that there was a serious problem with the floor. He had asked Mr Armstrong to withdraw the improvement notice once the tenants had left, but Mr Armstrong had taken the view that withdrawal was not permitted once an appeal had been lodged with the Tribunal.
22. The appeal was made under paragraph 10 of Schedule 1 to the Housing Act 2004. The paragraph does not require grounds of appeal to be identified. Paragraph 15 of the Schedule applies to an appeal under paragraph 10, and provides as set out at paragraph 5 above. The Tribunal is entitled to make its own determination following inspection and hearing, and is not limited to matters raised by Mr Walters.

FINDINGS

23. The Tribunal accepts Mr Armstrong's evidence that in his opinion there were category 2 hazards in the conservatory when he inspected on 21 December 2023, and that these had not been addressed when he saw the property again in March 2024. No hazards were apparent to the Tribunal on their inspection, but this took place much later.
24. The problems noted by Mr Armstrong are likely to have been caused by defective double glazing units and/or by lack of any under floor ventilation.
25. Mr Walters did not understand that the issue was the health and safety of his tenants. This was not clear from his communications with Mr Armstrong, or indeed from the improvement notice itself. His concern was to carry out the repairs identified by Mr Armstrong, and he was reliant on action being taken by the building insurers. There is no suggestion that he was given a timescale for this work when he heard from Mr Armstrong in December 2023.
26. The defects in the conservatory were not an immediate danger to the tenants. The Respondent served an improvement notice 3 months after the second inspection of the property, and clearly did not consider the matter to be urgent.
27. The HHSRS Operational Guidance includes, at section A1 of Annex D, a 'profile of potential health and safety hazards' in relation to damp and mould growth. It includes the following guidance on hazard assessment at 1.29

The location of the damp and/or mould is also relevant, the threat to health being influenced by the number and intended use of the affected room(s). Damp affected bedrooms are probably more important since mattresses tend to support larger dust mite populations than other furniture and furnishings. Also the most vulnerable age group normally spend a large proportion of the day in their bedrooms, both because that group typically require 9 to 14 hours sleep per day and because bedrooms are often also used for homework.

28. The Tribunal has regard to the location of deficiencies identified by Mr Armstrong and, being within a conservatory rather than a bedroom, considers that "*the likelihood of an occurrence over the next twelve months which could result in harm to a member of the relevant vulnerable group*" (a child under 14) by damp and mould growth is lower than the Council's assessment.

29. The Tribunal has regard to the following which were not available to the Respondent when the improvement notice was issued: the survey report prepared for the insurers, the property being vacated and put up for sale, and the lack of any apparent hazard on inspection on 19 February 2025 despite the fact that no repair work has been carried out save to the gutters.

30. It is possible that the Tribunal's lower assessment of the likelihood of significant harm would still have identified a category 2 hazard. The view of the Tribunal, however, is that a Hazard Awareness Notice would have been the appropriate action for the Respondent to take in the circumstances. The improvement notice was unnecessary or premature, and is quashed.