FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00HH/HIN/2025/0609
Property	:	10 Melville Street, Torquay, TQ2 5TA .
Applicant	:	James Sullivan
Respondent	:	Torbay Council
Type of Application	:	Appeal against an Improvement Notice – Housing Act 2004 Paragraphs 12 and 15 of Schedule 1 to the Housing Act 2004 (the Act)
Tribunal Members	:	Judge C A Rai Mr M C Woodrow MRICS Mr M R Jenkinson
Date type and venue of Hearing	:	30 September 2025 In person at Torquay and Newton Abbot Family Court, Torquay TQ2 7AZ.
Date of decision	:	17 October 2025

DECISION

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1. The Tribunal made an order confirming the Improvement Notice dated 31 March 2025 served by Torbay Council on the Applicant.

2. The reasons for its decision are set out below.

Background

3. The Respondent served an Improvement Notice and demand for payment of its expenses dated 31 March 2025 on the Applicant following two inspections of the Property. The Notice confirmed that it was satisfied that both Category 1 and 2 hazards existed on the Property, Flat B, 10 Melville Street, Torquay, Devon TQ2 5TA.

4. The Respondent inspected the Property following a complaint made to it by the Tenant.

5. The Applicant has appealed to the Tribunal against the Notice and the demand for payment of a charge of £437.99, made by the Respondent to cover its expenses in taking action against the Applicant.

6. The Applicant's appeal was received by the Tribunal on 19 April 2025.

7. Following receipt of the Application the Tribunal issued Directions dated 1 July 2025 to both parties which, amongst other things, directed the parties provide:-
   - statements of case,
   - copies of relevant documents and
   - copies of any witness statements upon which they sought to rely.

8. The Applicant did not comply with the Directions within the stated time limits and eventually requested an extension of time.

9. Both parties were directed to ensure that copies of all correspondence with the Tribunal were copied to the other party, but the Applicant repeatedly failed to comply with this direction.

10. The hearing bundle prepared by the Applicant to was incomplete. After the Tribunal had issued further directions, the Applicant provided a revised hearing bundle which the Tribunal accepted. By then he had also made a case management application relating to the preparation of the hearing bundle which he withdrew prior to the commencement of the substantive hearing.

11. The Tribunal received two separate hearing bundles, Bundle 1 (87 pages) and Bundle 2 (119 pages), which combined, contain the majority of the documents it had directed be included. References in this decision to numbers in square brackets preceded by B1 or B2 are to the page numbers in those bundles.

12. The Tribunal has not inspected the Property. The bundles contained photographs of the Property, some of which were referred to during the hearing. None of the photographs in the bundle are date stamped. Neither party requested an inspection of the Property. The Tribunal viewed the Property on the internet and concluded that it was not proportionate, in the context of the application, to carry out an inspection.

The Hearing

13. Both parties attended the Hearing. The Applicant was accompanied by Mr and Mrs Matthews, both of whom had made written statements in support of his Application. Mr Matthews was described in some correspondence as being the property manager and/or the Applicant's handyman. The Respondent was represented by Mr Brent Acutt, the housing specialist who had inspected the Property and Mr Robert Kelly. Both Mr Acutt and Mr Kelly are employees of the Respondent.

The Applicant's case

14. The Applicant's statement of case is not included in either bundle. In the absence of a statement the Tribunal told Mr Sullivan that he could rely upon and refer to his "introduction" in Bundle 1 notwithstanding it was not dated or signed. A copy was disclosed to the Respondent before the Hearing.

15. The Applicant told the Tribunal that Mr Tierney, the Tenant of the Property, had been referred to him by the Respondent. He said that the building contains ten flats all of which are currently occupied by tenants referred to him by the Respondent.

16. When the tenant of the Property was referred to him, the Applicant said he understood that the tenant would need and receive third party supervision or support. He told the Tribunal that this had not been provided. He said that both parties agreed that the Tenant is difficult. The Applicant claimed that he has caused significant damage to the Property. He said that was the reason the Property was in such poor condition when the Respondent inspected it.

