



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

Case reference : **HAV/29UN/HIN/2024/0508/BS**

Property : **Flat 7, 2-3 Beach Rise, Westgate-on-Sea,
Kent, CT8 8AB**

Applicant : **Kinara Homes Limited**

Representative : **David Wigram-Tomes**

Respondent : **Thanet District Council**

Representative : **Nicolas Bray**

Type of application : **Appeal against an Improvement Notice**

Tribunal members : **Mr R Waterhouse FRICS
Mr K Ridgeway MRICS
Ms T Wong**

Date and Venue of hearing : **21 March 2025
FTT(Property Chamber) Residential
Property, Havant Justice Centre,
Elmleigh Road, Havant, Portsmouth- By
remote video.**

DECISION

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Decisions of the Tribunal

1. The Tribunal upholds the Improvement Notice save for the amendments in paragraph 55 and 57 below.
2. The Tribunal thanks the parties for their clear and cordial submissions during the remote video hearing.

The Application

3. The Applicant seeks to appeal an Improvement Notice issued by Thanet Borough Council on 20 August 2024.
4. The application was received on 9 September 2024.

The Background

5. On the 20 May 2024, the Respondent received a Service Request Form from Vladimir Dordijevski the occupier of Flay 7, 2-3 Beach Rise, Westgate-on-Sea, Kent, CT8 8AB. The Service Request Form detailed housing condition concerns including “moisture and mould appeared in the room where I sleep, cold from the outside enters the kitchen through the cooker hood, the radiators were not installed until today”.
6. On 03 July 2024, Thanet Council inspected the premises using the Housing Health and Safety Rating System (HHSRS). The premises Flat 7 is a one bedroom first floor flat within the building. The building is pre 1920 four storey building converted into 14 flats with a rear communal garden. The flat comprises an open plan living room with kitchen, a bedroom and a shower room.
7. The Housing Officer submitted they identified three hazards.
8. The first was Excess Cold Flat 7 had instantaneous electric space heaters which use peak electricity. The premises has solid wall construction with painted brick to the front and cladding to the rear. The windows, door and enclosed balcony are of UPVC double glazed windows. One of the external grills to the extraction ducts was missing. There is no heating within the shower room.
9. The second was “Damp and Mould”. During the hearing the parties agreed that the property had been decorated several months ago and both parties agreed as at the date of hearing the issue of damp and mould had not recurred.
10. The third hazard identified was that of “Fire”. The Respondent asserted the property lacked a Grade D smoke alarm. There was a Grade D heat alarm in the open-plan lounge kitchen, the Respondent asserted that this was insufficient. The premises have a Grade A fire alarm system, but at the time of the inspection the fire alarm had a fault, and the alarm had been silenced. The entrance door to Flat 7 lacked an automatic door closer. On the ground floor of the premises, there was an electrical cupboard wood which would not provide sufficient fire resistance. The Applicant noted that the fire alarm issue had been attended to. At the hearing, neither party indicated there were any outstanding issues in respect of the Fire hazard.

The HHSRS Assessment

11. The Respondent undertook following their inspection, a full HHSRS assessment. The HHSRS assessment looks at the likelihood and severity of harm that may occur due to a particular hazard and then compares it to the national average for that dwelling type and age. **The assessment does not take into consideration the occupier of the premises instead it is assuming the persons of the most vulnerable age group are occupying the premises.** The second area considers harm outcomes.
12. First the likelihood of harm is assessed. The top four classes of harm are;
Class I including Death, permanent paralysis and 80% burns
Class II severe harm
Class III serious harm outcomes
Class IV moderate harm outcomes
13. Then a calculation is done to work out a hazard score.
14. The Applicant is focused on the Excess Cold Hazard and is not challenging the other aspects of the Improvement Notice.
15. The Respondent submits that the most vulnerable group is all persons over 65 years or over. And for a building of this type, the likelihood severity starting point is a category 1 hazard. Further it is submitted that the average property is likely to have had gas central heating, but with no thermal wall insulation, and quite possibly single glazing. This property has double glazing and instantaneous peak electric heaters which are significantly less affordable than gas central heating.
16. Paragraph 2.12 of the HHSRS Enforcement Guidance says “Local Authorities should consider an HHSRS inspection where the property is to be considered for improvements under strategies to deal with fuel poverty, to improve energy efficiency or to increase the proportion of vulnerable people living in decent homes”
17. The Respondent cites the Upper Tribunal case of Liverpool City Council v Anwar Hadi Kassim [2012] UKUT 169 (LC) HA/3/2011 , the respondent cites this case in support of the concept that the running cost of heating is relevant to HHSRS assessment.
18. The Respondent [85] considered affordability of the heating system as well as other deficiencies identified, such as low thermal insulation and lack of space heating provision in the shower room to be relevant matters affecting the likelihood and harm outcomes.
19. The Respondent noted the likelihood national average is 1 in 340, which has a representative scale point of 1 in 320. This was increased by two increments on the representative scale point 1 in 100. The outcome was that the inspection rated the Excess Cold hazard as a Category 1 hazard. [87]

