



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

**Case Reference** : **LON/00BD/HIN/2021/0015**

**HMCTS code** : **P: CVPREMOTE**

**Property** : **5 Marlow Crescent, Twickenham,  
Middlesex, TW1 1DD**

**Applicants** : **(1) Mr Abdurrazak Ali Endisha  
(2) Ms Enam A Ben Yagha**

**Representative** : **Mr Endisha in person**

**Respondent** : **London Borough of Richmond  
upon Thames**

**Representative** : **Mr N Hancock, Environmentl  
Health Practitioner**

**Type of Application** : **Appeal against an Improvement  
Notice**

**Tribunal Members** : **Tribunal Judge I Mohabir  
Mr T Sennett MA FCIEH**

**Date of determination** : **8 April 2022**

**Date of Decision** : **8 April 2022**

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**DECISION**

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### **Covid-19 pandemic: description of hearing**

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

#### ***Introduction***

1. By an application dated 23 July 2021, the Applicants seek to appeal two improvement notices made by the Respondents separately dated 20 July 2021 (“the notices”) in relation to 5 Marlow Crescent, Twickenham, Middlesex, TW1 1DD (“the property”).
2. The Applicants are the joint freehold owners of the property, which was jointly let to a Mr Ismail Jabari, Ms Arezo E Nijrabi and Mr Abdul Jabary in 2012 under an assured shorthold tenancy. The tenancy agreement expired in October 2014 and the tenants hold over as statutory periodic tenants.
3. The property is a semi-detached house with off street parking and a garden comprised of a lounge and kitchen on the ground floor with 3 bedrooms and a bathroom on the first floor together with a loft.
4. Mr Hancock is an Environmental Health Practitioner employed in Regulatory Services Partnership within the Private Sector Housing Team of London Borough of Merton, which is a tri-Borough Service for Merton, Richmond and Wandsworth Councils. He inspected the property on 3 February 2020 and 7 July 2021. The latter inspection resulted in the notices that are the subject matter of this appeal being served on the Applicants.
5. Mr Hancock concluded that the following hazards under Schedule 1, paragraph 2 of the HHSRS Regulations 2005 existed at the property:

<b>Hazard</b>	<b>Category 1 or 2</b>
Damp and Mould	2
Excess Cold	1
Falls between the levels	2
Electrical	2
Un-combusted fuel gas	2
Collision and Entrapment	2
Food Safety	2

6. The specific deficiencies found by Mr Hancock that gave rise to the category 1 and 2 hazards identified by him were:

The wash hand basin silicone has perished and the wash hand basin is loose resulting in water damage to the hallway ceiling below.

The drip beads / flashing to the rear patio door and window is perished and un-even.

The roofing felt has ripped and there are gaps in the roof tiles causing leaks. There is only 100mm of loft insulation.

All first floor windows open more than 100mm and they do not have restrictors installed.

No indication on the distribution board when the electricians were last checked by a competent person. Not all fuses are labelled. There is no RCD or MCB protection.

There are insufficient sockets in the kitchen, which is causing possible overloading of extension leads.

7. Following the 7 July 2021 inspection, Mr Hancock served each of the Applicants with the notices by letter on 20 July 2021.
8. Schedule 2 to the notices set out the remedial action the Applicants were required to commence by 28 August and to completed by 23 September 2021. However, at the hearing on 18 January 2022, the Tribunal heard evidence from the First Applicant's agent, Mr Khatib, that some of the remedial works set out in the notices had been carried.

Mr Hancock had not since re-inspected the property and was unable to confirm or deny this.

9. Therefore, at the conclusion of the hearing, the Tribunal directed both Mr Khatib and Mr Hancock to carry out a joint inspection of the property to determine what works had in fact been carried out by the Applicants and, if so, whether they had been carried out adequately.
10. It was agreed that following the re-inspection, if appropriate, Mr Hancock was directed to serve amended improvement notices with supplementary witness statements filed and served commenting on any amended notices. These would be the subject matter of this appeal.
11. Mr Hancock did in fact serve amended notices on the Applicants dated 3 February 2022 (“the amended notices”). The deficiencies found by him were:

<b>Deficiencies</b>	<b>Hazard</b>	<b>Category 1 or 2</b>
The roofing felt has ripped and there are gaps in the roof tiles causing leaks.	Damp and Mould	2
There is only 100mm of loft insulation.	Excess Cold	1
All first floor windows open more than 100mm and they do not have restrictors installed.	Falls between the levels	2
Non safety glass to the living room door.	Collision and Entrapment	2

The kitchen worktops are misaligned resulting in a gap between the two causing it not to be impervious and readily cleansable. The doors to the wall units and base units are misaligned and the veneer is worn.	Food Safety	2
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12. The remedial works that were required to address these deficiencies set out in Schedule 2 to the amended notices were in the following terms:

**Loft Insulation**

Remove all unwanted items located in the loft.