17. The Applicant acknowledged that at some time the tenant had kept a motor bike in the Property. He claimed that he had also removed the smoke and fire alarms, had taken the kitchen cupboard off the wall and kept the Property in poor condition.

18. The Applicant said that he had found it impossible to gain access to the flat to inspect it or remedy the alleged disrepair. All his attempts to address the hazards identified in the improvement notice had therefore been thwarted by the tenant refusing access to the flat to him or any of his workmen.

19. Mr Sullivan suggested that he had attempted to contact the person at Torbay Council who had originally referred the Tenant to him but was unable to do so. He also submitted that he had notified the Respondent of his intention to serve a Section 8 eviction notice on the Tenant. He said that neighbours, the police, his agent (Mr Matthews) and contractors and electricians are all aware of the abusive conduct of the tenant.

20. Mr Sullivan suggested that because the Respondent is "in charge" of the tenant it should pay for the damage to the Property caused by the tenant.

21. Mr Sullivan said that he had been unaware of the potential imposition of a fine until it had already been imposed. He referred to his expectations of even handedness and transparency contained in the Nolan Report as having been ignored by the Respondent in the way it had treated him following the inspection.

22. In his introduction, [B1 2] the Applicant stated that, until now, he had always had a good relationship with the Respondent which changed following Mr Acutt's inspection of the Property. He said that following receipt of correspondence, initially by email from Mr Acutt, he immediately identified that he could not have reasonable dealings with Mr Acutt. Subsequently he tried to contact other employees of the Respondent.

23. Mr Sullivan said he had also been upset by the fact that although initially Mr Acutt corresponded with him by email, the Improvement Notice was served on him by post. It had been sent to him during a period when he had been away from home recovering from hip surgery so he did not see it immediately.

24. The tenant had refused to afford Mr Matthews access to the Property with Mr Acutt on his first inspection.

25. Mr Sullivan told the Tribunal that Mr Matthews had worked as a builder. He said that if Mr Matthews had been allowed to enter the Property he would have been able to assess the condition at that time and carry out necessary repairs.

26. Mr Sullivan told the Tribunal that some of the suggested remedies to address the hazards identified in the Notice are unreasonable, impractical and would not justify the expense of rectification. He also claimed that the requirements are not legally enforceable and exceed the Applicant's remit. He said that the "fine" imposed "is considered unreasonable" as insufficient effort was made to ensure that he had received the notices. These submissions were repeated in his written grounds of appeal on the application form [B1 42].

27. Mr Sullivan stated that the Property was let unfurnished and that the oven in the kitchen area had belonged to the previous tenant. He was insistent that until the current tenant occupied the Property, the condition had been adequate.

28. Although Mr Sullivan has consistently stated that the suggested improvements recorded on the improvement notice were unrealistic. He accepted, when challenged by the Tribunal about the reference to the sash window that the suggested remedy to repair the window so that it closed and to provide secondary glazing "might be possible".

29. Mr Sullivan refused to accept that the old night storage heaters currently in the Property might not provide adequate heating. Whilst he acknowledged that these might be over fifteen years old, he said that the Respondent had made no attempt to test the output from those

heaters. He also refused to accept that the Property is excessively cold. Mr Matthews endorsed what Mr Sullivan had said, stating that night storage heaters could produce heat as well as store heat.

30. Mr Sullivan told the Tribunal that he had been unaware of the possibility of what he has described as a "fine" until he received the demand for payment of the Respondent's costs. He said, again, that the Applicant had ignored his expectations that he would be treated with even handedness and transparency as recommended in the Nolan report.

31. When asked by the Tribunal about his expectations with regard to the outcome of the hearing he said that what he wanted was help from the Respondent to remove the Tenant.

