



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

Case Reference : **BIR/00GF/HIN/2020/0006 & 8**

HMCTS Code : **V:CVPREMOTE**

Property : **Flat 1 and Studio 3, 1 Winifreds Drive,
Donnington, Telford, TF2 8BB**

Applicant : **Mr R S Thiara**

Respondent : **Telford & Wrekin Council**

Representative : **Ms Catherine Girvan**

Type of Application : **Housing Act 2004 –
Schedule 1 Paragraph 10 (1)
& Schedule 3 Paragraph 11(1)**

Tribunal Members : **Mrs A Rawlence MRICS
Mr R Chumley-Roberts MCIEH J.P.**

Date of Decision : **16 October 2020**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing on the papers which has been consented to by the parties. The form of remote hearing was Video (V: CVPREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Order

The improvement notice in relation to Flat 1, 1 Winifreds Drive, Donnington, Telford is part confirmed and part varied.

The improvement notice in relation to Studio 3, 1 Winifreds Drive, Donnington, Telford is part confirmed; part quashed and part varied.

The expenses incurred by the Council in preparation of the improvement notice for Flat 1, 1 Winifreds Drive, Donnington, Telford are confirmed as being payable.

The expenses incurred by the Council in preparation of the improvement notice for Studio 3, 1 Winifreds Drive, Donnington, Telford are determined as not being payable.

The Law

1. The law relating to the service and content of Improvement Notices as they relate to a situation where there is a category 2 hazard is set out in Sections 12-13 Housing Act 2004 and appear below:

Section 12 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.

2. Section 13 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.
3. Section 14 of the Act allows for a suspension of an improvement notice until a time, or the occurrence of an event, specified in the notice.
 4. Section 262(7) of the Act defines an owner in relation to the premises as a person... who is for the time being entitled to dispose of the fee simple (the freehold) of the premises whether in possession or in reversion.

Application for Flat 1, 1 Winifreds Drive, Donnington, Telford TF2 8BB

5. The Applicant appealed, under Schedule 1, Paragraph 10 of the Housing Act 2004 (“the Act”) against an improvement notice relating to the property that comprises the residential accommodation at Flat 1, 1 Winifreds Drive, Donnington, Telford, TF2 8BB (“the Property”). The notice was served by Telford and Wrekin Council, the local housing authority (“the Authority/Respondent”). It is dated 22 January 2020 and is made under section 12 of the Act, requiring certain works to be carried out to the Property to remedy hazards referred to in the Notice. The appeal lodged on behalf of the Appellant is dated 12 February 2020, which is a date before the notice was to have taken effect.
6. The works were to be started no later than 19 February 2020 and completed no later than 1 May 2020.
7. The improvement notice is one of the courses of action that the Authority may take in order to seek to remedy the hazards identified and the Authority has given reasons why this is the course of action chosen.
8. The Applicant also appealed under Schedule 3, Paragraph 11 of the Act against the recovery of expenses incurred by the Council in preparation of the Improvement Notice, under Section 49 of the Act.
9. 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.

10. The provisions of Paragraph 11 of Schedule 3 also provide for the person on whom a demand for the recovery of expenses has been served to have the right of appeal to a Residential Property Tribunal within 21 days of the notice of service.
11. Directions as to the future conduct of the appeal were given by the Tribunal on 11 March 2020. Due to the Covid-19 Pandemic, the matter was then listed for the consideration of the Tribunal on 6 October 2020.
12. On 1 September 2020 the Tribunal notified the parties that the Tribunal could not currently carry out inspections and that additional photographs by the parties could be submitted.

The Improvement Notice.

13. The Authority were satisfied that within the property there existed two category 2 hazards within the meaning of the Act, relating to the Property.
These were:
 - Damp and mould growth
 - Fire.
14. The Improvement Notice is at pages B32 to B39 of the Respondent's bundle.

The Property

15. It is understood that the Property was formerly an Old People's Home and was converted into flats and bedsits with works taking place during 2006 and 2007.
16. A plan was provided (JT1 attached to the Written Statement by Mr. Tallon on 9 September 2020). Subject to amendments concerning the bricking up of the external door shown in the living room of the flat, the removal of the rear external fire escape staircase and the provision of alternative external door in the right hand wall of the living room, this was agreed as being correct by both parties.
17. Flat 1 is a first floor dwelling with Entrance, Hall, Double Bedroom, Kitchen Area leading to Living Room with Shower room off. The Living Room has been extended at some time and this is referred to as the Living Room protrusion.
18. The flat has the benefit of gas central heating and double glazed windows with the exception of an oriel window which is single glazed.

