



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

Case Reference : CHI/00HG/HIN/2020/0012

Property : Flat C, 54 Albert Road, Plymouth PL2 1AE

Applicant : Mrs Marguerite Barker

Representative :

Respondent : Plymouth City Council Housing
Department

Representative : Thomas Sullivan
Senior Community Connections Officer

Type of Application : Appeal against improvement notice

Tribunal Member : Judge Tildesley OBE

Date of Hearing : 6 August 2020 at Havant Justice Centre by
telephone conference.
Decision announced on 6 August 2020

Date of Directions : 3 September 2020

DECISION

Background

1. The Applicant is appealing against improvement notice issued on 29 May 2020 by Plymouth City Council. The improvement notice required the Applicant to carry out remedial works in respect of three category 1 hazards by 19 June 2020.
2. The Applicant contacted the Tribunal on 17 June 2020 enquiring about the procedure for Appeal. On 18 June 2020 the Tribunal informed her that an application should be made by email and the date of service would be the date the application is received. The Tribunal received the Application on 29 June 2020 The Applicant stated that she had not seen the email of the 18 June 2020 and had sent the paperwork by post.
3. The Applicant stated that she received the improvement notice by email on 29 May 2020, giving her four weeks in which to complete the works. The Applicant tried to do this but had difficulties gaining access to the property because the occupier was ill with Coronavirus. The Applicant also complained about the charge of £148.30 made by the City Council for the issue of an improvement notice.
4. The Tribunal identified the following issues to be determined:
 - Whether the Applicant had good reason for submitting a late Appeal. It should have been received within 21 days (i.e by 19 June 2020).
 - The Applicant did not appear to be challenging the fact that there were category 1 hazards at the property, the appropriateness of an improvement notice to remedy the hazards, and the nature of the remedial works required. The Applicant's sole challenge appeared to be the time given to carry out the remedial works.
 - The Applicant also questioned why she had to pay the Council's costs for issuing an improvement notice. The Tribunal notes that the Applicant is not entitled to challenge those costs unless she is successful with the substantive Appeal against the improvement notice.
5. On 14 July 2020 the Tribunal formed the view that having regard to the overriding objective the issues in this Appeal could be dealt with on the fast track without the need for the parties to provide detailed statements of case. The Tribunal directed that the Appeal would be heard on 6 August 2020 by means of telephone conference. The Application and attachments would stand as the

Applicant's case. The Respondent was directed to supply a position statement dealing with the three issues by 30 July 2020.

6. The Applicant in person attended the conference call on 6 August 2020. Mr Sullivan appeared for the City Council.

Facts Found

Whether the Applicant had good reason for submitting a late Appeal?

7. The Applicant provided a Certificate of Posting dated 18 June 2020 which gave Havant Justice Centre as the destination address and stated that the delivery aim was "next working day" which would have been the 19 June 2020, the last date for receipt of the Appeal within the time limit
8. The Tribunal finds that the Applicant took steps to ensure that the Tribunal received the Appeal within the period of 28 days but was impeded by the unreliability of the postal service.
9. **The Tribunal is satisfied that the Applicant had good reason for the late delivery of the Appeal. The Tribunal, therefore, accepts the Appeal.**

Is an Improvement Notice appropriate?

10. The Tribunal finds that the property suffered from three category 1 hazards: "Falling between Levels" (HHSRS 1,487); "Damp and Mould" (HHSRS 2,445) and "Excess Cold" (HHSRS 1,023).
11. The Tribunal asked the Applicant to identify whether she agreed or disagreed with the deficiencies identified for each hazard. The Applicant made no substantive challenge to the deficiencies identified for "Falling between Levels" and "Damp and Mould". The Applicant suggested that the tenant's lifestyle had contributed to the damp and mould.
12. The Applicant said that she had installed a gas central heating system including a boiler in the property and had organised for insulation of loft. The Applicant, however, admitted that these works were carried out in 2002/2003, and were unlikely to meet modern standards.
13. Mr Seymour supplied the heat loss calculations for the various radiators in the rooms: single radiator in top front bedroom: heat loss 710 watts; single radiator in top rear bedroom: heat loss 774 watts; single radiator in lounge : heat loss 3,679 watts.