32. Mr Sullivan said that he had not until now served a notice on the tenant notwithstanding he repeatedly referred to his intention to serve a section 8 notice. He did not offer any explanation to the Tribunal why he had not considered serving a section 21 notice on the tenant (which is a no fault eviction notice) before he had received the Improvement Notice. He has not disclosed a copy of the tenancy agreement in the bundle, so the Tribunal has no knowledge about the content.

33. Mr Sullivan acknowledged that without support from the Respondent it might be difficult for him to remove the tenant. He suggested that it would be impossible to find the tenant alternative accommodation because he keeps a cat, which he implied was against the conditions of the tenancy.

The Respondent's evidence.

34. Mr Acutt said that he inspected the Property on two occasions. Both inspections preceded the service of the Improvement Notice. In his statement dated August 2025 he said that he has never met the Applicant or spoken to him [B2 37].

35. In response to a complaint made by tenant to the Respondent regarding problems with disrepair, damp and mould, Mr Acutt inspected the Property on 10 January 2025. Mr Matthews met him outside and was prepared to accompany him but the Tenant refused Mr Matthews access to the Property.

36. After his first inspection, Mr Acutt requested that the Applicant provide a copy of the current Electrical Inspection Certificate. The certificate has not been provided, although during the hearing both the Applicant and Mr and Mrs Matthews told the Tribunal that such a certificate existed.

37. Mr Acutt said he had identified various issues all of which are referred to in detail in paragraph 6 of his statement [B2 35].

38. Mr Acutt said he had emailed the Applicant following his first inspection. The Applicant responded to his email but he said he did not express any willingness to carry out improvement works.

39. Mr Acutt explained to the Tribunal that notwithstanding that, following an assessment of the property and identification of the category 1 hazards at the Property, the Respondent has a duty to act, its usual policy is to offer landlords an opportunity to engage with it to address and remove the hazards.

40. Mr Acutt told the Tribunal that the Applicant has never engaged with the Respondent. He said that was reflected by the content of their correspondence in the period between the first inspection and the service of the Improvement Notice.

41. Mr Acutt explained that the Housing Health and Safety Rating (HHSRS rating) of excess cold could not be conflated with the EPC rating for the flat. He said that the HHSRS rating is an assessment of whether a tenant can adequately heat the property and keep it warm. He explained that his rating of the Property was based on the likelihood of harm, taking account of relevant considerations and the Respondent's guidance.

42. Mr Acutt said that he said that he has access to a range of worked examples of HHSRS ratings. The Respondent's housing staff engage regularly with each other to benchmark assessments with the intention of achieving consistency with regard to all ratings. The housing officers are responsible for making the initial decision following an inspection and assessment of a property and for justifying the decisions made. The Respondent cannot compromise requirements which potentially impact on the safety of a tenant.

43. Mr Kelly separately expressed disappointment with the Applicant's lack of engagement with the Respondent and his refusal to address and remedy the hazards. He said that the person currently suffering most is the tenant. He also stated categorically that the Council could not, and he implied would not, support the Applicant in removing the Tenant.

44. Mr Kelly also said that the Respondent is not in a position to negotiate with the Applicant regarding the condition of the Property. Whilst accepting the Applicant's evidence that the other flats within the building have been made available by him to house other tenants referred by the Respondent, he said that could not influence the Respondent's duty to take action with regard to the hazards identified by the Improvement Notice.

45. Mr Kelly said that the condition of the Property is not safe. He referred, in particular, to the issues identified in the kitchen area and to fire safety. He said that the poor heating provision and the draughts from the window are unsatisfactory.

46. Mr Kelly said that the current "support" afforded to the Tenant and facilitated by the Respondent amounts to six hours a week. He said that, because of the inadequate facilities in the Property it is impossible for that support to provide anything other than assistance for the tenant in relation to basic personal hygiene, made more difficult by the very poor condition of the Property.

