



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

**Case Reference** : **MAN/00BR/HIN/2019/0020**

**Property** : **Flats 1-3, 7 Cliff Avenue, Salford, M7 2HN**

**Applicant** : **Mr F Moghimi**

**Respondent** : **Salford City Council**

**Type of Application** : **Housing Act 2004 – Sections 40-45 and  
Schedule 1 Paragraph 10 (1)**

**Tribunal Members** : **Mr J Rimmer  
Mr J Faulkner**

**Date of Decision** : **21<sup>st</sup> September 2019**

**Date of Determination** : **9<sup>th</sup> October 2019**

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**DECISION**

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**Order : The improvement notice in relation to Flats 1-3, 7, Cliff Avenue, Salford are varied as set out on paragraph herein.**

**A. Application.**

1. The Appellant appeals under Section 18 and Schedule 1, Paragraph 10 of the Housing Act 2004 (“the Act”) against an improvement notice relating to Flats 1-3, 7, Cliff Avenue, Salford. It relates to a number of issues identified by an officer of the Respondent, following an inspection of the property. The notice was served by Salford City Council, the local housing authority (the Authority”). It is dated 19<sup>th</sup> December 2018 and is made under section 12 of the Act, requiring certain works to be carried out to that flats and common parts of the building in which they are situated to remedy hazards referred to in the Notice. The authority has a discretion under Section 12 to serve an improvement notice in such a case. The Appeal against the notice lodged by Mr Moghimi is dated 19<sup>th</sup> January 2019.
2. The provisions of Paragraph 10 of Schedule 1 provide for the person on whom an improvement notice is served to have the right to appeal to a Residential Property Tribunal and, although setting out certain specific grounds of appeal, they do not restrict the overall generality of the paragraph. Thereafter a combination of Paragraphs 12 and 15 envisage an appeal by way of re-hearing, admitting matters not previously considered, to allow the Tribunal to confirm, vary, or quash the Notice.
3. Directions as to the future conduct of the appeal was given by the Deputy Regional Valuer of the Tribunal on 9<sup>th</sup> May 2019 and the matter then listed for the consideration of the Tribunal on 16<sup>th</sup> September 2019 with a hearing and inspection fixed for that date.
4. The Appellant is the freehold owner of 7, Cliff Avenue, Salford. This is a terraced house in a street of similar properties, constructed of brick under a tiled roof and comprises an entrance to a common ground floor hallway from which access is gained to a ground floor flat and a stairway leading to 2 upper storeys, each having one flat thereon. As the notice related to common areas and the doorways to the flats no internal inspection of the flats themselves was required.
5. The Authority had been previously involved in an inspection of the property as a result of matters coming to its attention in relation to the occupation and condition of the premises. A number of hazards, within the meaning of the Act, were apparently identified.
6. The Authority was satisfied that within the ground floor flat there existed category 2 hazards relating to, primarily, the fire safety provisions for the evacuation of the flats should the need arise.

7 There appeared to be two significant matters upon which the Tribunal noted there had been some agreement between the parties that assisted it to deal with a limited number of remaining issues:

- (1) It was recognised that a significant amount of work had been carried out by the Appellant to remedy the issues raised in the notice and other matters brought to his attention as a result of the local authority's inspection
- (2) He was hindered in this by the occupier of the ground floor flat when arranging work the work required.

8 Additionally, it was noted that during the course of the Tribunal proceedings it was conceded by the local authority that one aspect of the notice, Schedule 2A, need not be pursued.

9 The Tribunal records that it appreciates the position in which the Applicant found himself where the need to comply with an improvement notice does not easily walk hand in hand with the efforts required to secure possession of the flat. Conversely, the local authority's concern is with safety within the property and not the private issues between landlord and tenant.

