



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

Case Reference : BIR/17UD/HIN/2020/0015

Property : 43 Compton Street, Chesterfield, Derbyshire, S40
4TA

Applicant : Mrs Farhana Shipon Begum

Representative : Mr F A Khan

Respondent : Chesterfield Borough Council

Type of Application : Appeal against the service of an Improvement Notice

Tribunal Members : Judge T N Jackson
Mr A McMurdo (MSc, MCIEH)

**Date of paper
determination** : 11th February 2021

Date of Decision : 5th March 2021

DECISION

Decision

The Tribunal orders that the Improvement Notice is varied as set out below but is otherwise confirmed as issued:

- a) the variation of remedial action bullet point 1 of paragraph 1 of Schedule 2 relating to the Hazard of Damp and Mould by the deletion of ‘*and/or bulged areas of*’.**

The remedial works are to be started within 28 days of the service of this Decision upon the Applicant and each part of them is to be completed within 8 weeks of the date of service.

The Tribunal orders that the Applicant pay to the Respondent £418 in respect of expenses incurred by the Respondent in connection with the preparation and service of the Improvement Notice.

Reasons for decision

Introduction

1. The Applicant is the sole owner of the Property which was occupied by a tenant. On 22nd September 2020, the Respondent Local Authority served an Improvement Notice on the Applicant. The Notice detailed both Category 1 and 2 Hazards and set out the remedial action to be taken and the time within which it should be taken. The Applicant appealed to the Tribunal by an appeal form dated 7th October 2020 received by the Tribunal on 14th October 2020. The appeal related to the service of the Improvement Notice and the charge of £418 levied by the Council.

Background

2. On 21st of June 2019, the occupying tenant of the Property contacted the Respondent to complain of ongoing problems including severe dampness to ground floor rooms and a leaking roof causing water ingress to upper rooms. The tenant also reported that the Property was difficult to keep warm.
3. On the 10th of July 2019, the Respondent wrote to the landlord/agents making them aware of the alleged problems and gave brief details of the reported defects at the Property and advised them to inspect the Property and carry out any necessary repairs to make it safe.
4. On the 27th of January 2020, the tenant again contacted the Respondent stating that the damp was getting worse, someone had been to carry out a survey but nothing further had been done.
5. By letter dated 7th of February 2020, the Applicant, her managing agents and the tenant were notified of the Respondent’s intention to undertake an inspection of the Property on the 18th of February 2020. The letter advised that during the inspection an assessment would be carried out under Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) (‘HHSRS’) to determine whether any hazards existed at the Property that could affect the health and safety of the tenant. It notified the Applicant that the Council makes a charge of £418 when taking formal enforcement action in order to recover the cost of the process.

6. On 11th of February 2020, the Housing Regulations Officer received a phone call from the Applicant's representative stating that he was having the roof replaced but that contractors had kept letting him down but that works should start soon. He said that the contractors had told him to get the roof done first and then monitor the ground floor damp. He stated that the managing agents had all the paperwork. The Housing Regulations Officer advised that he would contact the managing agents but stressed that the leaking roof was not to be linked with rising dampness.
7. In the week commencing 12th of February 2020, the Housing Regulations Officer had phoned the managing agents who confirmed that they helped to source contractors and quotations but it was the Applicant who paid/has responsibility for all of the repair works.
8. On 14th of February 2020, the Housing Regulations Officer received an email from the managing agents who said that they had difficulty in contacting the roofing contractor who would not answer their calls. The Housing Regulations Officer advised them to look on 'Derbyshire Trusted Traders' for an alternative roofing contractor.
9. The Housing Regulations Officer inspected the Property on the 18th of February 2020 accompanied by the occupying tenant. Neither the Applicant, her representative nor the managing agents attended the inspection. The Housing Regulations Officer took photographs of the deficiencies he found during the inspection and these were enclosed within the Respondent's submission as exhibits **GB 10 - GB 35**.
10. On the same date, the Applicant's representative rang the Housing Regulations Officer to ask about the inspection and findings. He was advised that the officer needed to risk rate the Property but that his initial thoughts were the need to repair/ replace the roof covering and insulate the loft and for a damp survey to be carried out. The Applicant's representative was reminded, as stated in the letter dated 7th February 2020, that the Respondent may consider taking formal action if the risk rating revealed a Category 1 Hazard for Excess Cold, together with the fact that the defects had been reported in July 2019.
11. On the 19th of February 2020, the managing agent contacted the Housing Regulations Officer and advised that the Applicant's representative had contacted him, was upset about the findings of the inspection and concerned about the enforcement charge if a notice was to be served. The managing agent asked if the Applicant could be granted more time on an informal basis to carry out the works.
12. The Housing Regulations Officer responded that if his assessment identified a Category 1 hazard in relation to Excess Cold then he had a duty to serve a notice under Part 1 of the Housing Act 2004 and that the defects were reported in a letter sent to the managing agents on the 10th of July 2019 making them aware of the complaint. The Energy Performance Certificate, although conducted in 2011, also raised the fact that there was no loft insulation. For those reasons he was unable to grant any further informal period for works to be carried out, but that he would ensure that sufficient time would be included within the Notice.
13. The Housing Regulations Officer undertook a risk assessment of the Property based upon the inspection. After reviewing the deficiencies within the Property, in combination with the determined likelihood and harm outcome of the hazard, he determined the hazards of Excess Cold and Damp and Mould to be at greater risk than