47. Despite the exchange of correspondence between the Applicant and the Respondent following the first inspection of the Property, the Applicant had made no attempt either to rectify the hazards which the Respondent had identified during the inspection or suggest a timetable for so doing.

48. The Respondent informed the Applicant that it had identified both Category 1 hazards regarding excess cold, food safety, falls associated with baths and fire and Category 2 hazards regarding electrical hazards, personal hygiene and sanitation and drainage, and damp, and mould. The Applicant had still not produced a copy of the electrical safety certificate. Neither has he made any attempt to address the hazards.

49. Mr Acutt made a second inspection of the Property on 21 March 2025, during which he identified that nothing had changed with regard to the condition of the Property save that it was suggested, that the Tenant had removed the "moped" from the flat by the date of that visit.

50. The Respondent served the Improvement Notice on the Applicant by first class post on 1 April 2025. It was accompanied by a demand for payment of the Respondent's charges. Mr Acutt said that service by post was the required method for service of Improvement Notices.

51. Mr Kelly told the Tribunal that the Applicant's repeated reference to the duties referred to in the Nolan Report is misleading. That Report relates specifically to the conduct of councillors and officers, not its employees.

The Law and the service of the Improvement Notice

52. The duties of a local housing authority to take enforcement action are contained in the Act. Section 5(1) states that if a local housing authority consider that a Category 1 hazard exists on any residential premises, they **must** take appropriate enforcement action.

53. Subsection (2) defines the appropriate enforcement action, which includes seven options, serving an Improvement Notice, making a prohibition order, serving a hazard awareness notice, taking emergency remedial action, making an emergency prohibition order making a demolition order, and declaring the area a clearance area.

54. These options are listed in the letter dated 23 January 2025 which Mr Acutt sent to Mr Sullivan [B2 63]. That letter also referred to the possibility of the Respondent making a charge of "up to £622.50 plus any reasonable costs". In that letter the Respondent advised the

Applicant that works to remedy the hazards might require that he obtained consents. It stated that "if the tenants should vacate the property voluntarily before the works are started or completed this will not remove the necessity for the works to be done and progress will continue to be monitored." In addition, the Applicant was informed that in the six months following the service of an Improvement Notice, he could not serve a section 21 notice to evict the tenant.

55. The Respondent sent another letter to the Applicant on 6 February 2025 in which Mr Acutt confirmed that, in the absence of any written response from the Applicant listing the action he would be taking, he had scheduled another inspection. He said that should that reveal that no improvements to the Property had been made formal action will be taken. The letter again referred to the possibility of a charge of "up to £622.50 plus any reasonable costs" being made by the Respondent to cover its expenses [B2 76, 77].

56. That letter also contained a warning that failure to comply with a statutory notice could lead to an unlimited fine, if the Applicant was prosecuted, or alternatively the issue of a Civil Penalty under s.249a of the Act. The Applicant was also warned that the Respondent has statutory power to take the action required in relation to the hazards and reclaim its expenses from him. The letter was sent to the Applicant by email and post.

57. The Applicant emailed Mr Acutt (on 9 February 2025) stating that he did not respond well to threats. He said he had no intention of responding to 'your report' as I have a bevy of other officials descending on the property presumably at your instigation who will see for themselves the condition and the patently obvious perpetrator of such. [B2 78]. He quoted some of the principles in the Nolan report and suggested that the Respondent should have taken account of the tenant's damage to the Property and said that in the interests of impartiality and transparency "I look forward to your new, honest, impartial and unabridged report" [B2 78].

58. Finally, the Applicant said "Mr Acutt, I have been in the business too long to be intimidated by your unprofessional, aggressive approach and, if necessary, I will happily close down the whole building. I have dealt with many housing officials over the years and have always had cordial relations, but you have taken bureaucratic officiousness to new depths." He ended that email by stating he would consult other people and "with any luck this whole debacle can be resolved amicably by the application of some common-sense" [B2 78].