## **B. Inspection**

10 On the morning of 16<sup>th</sup> September 2019 the Tribunal inspected 7, Cliff Avenue. It was accompanied by Mrs Mann, the officer of the Authority dealing with the matter, together with the Appellant and his daughter, Miss Moghimi. Insofar as it is necessary to record its general description, this is set out above. The Tribunal was therefore able to see those matters that remained outstanding between the parties:

- (1) The state and condition of the doors to each of the three flats and the manner in which they acted, or were adapted to provide heat and smoke protection for occupiers of the building, with particular reference to the fitting of the doors in the frame and the provision of cold-seal smoke and intumescent strips, together with evidence of appropriate certification.
- (2) The fire alarm system that had been installed, which was not of the specification required by the notice but was recognisable as a system providing considerable protection.
- (3) The situation in which the system was dependent upon an electricity supply from the credit meter relating to the ground floor flat

## **C. The evidence**

11 The Tribunal had the benefit of very extensive submissions made by the Authority in support of its case to justify the improvement notice, principally in the form of a statement from Mrs Mann. This provided a clear overview of the situation from the perspective of the Authority. Although Mr Moghimi concentrated in his submission, particularly upon the compliance with much of what had been required and the difficulties with the ground floor occupant, he was clearly in disagreement with the conclusions drawn as to the necessity of an improvement notice.

- 12 In the light of the limited number of issues that remained between the parties they were able to discuss their views quite clearly and discretely with the Tribunal. This was particularly helpful as the Tribunal was considering the position afresh as of 16<sup>th</sup> September.
- 13 The doors to the flats  
Mrs Mann accepted that the doors to the ground and first-floor flats (flats 1 and 2) appeared now to have sufficient cold seal smoke strips and intumescent strips to provide adequate protection. A difficulty however was considered still to exist in relation to flat 3 on the second floor. The door does not fit within its frame for the appropriate strips to provide a draughtproof seal and strips are missing where the door meets a decorative skirting board at the hinged edge. Mr Moghimi indicates that the fitting may be as a result of heavy weight being suspended from the door over a long period. In that he may well be right, but the authority takes the view that, whatever the cause, a remedy needs to be found and the notice provided for this. Mr Moghimi was of the view that the matter could be remedied.
- 14 The fire alarm system  
The local authority had identified a hazard in relation to fire warning and the consequences in the event of a fire occurring. The improvement notice required a system that conformed to two separate alarm standards to deal adequately with heat and smoke warning in the flats and separately in the common parts.
- 15 The system that has now been installed appears to comply with the higher standard for both issues. Mrs Mann has continuing concerns. As now installed, the alarm will sound in common parts as well as flats for all alarms. She takes the view that this creates a problem in effect of minor activations within a single flat, leading to premature evacuations and, as a consequence, a tendency to develop a situation where activations might be ignored, or the alarm silenced at the main board.
- 16 Mr Moghimi feels that his experience suggests that concern is overstated and, in any event, he would seek to have the building evacuated earlier and more frequently that might be the case if full compliance with the specification within the notice.
- 17 There appears to be no issue between the parties that the system installed is in anyway defective, merely that it may, or may not do what is considered to be required in an appropriate manner.

- 18 The mains wiring of the alarm system  
This issue presents a serious financial problem for Mr Moghimi. The alarm is wired into the electricity supply for Flat 1 and is metered accordingly. That meter is a credit meter and relies upon it being sufficiently topped up. If it isn't the supply will run out and eventually battery support will be exhausted. The provision of a separate further meter would cost in the region of £2,000.00 with possibly further costs if the supply needed attention.
- 19 The Appellant's solution has been to provide a continuing credit of £5.00 per month to the tenant, currently a close relative of the Applicant, to ensure the supply is maintained. Mrs Mann considers this to leave too much to goodwill and chance, not satisfactory when dealing with the very serious risks arising in the event of fire.
- 20 The Tribunal canvassed particularly with Mrs Mann the extent to which she had considered a hazard awareness notice in respect of the identified issues. She had done so, but for three reasons decided against it. Removing, so far as practicable, fire danger is not a matter that should be delayed and was sufficiently serious to warrant immediate action. A hazard awareness notice would have introduced delay and the need to arrange re-inspection. The difficulty with the ground floor occupant indicated that she could not be confident that such a notice would have any effect.
- 21 The Tribunal noted that the authority did not provide its hazard scores under the rating system to the Tribunal. This is becoming more common. The tribunal appreciates that in the past it has been swamped on occasion with statistical data. The provision of some outline information does, however, inform the Tribunal of the manner of the decision-making process. The Tribunal would however concur with Mrs Mann that although the likelihood of a fire occurring might be slight, the consequences of such an event can be disproportionately serious and the tribunal consider the hazard score to be high enough to indicate a category 2 hazard, within the rating system.