average for properties of that type and age and categorized them as Category 1 and Category 2 Hazards respectively.

14. On 27th of February 2020, the tenant advised the Housing Regulations Officer that a re-roof had been organized for the following week and gave him the name of the contractor. The contractor confirmed to the Housing Regulations Officer that he had arranged scaffolding and works to begin the following week at a cost of £5000. On the 2nd of March 2020, the tenant confirmed to the Housing Regulations Officer that scaffolding had been erected at the Property and roofing works were due to start.
15. On 3rd March 2020, the Housing Regulations Officer sent a letter and accompanying schedule of works to the Applicant with a copy to the managing agents and to the tenant to allow the Applicant the opportunity to complete works before any formal enforcement action. The schedule of works addressed the remedial actions required to be taken in order to reduce the hazards of Excess Cold and Damp and Mould to acceptable levels. The schedule in the main, required the roof to be repaired or renewed and insulation to be provided. A damp survey and repair to brickworks was also required to address the hazard of Damp and Mould. The letter gave the Applicant a further 8 weeks to carry out the works which were to be completed or significant progress made by the 28th of April 2020. The letter reminded the Applicant that formal action may be taken if the works were not completed by that date and reminded her of the charge of £418 should formal enforcement action be required.
16. On 24th of March 2020, the tenant advised the Housing Regulations Officer that the Applicant and her representative had advised her that they would need to get further quotes for the damp works. She advised that the roof /gutters and fascias had been renewed but no loft installation installed.
17. On 27th of March 2020, the contractor advised the Housing Regulations Officer that they had finished the roof, had not installed any insulation but would not be carrying out any further works as the Applicant was withholding funds due to financial problems caused by the coronavirus pandemic.
18. On 5th June 2020, the tenant advised the Housing Regulations Officer that no further works had been carried out. Due to the pandemic, the Housing Regulations Officer was not able to inspect properties at that time.
19. On 3rd September 2020, the tenant advised that no further works had been carried out at the Property.
20. After giving written notice, on 15th September 2020, the Housing Regulations Officer reinspected the Property in the presence of the tenant. Neither the Applicant, her representative nor the managing agents attended. He took photographs of the deficiencies he found and these were enclosed with the Respondent's submission at **GB42-GB53**.
21. The Housing Regulations Officer noted that the roof covering and guttering had been completely renewed and the work was of a good standard. No roof insulation had been installed. No other works from the schedule of works had been carried out.
22. The Housing Regulations Officer undertook a further risk assessment of the Property. Whilst the roof works had mitigated some of the risk of harm, the reduced rescores still resulted in a Category 1 and Category 2 Hazard. Having had regard to the Council's

Enforcement Policy, the HHSRS Enforcement Guidance, the previous history and the actions taken by the Applicant, the Council determined it was appropriate to serve an Improvement Notice. The Notice was served on 22nd September 2020.

The Improvement Notice

23. A full copy of the Notice was included within the Respondent's bundle. Schedule 1 identified one Category 1 Hazard in relation to Excess Cold and Schedule 2 identified one Category 2 Hazard in relation to Damp and Mould. The Improvement Notice set out the deficiencies giving rise to the Hazards and the remedial work to be carried out in relation to each Hazard. The Improvement Notice required the Applicant to begin specified remedial works in relation to both the Category 1 and 2 Hazards on 20th October 2020 and to complete them by 1st December 2020.