59. The Respondent disclosed another (undated) email in which he quoted from the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 which required the Applicant to provide a copy of the certificate relating to the inspection and testing of the electrical system and that a copy should be provided (or have been provided) to each tenant of the Property and now to the Respondent.

The regulations require testing at regular intervals of not more than five years [B2 79].

60. On 31 March 2025, following his second visit to the Property which disclosed no repairs had been made, Mr Acutt sent a letter confirming this and stating that the Respondent could take no account of the lifestyle of the occupants when carrying out an HHSRS assessment. He acknowledged that the motorised vehicle was no longer in the Property. With the letter he enclosed the Improvement Notice dated 31 March 2025 and payment demand [B2 80].

61. Mr Acutt referred to his previous letters and confirmed that the Council has a duty to secure improvements and that he had already advised the Applicant of the action he was now taking in his earlier letters and making a charge. He also said that he would shortly send on an invoice for £437.99 and that a charge would be placed on the Property until this debt is paid, and where applicable the notice is complied with and revoked. The letter repeated the warning about the consequences of failure to comply and referred to prosecution, an unlimited fine or the issue of a Civil Penalty. It also referred the Applicant to the notes which accompanied the Notice which outlined his legal rights.

62. Section 12(1) of the Act states that if a local housing authority are satisfied that a Category 2 hazard exists on any residential premises…the authority may serve an improvement notice under this section in respect of the hazard. The difference is that the power is discretionary…. "**may**" not "must."

63. Paragraph 10 of Schedule 1 to the Act provides that a person on whom an improvement notice is served may appeal to the Tribunal against the notice. Paragraph 15 provides for any appeal to the Tribunal to be by way of a re-hearing which may be determined having regard to matters of which the authority were unaware. The Tribunal may by order, quash, confirm or vary the improvement notice.

64. Case law has decided that the Tribunal must determine whether the decision of the local housing authority was correct on the date on which that decision was made.

Reasons for the Tribunal's Decision

65. The Improvement Notice dated 31 March 2025, served on the Applicant stated that Torbay Council is satisfied that Category 1 Hazards and Category 2 Hazards exist at the Property.

66. The Respondent has a statutory obligation to act in relation to Category 1 Hazards and may take action in relation to Category 2 hazards.

67. The Category 1 hazards identified in the Notice are excess cold, food safety issues and the risk of falls, the latter exacerbated by a leaking shower. It identified possible remedies to address these hazards. It

also required that the fire alarm system certification together with evidence of regular testing be produced to it.

68. The Category 2 hazards identified in the Notice are electrical hazards, personal hygiene and sanitation and drainage (the leaking shower), damp and mould in the skylight, the cause of which was attributed to the absence of any heating in the common parts .

69. The Applicant was in addition required to:-
- repair the wall to the hallway cupboard containing the electrical meters (shared with the four other flats in that part of the building).
- provide a copy of the Electrical Installation Condition Report or commission a report.

70. The time limit to address or eliminate all the hazards specified in the Notice was within 60 days of 30 April 2025.

71. The Notice referred to remedies which would alleviate or eliminate the identified hazards. The requirements in relation to the works required to demonstrate fire safety are more nuanced. The Notice referred to the LACORS guidance and different graded coverage required for individual flats (i.e. the Property) and the common areas.

72. The Applicant's grounds of appeal are:
- that some suggested remedies to address the hazards identified in the Notice are unreasonable, impractical and would not justify the expense of rectification.
- the requirements are not legally enforceable and exceed the Respondent's remit.
- the "fine" imposed "is considered unreasonable" as insufficient effort was made to ensure that he had received the notices and was able to act.
- that it was impossible for him to gain access to the Property to inspect it or undertake repairs because the tenant refused access to him and his workmen.

73. The Tribunal finds that the Applicant's grounds of appeal are neither correct nor valid.

74. The Applicant could have undertaken some of the remedies suggested on the Improvement Notice to alleviate or eliminate the hazards but had chosen not to.