14. The Applicant argued that an improvement notice was not necessary because she said the works would have been done if she had access to the property. The Applicant said that it was unsafe to do the works because at the time the tenant was seriously ill with Coronavirus. The tenant was admitted to hospital and is now in a nursing home. The Applicant stated that the property would require a deep clean before work could commence. Given those circumstances the Applicant argued that it was more appropriate to suspend the improvement notice.
15. Under section 5 of the Housing Act 2004 the City Council is obliged to take enforcement action where a category 1 hazard exists in a property. The enforcement action includes hazard awareness notice, improvement, notice, prohibition order, and demolition order.
16. The Tribunal considers that a hazard awareness notice is inappropriate where there are multiple category 1 hazards and there has been no indication that the Applicant would work with the City Council to put matters right. Likewise a prohibition order and a demolition order are not applicable when it is possible to remedy the defect. **The Tribunal decides that an improvement notice is appropriate.**

Whether the Remedial Works are Necessary and the Timings for Completion of those Works?

17. The Applicant did not dispute that the works were necessary, and did not suggest alternative ways of remedying the deficiencies in the property.
18. The Applicant was concerned that some of the works were the responsibility of the freeholder and that she would not have sufficient time to complete the works as required by the Notice.
19. Mr Sullivan explained that the Schedule of Works clearly identified those works which fell within the responsibility of the freeholder. Mr Sullivan said that an improvement notice had been issued against the freeholder. Mr Sullivan assured the Applicant that she would not be expected to undertake those works required of the freeholder.
20. Mr Sullivan indicated that the improvement notice as it presently stands only required the Applicant to carry out the works relating to the “Excess Cold” category 1 hazard prior to re-occupation of a new tenant with the exception of the replacement of the broken window latch in the lounge when a period of three months was given from 26 June 2020. This period of three months also applied to the works to remedy the deficiencies for the Category 1 hazards of “Falling between Levels” and “Damp and Mould”.

21. Mr Sullivan stated that the City Council would be prepared to change the start time for the remedial works for which a three month limit had been imposed for completion from 26 June 2020 to 14 September 2020. Mr Sullivan also stated that if the tenant did not return to the property, the City Council would be willing to alter the time limit for all works to “prior to re-occupation by a new tenant”. Mr Sullivan repeated the City Council’s offer to work with the Applicant to find a resolution in respect of the remedial works required to the property. In the Tribunal’s view Mr Sullivan’s concessions dealt with the Applicant’s grounds for appeal.
22. The Tribunal had adopted the fast track procedure in the hope that an order by consent could be made disposing of the Appeal. It was not clear to the Tribunal whether the Applicant was consenting to the proposed Order. In those circumstances the Tribunal decided to issue a provisional decision giving the parties until 20 August 2020 to indicate whether they agree to a binding decision in the same terms as the provisional decision. The parties have now agreed to make the provisional decision binding.

Decision

23. **The Tribunal decides to confirm the making of the improvement notice dated 29 May 2020 in respect of the property but varies the period within which the remedial action is to be completed for the Category 1 hazards of Falling between levels and Damp and Mould, and replacing the broken window hatch from three months starting 26 June 2020 to three months starting from 14 September 2020. The Tribunal understands that the City Council will insert a time limit for all hazards of “ Prior to re-occupation of a new tenant” if the existing tenant does not return to the property. The Tribunal further confirms that the Applicant is liable to pay the reasonable costs of the City Council for issuing an improvement notice in the sum of £148.30.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands 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. The application must be sent by email to rpsouthern@justice.gov.uk.
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.
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