



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

**Case reference** : **LON/00BE/HIN/2017/0019**

**Property** : **Flat 3, 38 Peckham High Street,  
London SE 15 5DP**

**Applicant** : **Fri Wan**

**Representative** : **In person**

**Respondent** : **London Borough of Southwark**

**Representative** : **Mr Wayne Beglan of Counsel**

**Type of application** : **Appeal in respect of an  
Improvement Notice: Sections 11  
and/or 12 and paragraphs 10-12 of  
Schedule 1 to the Housing Act 2004.**

**Tribunal** : **Judge N Hawkes  
Mr C P Gowman MCIEH MCMI BSc  
Mr J Francis QPM**

**Date and venue of  
hearing** : **31<sup>st</sup> January 2018 at 10 Alfred  
Place, London WC1E 7LR**

**Date of Decision** : **19<sup>th</sup> February 2018**

---

**DECISION**

---

## **Decision of the Tribunal**

The Tribunal finds that the notice dated 20<sup>th</sup> October 2017 which forms the subject matter of these proceedings is invalid and of no effect.

## **The hearing**

1. The applicant did not attend the hearing and was not represented, having indicated to the Case Officer that he would be content with a paper determination.
2. The respondent was represented by Mr Beglan of Counsel and the Tribunal is grateful to Mr Beglan for his submissions.

## **The Tribunal's determination**

3. These proceedings concern a notice headed "Housing Act 2004 Section 12 Improvement Notice" which is dated 20<sup>th</sup> October 2017 ("the Notice") and which is addressed to the applicant.

4. The Notice provides (emphasis added):

*"1. You are owner of the premises known as: Flat 3, 38 Peckham High Street, London SE15 5DP.*

*2. In the opinion of the London Borough of Southwark, Category 2 hazards as set out in Schedule 1 to this notice exist within Flat 3, 38 Peckham High Street, London SE15 5DP. The Council is required to take action under section 5 of the Housing Act 2004. No Management Order is in force under Chapter 1 or Chapter 2 of the Housing Act Part 4.*

*3. In the opinion of the Council the works specified in Schedule 2 to this notice will remedy the hazard.*

*4. Under section 12 of the Act the Council require you to carry out the works to remedy the hazards to begin them not later than **10 November 2017** (being less than 28 days from the service of the notice) and to complete them within 2 months of that date."*

5. Subsection 13(3) of the Housing Act 2004 ("the 2004 Act") provides in respect of improvement notices:

*"(3) The notice may not require any remedial action to be started earlier than the 28<sup>th</sup> day after that on which the notice is served."*

6. It is very clear on the face of the Notice the date specified as the date by which the remedial must be started is less than 28 days from the date of

service of the Notice because it is less than 28 days from the date of Notice.

7. The date of service of the Notice was not specified in the evidence submitted by the respondent. However, during the course of the hearing, it became apparent that the Notice was served on 25<sup>th</sup> October 2017; the 28<sup>th</sup> day after service of the Notice was therefore 22<sup>nd</sup> November 2017; and the date specified in the Notice was 12 days too short.
8. In *Isaac Odeniran v Southend on Sea Borough Council [2013] EWHC 3888 (Admin)*, the High Court considered the wording of section 13(3) of the 2004 Act.
9. This was an appeal by way of case stated against a decision of the justices for the county of Essex sitting at Southend whereby they convicted the appellant of an offence relating to his failure to comply with an improvement notice. The notice provided:

*“Under section 12(2) of the Housing Act 2004, the Council requires you to carry out the works specified in the schedule attached to this Notice and to begin them not later than the 3rd day of May 2011 (being not less than 28 days from the date of this Notice) and to complete them by the 31st July 2011.”*
10. Accordingly, the notice purported to require that the remedial work be commenced within 28 days of the date of the notice, not of the date of service of the notice. The notice had been served by post and service was deemed to have taken place on the second working day after posting. It followed from this that the 28 day period would have commenced not on 3 May but on 5 May.
11. Mr Justice Collins stated at [5] to [7] of his judgment (emphasis added):

*“... the question that matters is whether they were correct in finding that the improvement notice was not invalid when it specified a commencement date for remedial action less than 28 days from the date of its service.*

*6 In my view, they were not correct in so finding. **The notice was clearly a defective notice, having regard to the mandatory terms of section 13(3).***

*7 It is to be noted that the council has decided not to appear on this appeal, albeit it did put in a skeleton argument in which it was sought to uphold the submissions made before the justices which persuaded them to conclude as they did. I am not in the least surprised because **it***

***seems to me that there can be no doubt that this was a defective notice and, accordingly, a prosecution for a failure to comply with it was inappropriate.***

12. The respondent drew the Tribunal's attention to the fact that, in *Odeniran*, the council was not represented at the hearing and Mr Justice Collins was not referred to *R. v Soneji [2005] UKHL 49*.
13. In *Soneji*, the House of Lords held that the correct approach to an alleged failure to comply with a provision prescribing the doing of some act before a power was exercised was to ask whether it was a purpose of the legislature that an act done in breach of that provision should be invalid.
14. The respondent noted that *Odeniran* was an appeal by way of case stated and so there would have been a limited opportunity to interrogate the facts. It was submitted that the present case is distinguishable from *Odeniran* on the facts and that a critical point of difference is that, in the present case, the right of appeal has been exercised.
15. The respondent argued that the fact that the right of appeal was not exercised was important to the decision in *Odeniran*. The respondent accepted that this is not apparent from the judgment but noted that the judgment is brief and submitted that the Tribunal is entitled to infer that this was the case.
16. The respondent invited the Tribunal to infer that Mr Justice Collins would have considered the purpose of the legislation and that he would have looked at the legislation as a whole. The respondent submitted that in using the term "mandatory", Mr Justice Collins should not be understood as departing from the approach taken in *Soneji*, and that the factual context was relevant in *Odeniran*.
17. The Tribunal notes that, in finding that the notice was clearly a defective notice having regard to the mandatory terms of section 13(3) of the 2004 Act, Mr Justice Collins referred solely to the wording of the section and did not seek to limit his judgment to the specific facts of the case before him.
18. The Tribunal has some sympathy for the respondent. The respondent has put forward evidence that there is damp and mould within the applicant's property and that the applicant's tenant states that "each time it rains water trickles in". Further, the respondent asserts that there are adequate procedural safeguards built into the right to appeal.
19. However, the Tribunal is not satisfied that it is open to it to make the inferences which the respondent invites it to make and the Tribunal

considers itself to be bound by the decision of the High Court in *Odeniran* that the terms of section 13(3) of the 2004 Act are mandatory. Accordingly, the Tribunal finds that the Notice is invalid and of no effect.

Judge Hawkes

19 February 2018

#### **ANNEX - RIGHTS OF 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.