Inspection

24. Neither party requested an inspection. In the submissions the Respondent describes the Property as a two storey pre -1920 mid terraced house consisting of a ground floor, first floor and basement. It is constructed from solid brick walls and a slate tiled pitched roof. Double glazed casement windows are fitted throughout. The Property benefits from gas central heating which extends to all rooms except for the kitchen which has no form of fixed space heating. The main entrance is accessible via a gated small front yard on the west facing wall on Compton Street. There is a garden to the rear of the Property which is accessed through the rear kitchen or via a shared gennel to the right. The Respondent's submission included photos of both the interior and exterior of the Property.

Hearing

25. Neither party requested a hearing and we therefore dealt with the matter on the basis of the written submissions provided by each party.

The Law

26. The Housing Act 2004 ('the Act') introduced a new system for assessing the condition of residential premises operated by reference to the existence of Category 1 and Category 2 Hazards. Section 2 of the Act defines Category 1 and 2 Hazards and provides for Regulations for calculating the seriousness of such Hazards. The relevant Regulations are the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) which came into force on 6th April 2006.
27. Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review. Section 4 imposes a duty on an authority to inspect properties in certain circumstances. If on such an inspection the authority considers that a Category 1 Hazard exists, section 5 imposes a duty to take the appropriate enforcement action. Where the Hazards are rated as Category 2, section 7 provides that the authority has discretion to take action, including the service of an Improvement Notice. An Improvement Notice requires the party on whom it is served to take remedial action in respect of the Hazard, usually by carrying out specified works. Section 11 of the Act says that remedial action to be taken must as a minimum be such as to ensure that the hazard ceases to be a Category 1 Hazard but may extend beyond such action.

28. Section 13 of the Act sets out the statutory provisions regarding the contents of Improvement Notices whether served under section 11, in relation to Category 1 Hazards, or section 12 in relation to Category 2 Hazards.
29. Section 8 of the Act requires the authority to prepare a Statement of Reasons explaining why they decided to take the relevant action-in this case an Improvement Notice- rather than any of the other kinds of enforcement action available to them.
30. Section 49 of the Act allows the authority to make such reasonable charge as it considers appropriate as a means of recovering administrative and other expenses incurred by it in determining whether to serve an Improvement Notice, identifying any action to be specified in the Notice and serving a Notice.
31. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. Paragraph 15 states that the appeal is to be by way of a rehearing but may be determined having regard to matters of which the authority was unaware. The Tribunal may confirm, quash or vary the Improvement Notice.
32. Section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about exercising their functions under the Act, in particular their functions under Chapter 2 of Part 1 of the Act relating to Improvement Notices. Section 9(2) provides that an authority must have regard to any such guidance.
33. In 2006, the then Office of the Deputy Prime Minister issued guidance under section 9 relating to HHSRS Operating Guidance (reference 05HMDO385/A) and HHSRS Enforcement Guidance (reference 05HMDO385/B), as amended.

Submissions

Applicant

34. The Applicant says that she has rented out the Property since 2001. She has never had any direct dealing with any tenants as this has always been done through the managing agent, to whom tenants raise their concerns and matters are then dealt with through the agent.
35. She says that this is an old property, there will always be some minor repair issues. To address the issue of cold, she had installed a new combi boiler for gas central heating, double glazing UPVC windows and doors and had new carpets fitted when the current tenant moved in. She was not advised of the need to fit loft insulation when she had the new roof fitted and that had she been made aware, she would have done this at the same time.
36. The tenant had not brought her concerns to the Applicant or her agent but had contacted the Council.
37. The Applicant provided copies of the following documents:
 - a) a Certificate of Guarantee for 30 years of Damp Proof Course starting on 27th October 1993;
 - b) an estimate dated 24th March 2015 described as a 'cosmetic refurbishment' detailing a range of repair and maintenance works throughout the Property including the replacement of the kitchen and bathroom;

- c) a Building Regulation Compliance Certificate 321878 dated 14th July 2015 detailing the installation of 7 windows and 2 doors;
- d) an invoice dated 7th March 2020 for the fitting of a new roof.