#### **D. The Law**

- 22 The law relating to the service and content of Improvement Notices as they relate to category 2 hazards is set out in Sections 12-13 Housing Act 2004 and appear below. If a category 2 hazard is identified, in the absence of any category 1 hazard, the authority may issue an improvement notice.
- 23 Improvement notices relating to category 2 hazards: power of authority  
to serve notice
- (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.

#### 24 Contents of improvement notices

- (1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.
- (2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—
  - (a) whether the notice is served under section 11 or 12,
  - (b) the nature of the hazard and the residential premises on which it exists,
  - (c) the deficiency giving rise to the hazard,
  - (d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,
  - (e) the date when the remedial action is to be started (see subsection (3)), and
  - (f) the period within which the remedial action is to be completed or the Periods within which each part of it is to be completed.
- (3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.
- (4) The notice must contain information about—
  - (a) the right of appeal against the decision under Part 3 of Schedule 1, and
  - (b) the period within which an appeal may be made.
- (5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

## **E. Tribunal's Conclusions and Reasons**

- 25 The Tribunal reminds itself that it is considering this matter by way of a rehearing and may, if there is such a situation, take into account any factors that have arisen since the notice was issued, or were not apparent to the parties at that time. This is of significance here in view of work now done by Mr Moghimi
- 26 It takes the view that it must first make a reassessment of the hazards identified by the Authority upon its inspection and which led to the conclusion that hazards existed and the category into which they should be placed.
- 27 In this respect the Tribunal is in no doubt whatsoever that there was a category 2 hazard in relation to the risk of fire, as mentioned in paragraph 21, above. It must now consider the position now.
- 28 It is therefore necessary to consider whether the three remaining issues identified by Mrs Mann present such a hazard as to justify the continued existence of an improvement notice.
- 29 The door to flat 3  
The Tribunal saw from its inspection that the current fitting of the door is such that no continuous seals are made. If a fire were to occur there would be a real risk of smoke or heat/fire being able to pass from one side of the door to the other. The Tribunal is satisfied that this needs to be remedied by provision of an appropriate door, fitting properly within its frame, as originally identified as a remedy by Mrs Mann.
- 30 The alarm system  
There are clearly different views as to the efficacy of what has been installed by Mr Moghimi. The Tribunal has viewed it in this way: considering the position as it is now, is the fire hazard significantly increased by what is now installed, compared to what was proposed by Mrs Mann. The Tribunal is of the view that the current installation now reduces very significantly the risk compared with what existed before.
- 31 The rewiring to the alarm  
It is clear that the present arrangement depends upon the good will of the occupant of the ground floor to keep his meter "topped up". Such an arrangement might deteriorate with another occupier in the future. The risk to the Tribunal's mind is too great, even if it were only to consider the position that might arise within the next 12 months.
- 32 The Tribunal appreciates the significant cost that a new metered supply would present to Mr Moghimi. It wonders if he is able to consider an alternative: he accepts responsibility for supply and charges the downstairs tenant for electricity use within the rent? This was not canvassed in any way before the Tribunal, but may present a cheaper solution.

- 33 **The Tribunal is therefore of the opinion that an Improvement is required, but that it should be varied** to take account of the position as it is now and the views of the tribunal set out above.
- 34 The Tribunal has considered carefully whether it should amend the timescale set within which the notice should take effect following this determination. As the Tribunal understands it the work should begin within 10 days of the decision upon this appeal and be completed within 28 days. It has however put forward a view, in paragraph 31, that the parties may wish to consider, separately or together.
- 35 **The Tribunal therefore varies the improvement notice as follows.**
- (1) Schedule 1A is amended to refer to Flat 3 only**
  - (2) Schedule 1B is deleted**
  - (3) Schedule 2A is deleted**
  - (4) Schedule 2B remains**
  - (5) The work required shall commence within 28 days of the order of the Tribunal and shall be completed within 28 days thereafter.**

J R Rimmer

Tribunal Judge