Provide additional loft insulation to the entire roof space. Ensure loft quilt has a minimum thickness of 250mm – 270mm.

**First Floor Windows**

Provide window restrictors to all the first floor windows. Ensure windows can be locked by the use of a key and cannot be opened more than 100mm. An override device should also be installed in case of emergency, which can only be operated by an adult.

**Safety Glass**

Install new safety glazing or film, which complies with BS6206 Class B to the door and panels located in the living room.

**Kitchen Units**

Overhaul the kitchen cupboards, plinths and panels. Replace all missing parts as necessary. Leave in full working order upon completion. If necessary and for units, which are beyond economical, repair replace as necessary with new. Leave in full working order upon completion.

### **Kitchen Work Tops**

Realign the kitchen work tops, upon completion ensure there is no gap between the two and both surfaces meet and are impervious.

### **Recommendation:**

Due to the age and condition of the kitchen it is strongly recommended that the current kitchen is stripped out and a new kitchen is installed as described below. The oven must be installed in the furthest position away from the entrance/hallway.

Appliances need to be re-installed ergonomically.

Kitchen shall include the following items:

- Hot and cold water supplies
- Sink and drainer
- Cooker (where free standing to be level and restrained from tipping)

All oven doors should be “cool doors” so they should not be hot to the touch.

### **Fridge/Freezer**

- Working surfaces, arranged wherever possible between cooker and sink
- Storage space combining a minimum 1 double base unit with worktop, sink unit and double wall unit
- Work surface to be clean with mastic sealed edges and impervious to liquid
- 2 double sockets on worktop height (non-dedicated)
- At least one other double socket should be at low level for fridges etc.
- An extract fan in accordance with current Building Regulations.

If an electrical cooking appliance is provided an electric socket shall be provided exclusively for that purpose complying with the current edition of the Institute of Electrical Engineers (IEE) Regulations.

Kitchen sink units, water and gas service pipes should be cross-bonded and earthed to current electrical Regulations

## **Roof**

Overhaul the entire hip roof, remove all loose, slipped and broken tiles. Take off and renew any defective battens and repair any underlay as necessary. Replace all missing tiles matched to existing securely fixed with non-ferrous nails. Renew any defective soakers and flashings in code 4 lead, stepped in courses and dressed down over adjacent roof/chimney. Leave roof sound and watertight on completion.

13. The amended notices required the Applicants to commence the remedial works by 15 March and complete them by 10 May 2022.
  
14. The “grounds” on which the Applicants seek to appeal the amended notices in effect amounted to a series of general complaints. These included:
  - the tenants’ continued occupation of the property after October 2014.
  - the fact that they have not been able to obtain possession for approximately 7 years.
  - the bad advice received from the letting agent (Chase Buchanan) in relation to the Applicants continuing legal (repairing) obligations as the landlords after the contractual term of the tenancy had expired and the failure to obtain possession.
  - the tenants had not afforded the Applicants an opportunity to inspect the property for any defects after 2014 and the fact the lockdown during the Covid-19 pandemic had prevented any such works from being carried out.
  - the fact that the Applicants had given the tenants “compensation” in the sum of £2,800 in April and June 2020 to carry out any repairs themselves.
  - that the tenants and Mr Hancock appear to have conspired through this process to frustrate the Applicants further from being able to obtain possession of the property.

### ***Relevant Law***

15. Paragraphs 15(2) and (3) in Schedule 1, Part 3 of the Act provides that any appeal against an improvement notice is to be by way of a re-hearing and the Tribunal may by order confirm, quash or vary the notice.
16. No statutory guidance is given in the Act as to how the Tribunal's discretion under paragraph 15 above is to be exercised. However, it is suggested that each case is fact specific and the Tribunal, on balance, must be satisfied, firstly, that the hazard(s) set out in an improvement notice exist and, secondly, have to be addressed by the appropriate remedial works set out in the notice. In doing so, it is further suggested that an appropriate balance has to be struck between the competing interests of the parties.