75. The Applicant has provided no evidence to substantiate which requirements are not legally enforceable.

76. Whilst Mr Acutt's statement confirmed that the Tenant would not allow Mr Matthews to accompany him on his first inspection, he has also provided evidence that Mr Matthews had told the tenant that he could enter the Property whenever he wanted to [B2 40]. Mr Acutt gave

advice to the Applicant about access in his email dated 7 January 2025 [B2 46].

77. Mr Sullivan consistently blamed the tenant for the condition of the flat. Whilst the Tribunal accepts it was possible that some of the deficiencies with regard to damage may be attributable in part or whole to the conduct of the tenant, that is not a material consideration to the Applicant's obligation to remedy the hazards. Mr Acutt identified that in his correspondence with the Applicant.

78. The Applicant has provided no evidence of attempts by him, or his nominees, to enter the Property following his receipt of correspondence from Mr Acutt about the inspection. All the correspondence disclosed suggests that the Applicant had no intention of carrying out any repairs.

79. The physical circumstances which gave rise to the hazards of excess cold and food hygiene must have existed at the beginning of the current tenancy. The Applicant has provided no evidence to the contrary.

80. Fire safety is of critical importance in a building containing five flats, which on the Applicant's evidence are all occupied by tenants who may be more vulnerable than "average tenants." The apparent absence of any electrical certification is potentially serious and will impact on fire safety.

81. The requirement to carry out necessary work to make the one room within the flat, fit for purpose to enable food preparation and by the provision of a consistent heat supply is not an unreasonable requirement.

82. The Applicant accepted that a repair to the sash window and the installation of some secondary glazing was "possible" but remained resistant to providing any food preparation facilities or improved heating.

83. A repair to the shower so that it is functional without leaking is a basic repair.

84. During the hearing Mr Sullivan neither acknowledged nor expressed any willingness to repair the shower or to make any improvements to the Property to address the deficiencies identified in the Improvement Notice.

85. The Tribunal also finds that the Applicant's claims that he was unaware that he could be fined by the Respondent untrue. His correspondence and submissions are all clear and well written. That correspondence demonstrates that he is capable of reading and comprehending written correspondence.

86. The amount of the costs which the Respondent seeks to recover is within the limit referred to in Mr Acutt's correspondence and was

clearly stated to be payable in respect of its expenses incurred as a result of the Applicant failing to engage with it by rectifying the hazards identified.

87. All of the correspondence from Mr Acutt to the Applicant disclosed in the bundles, save for the email referring to the Electrical Safety Regulations, referred to the possibility of unlimited fines, prosecution and the imposition of a Civil Financial Penalty. Reference was also repeatedly made to the ability of the Respondent to recover expenses up to a limit which was in excess of the amount invoiced by the Respondent.

88. Having examined and considered the Applicant's evidence in both bundles and his statement of case recovered from the Tribunal file, it is satisfied that it contains nothing relevant to support his grounds of appeal.

89. Mr Kelly confirmed that the other flats in the building have not been inspected by the Respondent. The inspection of the Property was undertaken because of the tenant's complaint.

90. Only the Applicant knows whether or not the other flats within the building are likely to be compliant with current Housing legislation.

91. Whilst the Tribunal considered if Mr Sullivan's threat to close down the building implied that he does not believe that it is, it accepts that might equally be attributable to an awareness that shortcomings with the current fire alarm system and the potential costs associated with complying with current legislation might make the building uneconomic to retain for its current use. However, it accepted that such considerations are speculative rather than evidential.

92. Taking all of this into account the Tribunal is satisfied that the Applicant's grounds of appeal against the Improvement Notice are without merit.

93. The Tribunal makes an Order confirming the Improvement Notice dated 31 March 2025 made by Torbay Council in respect of the Property and its demand for the Applicant to pay £437.99. to cover the Respondent's expenses referred to in the demand.

Judge CA Rai (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.