Submissions

19. Both parties made submissions which were copied to the Tribunal and to the other party.
20. At the Hearing both parties made reference to these submissions and put forward their case.
21. The Tribunal noted the following:
22. It was apparent that the management of the Property had transferred from the letting agent on 23 November 2019 to the Applicant.
23. Prior to this The Council had been in correspondence with the letting agent with regard to hazards at the property and remedial works required to reduce the hazards (letter dated 5 August 2019 – JT8 attached to Mr Tallon’s Witness Statement dated 9 September 2020).
24. When the conversion took place, the layout of the flat was altered such that a door from the left hand side of the living room to the balcony and rear external fire escape staircase was bricked up and an alternative door in the right hand wall was provided instead of a window.
25. The UPVC door to the balcony in the right hand wall of the living room was in poor repair with a middle hinge missing.
26. There was no heating in the shower room and the mechanical extractor/fan had an over run of 90 seconds.
27. From the photos there was evidence of condensation and mould growth but both parties agreed that water penetration to the flat had been cured.
28. Schedule 2 of the notice paragraph 2 referred to defects in the lighting system and it was the Council’s case that they had no evidence that the electrical wiring in the flat was up to current standards.
29. The Council had not been able to test the automatic fire alarm system in the building.
30. The Council were questioned as to their calculations using the Housing Health and Safety Rating Scoring System (in the Respondent’s bundle at B7 and B8).

Decision

31. 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. As the matter is a rehearing the Tribunal has the power to confirm, quash, or vary the notice (Schedule 1, paragraph 15 of the Act).

32. The Tribunal is satisfied that the Appellant is a proper recipient of the notice.

33. The Tribunal confirms the Category 2 hazard of Damp and mould growth.

34. However, The Tribunal confirms and varies the remedial action to be:

Sterilise all the mould growth with a suitable approved fungicide and redecorate where necessary.

Provide a wet radiator in the bathroom connected to the existing gas central heating system in the flat.

Install an adequate and suitable mechanical extract fan in the bathroom in accordance with manufacturer's instructions, ducted to the external air. Adapt and extend existing electrical installation in suitable cable and connect to fan. Test and leave in proper working order (the wiring shall be carried out by an approved contactor registered under the competent person's scheme).

NOTE: The fan and motor should be capable of extracting air at a minimum rate of 21 m³/hour or 3 air changes per hour, whichever is the greater. The fan should be operated by the light switch and have automatic fan failure changeover and a light to indicate failure. The fan should over-run for a minimum of 20 minutes. Any ducting and fan should be sited and constructed so as to keep noise to a minimum.

Carry out works to ensure that the thermal transmittance coefficient of the external walls to the living room protrusion complies with current building regulations. Properly line the internal surface of the external walls to the living room protrusion and the reveals to any window and external door opening, using plasterboard and rigid gas-filled polyurethane board (or any other approved product). Such plasterboard to be of at least 9mm thickness, and such polyurethane board to be at least 20mm thickness. The plasterboard to be fixed to timber and noggins, and the polyurethane board to fill the spaces between the battens and noggins. The timber grounds and battens and noggins to be vacuum pressure impregnated with preservative. The battens to be at least 50mm wide by 20mm thick and to be at 400mm centres and set on a ground of appropriate size, the noggins to be positioned as necessary to provide support to all edges of the laminated insulated board. The ground and battens and the noggins to be fixed to the walls by means of rust resistant nails and to be separated from the surface of the walls by strips of 1,000 gauge polythene sheeting or of bitumen felt as protection from any dampness in the walls. The polyurethane board to be carefully fitted to fill closely all of the spaces between the battens and noggins and grounds to the whole of the area to be dry-lined.

The whole of the lined area to be skimmed with a coat of at least 5mm thick good quality plaster, floated off to a smooth and even finish and to be properly made good at junction with internal walls and ceilings and window and door frames.

Take down the defective hung external door in the living room protrusion and set aside re-usable ironmongery. Either supply new door or properly adjust and rehang existing door and provide supporting bar to the middle hinge, refix previously set aside ironmongery, renewing where necessary, adjust and oil. Leave the whole sound and in property working order upon completion.