### ***Decision***

17. The hearing took place remotely on 18 January 2022 by CVP. The First Applicant, Mr Endisha attended in person on behalf of both Applicants from Cairo in Egypt where apparently he has resided at least since the letting of the property commenced in 2012. Mr Hancock represented the Respondent.
18. In chief, Mr Hancock confirmed that the contents of his first witness statement dated 10 November 2021 about the deficiencies found in the property following his various inspections were correct. He did not resile from this in cross-examination by the First Applicant.
19. In his supplementary witness statement dated 3 February 2020 following the joint inspection of the property with Mr Khatib on 25 January 2022, Mr Hancock confirmed that the following works set out in Schedule 2 in the improvement notices had been carried out in the property:



### **Rear elevation Windows**

Provide a drip bead above the rear elevation patio door and window. Ensure the bead is bedded in using sand and cement and covers the full length of the window and door.

### **Kitchen**

Take up the existing entire linoleum floor covering. Install new flooring covering to match existing if necessary. Ensure upon completion the flooring is impervious, capable of being adequately cleaned, level and flush with existing.

### **Gas Boiler**

A valid gas safety certified has been received.

### **Electrical Certificate**

An electrical safety certificate has been received which was deemed satisfactory, additional sockets have been installed.

### **Kitchen Oven**

Replace the existing oven with similar size and in the same location. Provide an impervious surface as a splash back behind the oven at work top height. Provide all necessary documentation such as a gas safety certificate or electrical installation certificate to ensure the oven is installed in accordance with manufacturers instructions.

20. Schedule 2 in the amended notices set out the remaining remedial works to be carried out (see paragraph 12 above).
21. In cross-examination, the First Applicant accepted that the legal repairing obligation fell on the Applicants as the landlords. He said that he had not been familiar with the “tenancy laws” in this country. By way of mitigation, he said that any remedial works required could not be carried out because of the lockdown imposed as a result of the

Covid-19 pandemic. In any event, the First Applicant said that he had delegated any matter concerning repairs to the property to Mr Khatib. The supplementary witness statement filed by the First Applicant added nothing of relevance by way of evidence other than to repeat his general unhappiness about the situation and not being able to obtain possession of the property.

22. The Tribunal heard evidence from Mr Khatib. He confirmed that various items of work set out in Schedule 2 to the notices had been completed. These included installing a drip outside the patio window, the installation of a new consumer unit and 4 kitchen sockets, the provision of a gas safety certificate, the replacement of the kitchen flooring and the installation of a new oven. This appears to have been corroborated in part by Mr Hancock during the re-inspection on 25 January 2022.
23. The Tribunal was satisfied that the First Applicant could not properly comment on the existing remedial works set out in Schedule 2 to the amended notices because, on his own case, he did not reside in this country and had not physically inspected the property since on or about 2012.
24. The Applicants relied on the evidence of Mr Khatib about the need and scope of the remedial works. The Tribunal was satisfied that, whilst Mr Khatib had many years experience as a Property Manager and a Design Engineer, he was not sufficiently qualified to comment on whether the remaining remedial works amounted to category 1 or 2 hazards under the Act and/or the scope of any such works. His role, as the agent for the Applicants, was simply to ensure any works he was instructed to carry out was done.
25. In any event, it is important to note that the Applicants did not challenge the need to carry out the works specified in Schedule 2 to the amended notices. The “grounds” advanced by the Applicants in

support of the appeal amounted to no more than comment and/or mitigation.

26. The Tribunal was, therefore, satisfied that the only person who was suitably qualified to comment on the need and scope of the remedial works to address the remaining category 1 and 2 hazards in the property was Mr Hancock. The Tribunal found him to be a credible witness and accepted his evidence about the existence of the remaining hazards in the property. It follows, the Tribunal found that the hazards set out in the amended notices dated 3 February 2022 (see paragraph 11 above) still existed in the property. The Tribunal also found that the scope of the medical works set out in Schedule 2 to the notices (see paragraph 12 above) is reasonable save for the replacement of the existing kitchen, which is not identified as a hazard in the property and is no more than a recommendation by Mr Hancock.
27. Accordingly, the appeal is dismissed and the amended improvement notices dates 3 February 2022 are confirmed with the exception of the recommendation of complete kitchen replacement. In addition, the date for completion of the work required by the notices is amended.

***Costs***

28. No application was made by the Mr Hancock on behalf of the Respondent for the fixed or other costs incurred in the issuing of the notices or the amended notices or responding to the appeal. Therefore, the Tribunal did not make any order in relation to this matter.