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

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| **Case Reference** | **:** | **MAN/00BR/HIN/2021/0002** |
| **Property** | **:** | **57, Weaste Road, Salford M5 5HL** |
| **Applicant** | **:** | **Humble Roots Limited** |
| **Respondent** | **:** | **Salford City Council** |
| **Type of Application** | **:** | **Appeal against an improvement notice – Schedule 1, Housing Act 2004** |
| **Tribunal Members** | **:** | **Tribunal Judge C Wood**<br>**Tribunal Member Mr. J.Faulkner** |
| **Date of Decision** | **:** | **27 July 2021** |

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**DECISION**

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## Order

1. In accordance with paragraph 15(3) of Schedule 1 to the Housing Act 2004, the Tribunal orders that the improvement notice dated 25 November 2020, ("the Improvement Notice"), is confirmed as issued.

## Background

2. By an application dated 15 December 2020, ("the Appeal"), the Applicant appealed against the Improvement Notice.

3. Directions were issued in February 2021 pursuant to which both parties submitted written representations and a hearing of the Appeal was scheduled to take place on Wednesday 30 June 2021 by way of remote video hearing.

4. By email sent on 29 June 2021 at 21:26, the Applicant's representative, Mr.Ashley McMullin, notified the Tribunal that due to "an emergency problem come up tomorrow" he would be unable to attend the "tribunal call" on the following day. Mr. McMullin was contacted on the day of the hearing and confirmed (again by email sent at 09:40) that he was "happy for the hearing to go ahead without my attendance". In the email, he briefly re-stated the Applicant's grounds of appeal against the Improvement Notice.

5. In the circumstances, the Tribunal considered that it was appropriate to proceed with the hearing which was attended by the following on behalf of the Respondent:

   Mr.Nicholas Flanagan – Counsel

   Mr. Craig Condron – Housing Standards Officer

   Ms Karina Daniels – Regulatory Services Officer

## The Law

6. The Housing Act 2004, ("the Act"), introduced a new system, the Housing Health and Safety Rating System (HHSRS), for assessing the condition of residential premises, which can be used in the enforcement of housing standards. The system entails identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.

7. Hazards are categorised as Category 1 and Category 2 hazards.

8. Section 7(2) of the Act sets out five types of enforcement action which a local authority may take in respect of a category 2 hazard. If two or more courses of action are available, the authority must take the course which they consider to be the most appropriate. One of these is an improvement notice.

9. An improvement notice 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: section 12(2).

10. The person on whom an improvement notice is served may appeal to the Tribunal against an improvement notice (Schedule 1, para.10(1) of the Act).

11. Paragraph 15(2) of Schedule 1 provides that the appeal is by way of a re-hearing, (para. 15(2)(a)), but may be determined having regard to matters of which the authority were unaware, (para. 15(2)(b)).

12. The Tribunal may confirm, quash or vary the improvement notice (para. 15(3)).

**Evidence**

13. The Applicant's grounds of appeal as set out in the Application and subsequent written submissions are summarised as follows:

    13.1 the Respondent had acted pre-emptively in issuing the Improvement Notice when they could have continued to work in consultation with the Applicant to ensure that the requested works were satisfactorily undertaken;

    13.2 the Respondent was aware that contractors had been instructed to undertake works at the Property following their 1st inspection. The Applicant had relied on those contractors to do those works properly/satisfactorily. Covid-19 restrictions had made the undertaking of the works more difficult and, in the tenants' interests, the Applicant had tried to minimise the number of visits its representatives made to the Property;

    13.3 at no time had the Applicant refused to carry out the works but had sought discussion with, and further information from the Respondent about the works;

    13.4 the Respondent's approach in taking enforcement action, rather than continuing to work with the Applicant, was considered by the Applicant to be a "waste of resources and money".

14. The Respondent's position, as set out in oral submissions by Mr.Flanagan at the hearing, is summarised as follows:

    14.1 having regard to the Applicant's submissions (which raise no issues regarding procedural irregularities, the lawfulness of the Improvement Notice or the defects/deficiencies identified in and/or the remedial works required by the Improvement Notice), the Respondent considered that the Appeal was whether the issue of the Improvement Notice was "reasonable";

    14.2 the relevant chronology is as follows:

        (1) July 2020: the Property is acquired by the Applicant and an application made for an HMO licence;

(2) 6 October 2020: Respondent's 1st inspection;

(3) 8 October 2020: email from the Respondent to the Applicant listing 7 defects including the following two issues: (i) there were no fire doors, there were gaps of more than 4mms around 6 doors and a lack of intumescent strips/cold smoke seals on 1 door; and (ii) damp/mould in rear 1/F bedroom. These two defects later comprised the defects identified on the Improvement Notice. Remediation works were required to be completed within 28 days. The email also noted that the Respondent had been unable to inspect the 2/F bedroom (room 5) as the door was locked and requesting that it is unlocked on subsequent inspection;

(4) 18 November 2020: Respondent's 2nd inspection at which it was identified that issues regarding the gaps round the doors/replacement of intumescent strips still outstanding.

(5) 25 November 2020: Improvement Notice issued with date for completion of works of 27 January 2021;

14.3 the Respondent considers that the Appeal contains an implicit submission by the Applicant that they should have been afforded more time to carry out the works. The Respondent rejects the Applicant's suggestion that Covid-19 restrictions made carrying out the works more difficult. At the relevant time, (October/November 2020), there was no national lockdown and the guidance permitted landlords and their contractors to access properties for the purpose of inspection/effecting repairs. The Respondent considers that the time allowed for the completion of the works following the inspection on 6 October 2020 was adequate/reasonable;

14.4 following the 1st inspection, the Applicant had confirmed to the Respondent that their contractors had been instructed to carry out the works;

14.5 at a further inspection carried out by the Respondent on 8 April 2021 it was identified that the defects to the doors remained unremedied. The Respondent understands that the tenants would be moving out on 17 July 2021 and the Applicant appeared to be suggesting to the Respondent that they were awaiting this before undertaking the works.