20. After the HHSRS assessment was completed, the Respondent considered the current and likely occupiers in determining the most appropriate action. The Enforcement Guidance, issued by ODPM in 2006. The premises are located within the Thanet 0077D Lower Super Output Area within the Westgate-on –Sea ward and Thanet local authority district. In 2019 the area ranked amongst the 30% most deprived neighbourhoods in the country according to the indices of Deprivation 2019. Therefore, the Respondent asserts the future occupants will require an affordable form of heating to reduce the risk of adverse health outcomes from sub optimal temperatures.
21. The Tribunal finds the HHSRS correctly assesses a Category 1 Hazard, and so the need for an Improvement Order is met.

Cost of running the heating and hot water?

22. The Respondent has had reference to the EPC for the building which suggests energy needed in the property is 2779KWh per year for heating and suggests the typical cost of installing high heat retention storage heaters is £800 to £1200 which would provide an annual saving of £469.
23. At para 83 for the Respondents statement of case the Respondent outlines the actual cost of the electricity use as being £80 per month with £200 to £300 in the winter per month to £30 to £50 per month in the summer.

Options for replacement heating

24. The Respondent considered and made reference to differing alternative options these were provided in a table.

System	Heating Cost (2779 kWh)	Hot water cost (2,999 kWh)	Combined Cost (5778 kWh)	Estimated installation cost
Gas fired central heating	£307.46	£206.58	£514.04	£5,570
Air source heat pump	£226.87	£734.76	£961.63	£7,500
Electric heating standard tariff	£680.89	£734.76	£1,415.65	£550
Electric heating off – peak tariff	£402.96	£434.86	£837.82	£3,593.15

25. The Respondent [91] opted for storage heaters for the remedial works contending it struck a balance between reducing the hazard, being practicable and being able to be installed at a reasonable cost. The parties agreed that a replacement system was needed but differed on the solution.

The Law

26. 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.

27. 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 prescribed method. Hazards that score 1000 or more above are classed as Category 1 hazards, whilst hazards with a score below 1000 are classed as Category 2 hazards.

28. 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)”*.

29. 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”*. Those regulations are the Housing Health and Safety Rating System (England) Regulations 2005.

30. 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. If two or more courses of action are available, the Local Authority must take the course which it considers to be the most appropriate. An Improvement Notice is included in the type of enforcement action that a Local Authority may take following identification of a Category 1 hazard.

31. 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 Section 7(2) service of an Improvement Notice.

32. Section 9 of the Act requires the Local Authority to have regard to the HHSRS operating guidance and the HHSRS enforcement guidance.
33. Sections 11 to 19 of the Act specify the requirements of an Improvement Notices 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.
34. 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 that in Section 11.
35. An Appeal may be made to the Tribunal against an Improvement Notice under Paragraph 10, Part 3, Schedule 1 of the Act.
36. 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 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.

Discussion and decision of the Tribunal

Whether an Improvement Notice Should be Issued?

37. The legislation is structured in such a manner that if a category 1 hazard is present on a property appropriate enforcement action must be taken to reduce the hazard.
38. Where there are category two hazards there is discretion to take action to reduce the hazard.
39. **The Tribunal finds that this property has one category 1 hazard. The Tribunal considers that the Respondent was justified in taking enforcement action.**
40. The question, therefore, is whether the Improvement Notice was the most appropriate enforcement action to take in respect of the category 1 hazard.
41. The Applicant accepted the need for the Category 1 hazard to be addressed but differed on the appropriate action to take.