35. The Tribunal confirms the Category 2 hazard of Fire.
36. However, The Tribunal confirms and varies the remedial action to be:
37. Ensure that the existing original LI smoke detecting alarm system is fully operational and functions as designed as marked in red circle on JT1 (attached to the Witness Statement of Mr Tallon dated 9 September 2020).
If that is not functional then provide an independent mains connected, with battery backup, smoke detector in the lobby area of Flat 1 close to the fire door to the kitchen.

Undertake an electrical installation condition report of the installations similar to the model in BS7671 and submit a copy to the supervising officer James Tallon/ The Council As required by BS7671 the certificate must be made out and signed by the person or persons who carried out the design, construction, inspection and testing work registered under the competent person scheme.
Carry out all code 1 and 2 works identified in the report and provide a completion certificate to the Council.
38. Works to be started within 4 weeks of this decision and to be completed 8 weeks after that date.
39. At A4 of the Respondent's bundle is the breakdown of fees incurred by the Council in preparation of the Improvement Notice, under Section 49 of the Act. The recovery of such fees is under Section 50 of the Act.
40. The Tribunal finds the demand was correctly served and determines that the fees totalling £278.62 are reasonable and payable by the Applicant.

Application for Studio 3, 1 Winifreds Drive, Donnington, Telford TF2 8BB

41. The Applicant appealed, under Schedule 1, Paragraph 10 of the Housing Act 2004 ("the Act") against an improvement notice relating to the property that comprises the residential accommodation at Studio 3 , 1 Winifreds Drive, Donning, Telford, TF2 8BB ("the Property"). The notice was served by Telford and Wrekin Council, the local housing authority ("the Authority/Respondent"). It is dated 13 January 2020 and is made under section 12 of the Act, requiring certain works to be carried out to the Property to remedy hazards referred to in the Notice.

The Appeal lodged on behalf of the Appellant is dated 12 February 2020, although the Tribunal had received notice of the appeal on 4 February. The final date for the appeal was the 3rd February 2020 and as such the applicant was one day late for any appeal. The Tribunal allowed the appeal on 24 April 2020.

42. The works were to be started no later than 10 February 2020 and completed no later than 1 April 2020.
43. The improvement notice is one of the courses of action that the Authority may take in order to seek to remedy the hazards identified and the Authority has given reasons why this is the course of action chosen.
44. However, the Council had also issued a Hazard Awareness Notice on 6 January 2020 which was attached to the application (and not included in either the Applicant's or the Respondent's bundles). This was made under Section 29 of the Act, in respect of the Category 2 hazard concerning Crowding and space.
45. The Applicant also appealed under Schedule 3, Paragraph 11 of the Act against the recovery of expenses incurred by the Council in preparation of the Improvement Notice, under Section 49 of the Act.
46. 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.
47. The provisions of Paragraph 11 of Schedule 3 also provide for the person on whom a demand for the recovery of expenses has been served to have the right of appeal to a Residential Property Tribunal within 21 days of the notice of service.
48. Directions as to the future conduct of the appeal were given by the Tribunal on 24 April 2020. Due to the Covid-19 Pandemic, the matter was then listed for the consideration of the Tribunal on 6 October 2020.
49. On 1 September 2020 the Tribunal notified the parties that the Tribunal could not currently carry out inspections and that additional photographs by the parties could be submitted.

The Improvement Notice.

50. The Authority were satisfied that within the property there existed three category 2 hazards within the meaning of the Act, relating to the Property.
These were
 - Crowding and space
 - Damp and mould growth

- Fire.
- 51. The Improvement Notice is at pages C16 to C22 of the Respondent's bundle (relating to this Property).
- 52. It is understood that the Property was formerly an Old People's Home and was converted into flats and bedsits with works taking place during 2006 and 2007.
- 53. A plan was provided (JT1 attached to the Written Statement by Mr. Tallon on 9 September 2020) and this was agreed as being correct by both parties.
- 54. Studio 3 is a ground floor dwelling with its own external access. The flat comprises Shower Room, Bedsitting room leading to Kitchen Area.
- 55. The flat is currently heated by one oil-filled free-standing electric radiator. The property is assumed to have double glazed windows.