15. In response to questions to Mr. Condron from the Tribunal, he confirmed as follows:

15.1 of the 7 items requiring remediation set out in the email dated 8 October 2020, items 1,4,5 and 7 had been completed by the Applicant prior to the 2nd inspection. In his view, the Applicant had done the "bare minimum" and had not resolved the most important issues ( the remedial works to the internal doors at the Property) which impacted on fire safety at the Property;

15.2 the Improvement Notice did not require the doors to be replaced with fire doors but for the gaps around the doors to be reduced, and the intumescent strips/cold smoke seals on 1 door to be fitted;

15.3 there was a mains wire interlinked alarm system;

15.4 an HHSRS assessment could not be carried out at the 1st inspection because Mr.Condron did not have access to all of the bedrooms at the Property. However at that 1st inspection, he was able to identify defects that would be relevant on such an assessment;

15.5 following the HHSRS assessment, the Property was given a "G" rating. In his view, the harm outcomes (as set out in the HHSRS assessment) were severe and that enforcement action (in the absence of voluntary remediation by the Applicant) was reasonable. There was no policy whereby a rating of below a "C", for example, should not give rise to enforcement action;

15.6 he considered that he had gone through an informal process of consultation with the Applicant following the 1st inspection but the lack of progress in completing the works made him consider that nothing further would be achieved by undertaking a formal consultation following the 2nd inspection.

16. Mr.Flanagan confirmed that, where a Category 2 hazard exists, enforcement action is a lawful option open to the Respondent, including the issue of an improvement notice.

**Reasons**

17. The Tribunal noted that there is no reference in the Appeal to either of the specific grounds of appeal set out in paragraphs 11 and 12 of Schedule 1 to the Act. Accordingly, the Tribunal considered the Appeal to be an appeal under the general right of appeal set out in paragraph 10 of the Act.

18. The Tribunal also noted that the Applicant's grounds of appeal as summarised in paragraph 13 above did not relate to any procedural irregularity regarding the Improvement Notice, or any challenge to the assessment of the defects identified in the Improvement Notice or to the remedial works required.

19. Having regard to the parties' submissions, the Tribunal concluded as follows:

19.1 it considered that the Respondent had moved quickly from the 2nd inspection to the issue of the Improvement Notice but that it did not consider that the Respondent had acted unreasonably or pre-emptively for the following reasons:

(1) following the 1st inspection/email of 8 October 2020, the Applicant had been given 28 days to remedy the identified defects. None of the required remedial works involved extensive works or the incurring of significant cost. In this respect, the Tribunal noted that the Respondent had not required the

replacement of the internal doors at the Property with new fire doors which, based on its own knowledge and experience, would not have been an unusual or unreasonable requirement in such circumstances but had chosen a cheaper/less extensive option of remedial works to the existing doors/frames. The Tribunal therefore determined that the Applicant had been given a reasonable time to carry out the remedial works;

(2) following the email of 8 October 2020, the Applicant advised the Respondent that contractors had been instructed to carry out the remedial works. Having regard to the nature/extent of the works, the Tribunal concluded that it was reasonable for the Respondent to assume that the works would have been completed by the date of the 2nd inspection, being almost 2 weeks after the required date for their completion;

(3) in their written submissions, the Applicant appeared to suggest that their contractors were in some part responsible for the failure to satisfactorily complete the remedial works to the doors. The Tribunal is clear that the responsibility for the supervision and monitoring of contractors lay solely with the Applicant;

(4) the Tribunal was not persuaded that any Covid-19 restrictions in force at the relevant time impacted the Applicant's ability to have the remedial works done within the required period;

(5) with regard to the Applicant's submission that, following the 2nd inspection, the Respondent should have been willing to provide further information and/or enter into further discussions with them before taking enforcement action, the Tribunal notes that there is evidence in the parties' written submissions of dialogue between the parties following the 1st inspection. In particular, the Tribunal notes that the Respondent responded to the Applicant's enquiries made in or about November 2020 requesting further clarification of the nature/extent of the works required to be undertaken on the doors, and on the appropriateness of the works as proposed by the Applicant's contractors. It is not clear to the Tribunal what further information the Applicant was seeking from the Respondent or what further discussion would have achieved. Further, the nature of the enquiries raised concerns with the Tribunal about the competence of the Applicant's contractors and the willingness of the Applicant to instruct them to undertake works as outlined to them by the Respondent which would meet the required safety specifications.

20. Paragraph 15(2)(b) of Schedule 1 to the Act permits the Tribunal in its determination to have regard to matters of which the Respondent were unaware at the date of the Improvement Notice. Since one of the fundamental grounds of the Applicant's Appeal is the pre-emptive nature of the Respondent's action in issuing the Improvement Notice so soon after the 2nd inspection, the Tribunal consider that it is relevant to their determination

that, as at 8 April 2021 (the date of the Respondent's 3rd inspection), the remedial works remained uncompleted, and that tenants had remained in occupation throughout and were expected to remain until 17 July 2021. The Tribunal considered this to be evidence of the Applicant's unwillingness to undertake the remedial works at all, and not, as suggested, to a need for greater time in which to do so.

21. For these reasons, the Tribunal was satisfied that it was appropriate to confirm the Improvement Notice as issued.

C Wood
Tribunal Judge
27 July 2021