42. The next step to consider is whether the remedial works required by the respondent in the Improvement Notice were reasonable and practicable.
43. The parties both agree that the current form of electric heating in the flat is functionally but the Respondent considers it dated and does not meet the level of affordability required for vulnerable occupants. The Applicant disagrees. The Tribunal taking into account the nature of the property and the category of tenant that would potentially occupy the property finds the current heating system does not on balance meet the affordability criteria.

What the Improvement Notice should contain?

44. The Respondent submits a system by Dimplex is the preferred option, such a system allows heat to be stored from non-standard tariff and has the option of a boost using standard tariff during the day if required. The Applicant contends that the Dimplex system has only a number of standard sized units which may require greater energy use, as some rooms may have a heater that is in excess of the needs of the particular room and therefore the Applicant says is more costly. The Respondent disagrees.
45. The Applicant proposes an alternative system by “Rointe”, asserting that such a system is cheaper to install.

Can the tenants operating costs be considered in determining the works?

46. In *Liverpool City Council v Anwar Hadi Kassim* 2011 UKUT 169 (LC) LT Case Number: HA/3/2011, the Tribunal considered affordability in terms of the use by the tenant.

In her witness statement Ms Griffiths says this:

“If heating systems are prohibitively expensive to use, I consider that the occupants of the property will not use them or will restrict their use thus resulting in the effects of Excess cold which the HHSRS is aiming to address”

The Upper Tribunal said; “This in my view properly identifies the potential relevance of the cost of running a heating system. An occupier could be deterred by cost from using a heating system by the cost of running it, just as he might be deterred from using it by difficulties in operating it. Whether he would be so deterred is a matter for the authority or on appeal the RPT. It is clearly a matter of potential relevance in my judgement. I reach this conclusion independently of the Guidance, but the Guidance is consistent with it. I should make clear also that the Guidance itself contrary to what appeared to be the approach urged on behalf of the council, has no independent force. It is there to assist in the application of the statutory provisions.”

In the context of the assessment, the question needs to be addressed by reference to the vulnerable group those over 65. Any proclivity to be deterred from using the heating system by reasons of expense must be considered in relation to this group. The Guidance (see paragraphs 2.30 and 2.31...) says that vulnerability due to factors other than age cannot be taken into account. To the extent that the over 65 population is generally less well off than the younger working population, that fact is, in my view, relevant but no more specific assumption as to means can be taken into account. “

The Tribunal finds that the affordability of a replacement system for the vulnerable over 65 group can be taken into account.

Can the landlord's installation costs be taken into account?

47. The Applicant asserts that their financial position is not strong, and that account should be taken of their ability to afford the installation of the works.

48. The Applicant further asserts there must be a test of reasonableness as to which solution should be provided. The Applicant submits it would be irrational if a replacement system that cost thousands of pounds only resulted in a very modest saving. The Applicant submits that a cost benefit calculation should be a material consideration in the appraising of whether an Improvement Notice is reasonable.

49. **The Tribunal finds that the HHSRS assessment identifies the Hazard, and the Improvement Notice should prescribe the required outcome of the works to resolve. The Improvement Notice should not prescribe a solution that is in excess of rectifying the Hazard identified. The Improvement Notice should be sufficiently flexible to allow differing solutions provided that the solution resolves the Hazard identified. The Regulations do not provide for the costs per se of the works to the landlord to be taken into account but the Improvement Notice should be sufficiently flexible to allow the landlord to resolve the Hazard with the most cost-effective solution provided the threshold required in the Improvement Notice is met.**

Improvement Notice – Excess Cold – Nature of works- Amendment

50. The Improvement Notice currently requires;

“Install within Flat 7 a suitable and sufficient fixed space heating installation capable of economically heating all rooms to a temperature of 21°C throughout the year. The installation provided must be fit for purpose, available at all times, and be affordable for, and controllable by, the occupier of the premises. For this purpose: install high-heat retention electric storage heaters with on-peak boost function in the open-plan kitchen living room and bedroom. The shower room within Flat 7 must have an electric towel

rail that is controllable by a timer. Storage heaters can either be connected by either one or two 230V electrical supplies (peak and off-peak). Where one supply is used the heaters must be programmable to tell it when to charge in accordance with the off-peak (economy-rate) tariff. Where two supplies are used they must be connected to two switched fused spurs (one for peak and one for off-peak), and the off-peak supply must be permanently wired via a Deadline (Date by which remedial action MUST be completed) 13 November 2024 separate electrical circuit connected to a consumer unit fed by an economy-rate electricity supply with switching provided by suppliers switchgear. The installer must demonstrate and give clear instructions to the occupier(s) on how to use the heaters efficiently and the occupier(s) must be left with a copy of the user instructions.