Submissions

- 56. Both parties made submissions which were copied to the Tribunal and to the other party.
- 57. At the Hearing both parties made reference to these submissions and put forward their case.
- 58. The Tribunal noted the following:
- 59. The property was first inspected on 10 December 2019.
- 60. The property was occupied by two people whereas the Council stated it was only suitable for occupancy by one person.
- 61. The heating was by one free-standing electric radiator, but the tenants had removed a previously fixed electric heater.
- 62. There was no heating in the shower room and the mechanical extractor/fan had an over run of two minutes.
- 63. It was not possible to use the cooker hood due to the tenant's placement of white goods.
- 64. The only evidence of damp/mould was at the rear of the WC on the outside wall. The tenant(s) had been there for two years and there seemed little evidence of condensation and mould elsewhere in the bedsit.
- 65. There had been holes in the plasterboard on the wall behind the bed.
- 66. The Council had not been able to test the automatic fire alarm system in the building.

67. The Council were questioned as to their calculations using the Housing Health and Safety Rating Scoring System (in the Respondent's bundle at C12, C13 and C45).

Decision

68. 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. As the matter is a rehearing the Tribunal has the power to confirm, quash, or vary notice (Schedule 1, paragraph 15 of the Act).

69. The Tribunal is satisfied that the Appellant is a proper recipient of the notice.

70. The Tribunal notes the serving of a Hazard Awareness Notice on 6 January 2020. This was in identical wording to the Category 2 Hazard, in respect of Crowding and space in the Improvement Notice dated 13 January 2020. This notice has not been rescinded and the Tribunal determines that insufficient time was given to the Applicant to address the issue before the serving of the Improvement Notice, seven days later.

71. The Tribunal, therefore, deletes the Category 2 Hazard Overcrowding and Space.

72. The Tribunal confirms the Category 2 hazard of Damp and mould growth but finds inconclusive proof of damp and mould to the wall behind the bed.

73. Therefore, The Tribunal confirms and varies the remedial action to be:

Sterilise all the mould growth and redecorate where necessary.

Install an adequate and suitable mechanical extract fan in the bathroom in accordance with manufacturer's instructions, ducted to the external air. Adapt and extend existing electrical installation in suitable cable and connect to fan. Test and leave in proper working order (the wiring shall be carried out by an approved contactor registered under the competent person's scheme)

NOTE: The fan and motor should be capable of extracting air at a minimum rate of 21 m³/hour or 3 air changes per hour, whichever is the greater. The fan should be operated by the light switch and have automatic fan failure changeover and a light to indicate failure. The fan should over-run for a minimum of 20 minutes. Any ducting and fan should be sited and constructed so as to keep noise to a minimum.

Undertake a heating assessment of Studio 3 when all works have been completed.

Provide a suitable form of fixed heating based on the assessment and the type of power provided to the chosen system. The fixed heating appliances should be located in both the shower room and the bed sitting room. Any heating should be controllable by the occupants, and safely and properly installed and maintained. It should be appropriate to the design, layout and construction, such that the whole of the dwelling can be adequately and efficiently heated. Any system should be installed in accordance with the current Building Regulation improvement document L1B.

Where the work involves the provision of a new heating system, a way of complying with the responsibilities of a landlord, would be to provide a set of operating instructions aimed at achieving economy in the use of fuel and power in terms that occupants can understand in a durable format that can be kept and referred to over the term of the tenancy. The instructions should be directly related to the particular system installed.

74. The Tribunal confirms the Category 2 hazard of Fire.

75. The Tribunal confirms the remedial action to be:

Provide a stand-alone mains powered smoke detector with integral battery back up in the living/sleeping area of Studio 3.

76. Works to be started within 4 weeks of this decision and to be completed 8 weeks after that date.

77. At C46 of the Respondent's bundle is the breakdown of fees incurred by the Council in preparation of the Improvement Notice, under Section 49 of the Act. The recovery of such fees is under Section 50 of the Act.

78. The Tribunal notes that there was no engagement in connection with this property with the Applicant until December 2019. On 6 January 2020 an Improvement Notice was served which was incorrect and was subsequently re-served on 13 January 2020. However, on 6 January a Hazard Awareness Notice was served in connection with the Category 2 Hazard Crowding and Space. The Council has by its actions, created confusion for the Applicant, which is likely to have led to delays in the resolution of this matter.

79. Therefore, The Tribunal finds that no fees are payable.

Appeal

1. 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.

2. 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.
3. 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.
4. 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.

Anthea J Rawlence
Chair