38. The Applicant says that she paid a deposit to the roof contractor in December 2019 but the work was not completed until July 2020. She has gone to other contractors but no one was willing to carry out the work due to Covid 19 and lockdown. She says that she informed the Council of what was happening but the Council did not want to help.
39. The Applicant accepts that there are some signs of rising damp which she says is caused by the damp cellar. Since the serving of the Improvement Notice, there had been a second lockdown and it had been difficult to get anyone to quote for the works required by the Council. She had contacted all the contractors on Derbyshire County Council's Trusted Traders' list but whilst a few tradespeople had agreed to look at the Property no one had attended. She also says that for the same reason it would be difficult to complete the works in 6 weeks.
40. The Applicant refers to the Respondent having 'treated her like a criminal' as a result of the delay to complete the work.
41. She says that she has maintained and looked after the Property whenever maintenance was needed. She requests the Tribunal to give her longer time to carry out whatever work is needed and to dismiss the Council's Improvement Notice and 'harsh' charge of £418.

Respondent

42. The Respondent's case as to why an Improvement Notice (rather than any other formal Notice or Order) is appropriate is set out in the "Statement of Reasons for decision to take enforcement action" dated 22nd September 2020 which was sent with the Improvement Notice.
43. The Respondent says that improvement works in recent years are not relevant. The disrepair is not minor but is appropriately categorised as Category 1 and 2 Hazards respectively.
44. The managing agent was advised of the potential problems in a letter in July 2019 and they did not contact the Respondent until February 2020. The Respondent submits that they would expect a professional agent to inform its clients of the need to provide loft insulation and the need to manage a property without serious damp conditions.
45. The Respondent states that the tenant says that she had reported problems including damp and mould numerous times to the Applicant and agent but nothing had been done.
46. The Applicant has been given more than enough time to resolve the issues both via informal and formal Council intervention. The Applicant had not shown the Respondent the Damp Proof Guarantee (which suggests the injected Damp Proof Course is 27 years old).
47. The Applicant has known about the problems at the Property before the Covid 19 pandemic began, and in particular, before the national lockdown began in England around 23rd March 2020. The Council advised landlords to follow strict Covid 19

Government Guidance when arranging and carrying out works in their properties. The covering letter with the Improvement Notice provided a link to the latest Government guidance regarding the Coronavirus at the time which indicates, where it is safe to do so, it is in the interest of both landlords and tenants to maintain their property.

48. Covid 19 was referred to in the Statement of Reasons attached to the Improvement Notice and the fact that the occupying tenant lived alone and would be willing to stay in a separate room or be at work while works are carried out. Covid 19 guidance for landlords was updated on 5th November 2020. The timescale for works to be completed by 1st December 2020 was fair.

Deliberations

49. We consider the matter by way of a rehearing. We are looking at matters afresh; but what we are looking at is **the Respondent's decision** rather than making a decision based on what we have seen at the inspection. We should make a decision considering the evidence that was available to the Respondent when it made its decision, although we may have regard to matters of which the Respondent was unaware.
50. We note that in the application the Applicant has not challenged the assessment of the hazards at the Property nor raised any questions regarding the Respondent's compliance with the procedural requirements relating to the issue of an Improvement Notice.

Hazards

51. Having had regard to the written evidence of the Housing Regulations Officer regarding the inspection and subsequent reinspection, the photographic evidence taken at the time, and the two HHSRS risk assessments, we agree that the Category 1 and 2 Hazards, as described in the Improvement Notice, existed and had been appropriately categorised as Category 1 and 2 respectively.
52. Having regard to the nature of the Hazards, the background and the lack of progress in relation to works following an informal approach in relation to Hazards properly categorised as Category 1, (in relation to which the Respondent has a **duty** to act), and Category 2, we do not consider the Respondent's action in serving an Improvement Notice to have been unreasonable. We consider that an Improvement Notice, rather than any other formal Notice or Order or indeed no formal action, was appropriate. We agree with the considerations as to the appropriate option as set out in the Respondent's Statement of Reasons dated 22nd September 2020.
53. We are not satisfied that there is evidence to support the Applicant's claims that the Respondent treated her 'like a criminal' in issuing an Improvement Notice. The Applicant had failed to complete the works despite being made aware of them in July 2019 and receiving an opportunity by informal intervention in March 2020 to carry out a schedule of works identified by the Respondent. Despite asserting that she was not aware that roof insulation was required, the installation of insulation was detailed in the schedule of works sent in March 2020. After noting that roofing works had been done, the Respondent reinspected and carried out a further risk assessment before deciding whether it was necessary to issue an Improvement Notice.
54. We are satisfied that the Respondent complied with statutory requirements in relation to the issue and service of the Improvement Notice.