Each storage heater must:

- A. Be high heat retention.
- B. Be compliant with lot 20 of the ErP Directive.
- C. Have an electronic room temperature control and a 7-day timer or smart controls.
- D. Have an on-peak boost heating function.
- E. Be suitably located and securely fixed to a wall.
- F. Be wired into a switched fused spur.
- G. Be appropriately sized in accordance with the manufacturer's guidelines taking into account the size of the room, geographical location and orientation, and insulative properties of the premises, you must supply a copy of your calculations to the Council.

All electrical work must be carried out by competent persons in accordance with Part P of the Building Regulations and the 18th edition of the IEE Wiring Regulations (BS 7671).”

- 51. The two parties agree that there is a Hazard 1 Excess Cold. The two parties differ on the solution. The Respondent submits a Dimplex system that allows heat to be stored from an off-peak tariff and has the potential for a daytime boost. The Applicants say, citing various consumer sources that such a system is complex to run and because of the complexity the ability to secure the maximum savings is limited. The Applicant also says that the size of the range of the units is relatively limited so resulting in the potential for larger than needed units in rooms which in turn result in costs being wasted. The Respondent disagrees with this analysis.
- 52. The Applicant prefers a system produced by “Roointe” this system does not use off peak electricity but retains heat through heating fluid within the system. The Respondent asserts that such a system would be more expensive to operate, the Applicant disagrees.
- 53. The purpose of the Tribunal is to determine whether the identification of the Hazard is reasonable, and the Improvement Notice is appropriate and proportionate. The Tribunal cannot judge between two specific proposed

solutions merely are that the requirements of the Notice are proportionate to the hazard identified.

54. The Improvement Notice should provide the outcome desired which in this case is broadly to achieve adequate heating at an affordable level. It should then be for the landlord to judge which system is appropriate, providing that the threshold required by the Notice is met by the system, then the landlord is free to choose the most appropriate system for the property. The landlord being conscious in their selection of the need to fulfil the requirements of the Notice, they have flexibility of solution but if the solution is materially inadequate, they are open again to enforcement action by the Respondent Authority.
55. The Tribunal determines the Improvement Notice to remain as is but substituting the following for the extract in paragraph 50 above.

“Provide a fixed, permanent heating system, in the open – plan kitchen, living room and bedroom heating system. This system must be programmable and capable of being controlled by the occupants, efficient and affordable to run. The system must be capable of heating living rooms and bedrooms to 21 degrees Celsius and to 18 degrees Celsius in all other rooms and common parts. The shower room within Flat 7 must have an electric towel rail that is controllable by a timer.

The system must be appropriately sized in accordance with the manufacturer's guidelines taking into account the size of the room, geographical location and orientation, and insulative properties of the premises, you must supply a copy of your calculations to the Council.

All electrical work must be carried out by competent persons in accordance with Part P of the Building Regulations and the 18th edition of the IEE Wiring Regulations (BS 7671).”

56. The Applicant noted that an electric towel rail had been installed in the shower room subsequent to the notice. It was not clear whether the towel rail had a timer.
57. Finally, the Respondent at [82 para 7] requests the following amendments to the Improvement Notice on the basis the original Notice had incorrectly assumed the property to be an HMO. The following alterations are;
- In paragraph 1 of the Improvement Notice, replace “person managing” with “owner”.
 - In paragraph 1 of the Improvement Notice, insert “Flat 7” before “2-3 Beach Rise”
 - In Schedule 2 Improvement Notice, remove all Remedial Works relating to the common parts of the building; namely items 3.2, 3.3 and 3.4.
58. The Tribunal determines the Improvement Notice is amended as set out in paragraph 55 and 57 above.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).