Remedial action

55. Although the Property has been reroofed, there is limited evidence that the remedial action set out in the Improvement Notice has been completed.
56. With the exception of bullet point 1 of paragraph 1 of Schedule 2 (see below), having regard to the nature of the Hazards, the photographs in the Respondent's bundle and the written evidence of the Housing Regulations Officer, we find the remedial action detailed in Schedules 1 and 2 of the Improvement Notice to be appropriate and proportionate.
57. Schedule 2 identifies penetrative dampness as the deficiency giving rise to the Category 2 Hazard of Damp and Mould and includes the following paragraphs:

Damp staining is evident to front external elevation with spoiled brickwork/perished pointing particular above the front entrance door. (This can contribute to water ingress to internal surfaces).

The rear elevation wall (below the kitchen window) and gable wall near the side gennell, have areas of spoiled brickwork and perished pointing.

We note that 'spoiled' brickwork is not further described.

58. Remedial action bullet point 1 of paragraph 1 of Schedule 2, requires the Applicant to:

Replace/repair any fractured and/or bulged areas of brickwork to the front external wall, the rear external wall and right hand side rear gable wall(s). Ensure any replacement brickworks are rebuilt to match existing. Properly tooth and bond into adjoining brickwork and point up using good mortar. Leave sound and even upon completion'.

59. Paragraph 26 of the Respondent's written evidence refers to 'bulging/defective brickwork particular above the entrance door'). The handwritten inspection report refers to 'bulging brickwork to front and defective pointing/gaps front and rear below window and left -hand side' (page 120) whereas the typed inspection report refers to 'external walls in disrepair with evident gaps/spoiled pointing' but does not refer to bulging brickwork (page 132). We have reviewed the photographic evidence of the front elevation from both the first and second inspections (pages 58 and 60) and (pages 158 and 178) respectively. Whilst the photos show weathered bricks, stained brickwork and perished pointing, the bulging brickwork referred to in paragraph 26 of the written evidence is not readily apparent and the photo descriptions of the front elevation do not refer to 'bulging' brickwork. We are not satisfied on the evidence available that there is bulging brickwork to be repaired or replaced and therefore delete the phrase '*and/or bulged areas of*' from the remedial action.
60. We have reviewed the other photos of the brickwork and the descriptions attached to them. The photos of below the kitchen window show 'perished pointing rear external wall below kitchen window' (page 90); 'gaps in brickwork rear elevation' (page 86) and 'perished pointing left hand side external wall' (page 88); 'rear elevation wall perished pointing/ gaps' (page 180); 'revisit-front elevation wall perished pointing' (page 178); 'revisit-rear elevation wall perished pointing/gaps' (page 179).

61. There is evidence of fractured bricks and gaps in the brickwork (pages 88) but the majority of the ‘spoiled brickwork’ relates to weathering and staining. We agree that fractured (as distinct from ‘spoiled’) brickwork is likely to lead to the risk of harm occurring during the 12 months following the inspection as a result of Damp and Mould and that it is necessary and proportionate to replace or repair such fractured bricks. In relation to the weathered and stained brickwork, there is limited evidence that it is to such a degree that, on a house constructed with solid walls, such weathering is likely to lead to the risk of harm occurring during the following 12 months as a result of Damp and Mould. We note that there is no remedial action relating to the weathered and stained brickwork and we agree that that is appropriate. There is significant evidence of perished pointing and this is covered by a separate remedial action with which we agree.

Date to start and complete the works

62. We do not accept the Applicant’s submission that they have been prevented from carrying out the work due to the lockdown. Whilst we accept that there would have been difficulties obtaining tradespeople during the first lockdown in March 2020, the Council provided the Applicant with a link to the Government Guidance regarding carrying out work during the pandemic. Further the tenant was willing to stay out of the Property or stay in a separate room to allow works to be carried out. There is limited evidence that the Applicant contacted the Respondent after the service of the Improvement Notice to advise them of any concerns regarding obtaining workmen.

63. The remedial works are to be started within 28 days of the service of this Decision on the Applicant and each part of them is to be completed within 8 weeks of the date of service.

Charge by the Council

64. Having regard to our determination that the Respondent acted appropriately in issuing the Improvement Notice, we consider it appropriate to make an order under section 49(7) of the Act requiring the Applicant to make payment of the Respondent’s reasonable charges in relation to the preparation and service of the Improvement Notice. We note that the Respondent has indicated that these costs are in the sum of £418, which we confirm is a reasonable charge.

Costs

65. Neither party has made an application for costs and we therefore make no costs award.

Appeal

66. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson