



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

Case Reference : **CHI/45UB/HIN/2019/0007**

Property : **7, Hamilton Mews, Cokeham Road,
Sompting, Lancing, West Sussex,
BN15 0AL**

Appellant : **Mr T Thorne and Mr M Thorne**

Representative : **Mr T Thorne**

Respondent : **Adur District Council**

Representative : **Ms Flanagan , Legal Executive**

Type of Application : **Schedule 1 para 10 (1) Housing Act
2004 (Appeal against improvement
notice)**

Tribunal Members : **Mrs F J Silverman Dip Fr LL.M
Mr R Wilkey JP FRICS**

Date of hearing : **25 September 2019**

Date of Decision : **01 October 2019**

DECISION

For the reasons given below, the Tribunal confirms the Improvement Notice served on the Applicants by the Respondent.

REASONS

- 1 The Respondent served an Improvement Notice on the Applicants on 21 March 2019 and the Applicants filed an appeal against the Notice on 10 April 2019.
- 2 Directions were issued by the Tribunal on 30 May 2019.
- 3 The Tribunal inspected the property on the morning of the hearing.
- 4 The property comprises a modern mid-terrace first floor flat situated on a residential road in Sompting but close to local shops and accessible by car or public transport to the larger amenities available in the nearby town of Worthing. A ground floor entrance leads up a carpeted stairway to a small landing off which is a small bathroom (shower only, no bath). A doorway on the right hand side of the landing gives access to a small living room whose windows look over the public road. A tiny galley kitchen corridor leads from the living room to the small bedroom at the rear of the property which overlooks an area of grass (not included in the demise) and a car park. The bedroom has a narrow wardrobe cupboard which also houses the water tank. A full length glazed door opens inwards into the bedroom creating a Juliet balcony with a protective guard railing at adult waist height. At the time of inspection the property was vacant, unfurnished and lacked any white goods in the kitchen. A recently installed doorway separated the bedroom from the kitchen area.
- 5 The hearing of this matter took place before a Tribunal sitting at Havant at which the Applicants were represented by Mr T Thorne, and the Respondent by Ms Flanagan, a legal executive. Mr M Thorne did not attend the hearing. A bundle of documents prepared by the Respondent was placed before the Tribunal for its consideration. References below to page numbers refer to pages in the hearing bundle.
- 6 The parties confirmed that the only matter outstanding between them was the issue of a safe means of exit from the bedroom in the case of fire. All other matters identified in the Improvement Notice had been satisfactorily resolved.
- 7 As confirmed on inspection of the property, in the event of a fire the exit route for an occupant of the bedroom to the ground floor and exterior of the property via the staircase would have to be made through both the kitchen area and living room. In the Respondent's view, taking account of the Lacors guidance (p 278 et seq) and Operating Guidance issued by the Office of the Deputy Prime Minister p222 et seq) which required the Respondent to assess the property to reflect usage by vulnerable persons, this was an unsafe method of exit from an inner room (i.e. a room where escape must be accessed through another room) and constituted a Category 1 hazard in respect of which the Respondent was obliged by the Housing Act 2004 to take action.
- 8 The Respondent considered that the only acceptable solutions to this problem were either to create either a by-pass of the kitchen area by making a passageway through the bedroom cupboard or to make a 'jack-and-jill' bathroom either of which would enable an occupant to

gain access to the staircase without passing through the kitchen area (page 113). Alternatively, it was suggested that the Applicants could fit the property with a sprinkler system. Solutions which involved either reversing the floor layout of the flat or creating an exterior fire escape had been ruled out as not proportionate in terms of cost and also as probably needing a third party consent from the freeholder.

- 9 The Respondent had offered the Applicants access to funding to enable works to be carried out (page 81). This had been refused by the Applicants.
- 10 The Applicants' argument contained in their application (pages 11 and 41) was that the layout of the flat had satisfied the Building Regulations when it had been constructed and that the full length door with its Juliet balcony provided an adequate direct exit route from the bedroom in the event of a fire. They also maintained that their preferred exit route via the Juliet balcony satisfied the Lacors Guidance and that the service of the Improvement Notice was therefore inappropriate.
- 11 The Respondent rejected this suggestion saying that it was not a viable option to expect an occupant to use the Juliet balcony as a means of exit because it involved navigating the waist high guard rail and then a drop to ground floor level where there was a concrete step in the potential landing area. Because the landing area did not belong to the property, it could not be guaranteed that the area would be kept free of obstructions. On one occasion when the Respondent had visited the property the potential landing area had been obstructed by a folded up rotary washing line.
- 12 The Respondent maintained that because the bedroom is an inner room paragraph 2.9 of the Building Regulations only allows escape from an inner room via another room if that other room is not a kitchen. In this case the 'other' room is a kitchen. Further, the Lacors guidance states at paragraph 12.1 that where an inner room is a sleeping room, which it is in this case, escape through another room should only be accepted if the inner room is not more than 4.5 m above ground level and has an escape window leading directly to a place of ultimate safety. Additionally, there must be an adequate automatic fire warning system in place. In the present case the Respondent maintains that the Juliet balcony is not an appropriate means of escape. In any event, the Lacors guidance requires the escape door to be fitted with a thumb turn lock (which the door under discussion does not have) and there is only a battery operated smoke alarm in the living room at the property which is unsatisfactory and inadequate in these circumstances.
- 13 The Tribunal accepts that the Respondent is required under the Lacors assessment to consider the property in the light of its suitability for occupation by a vulnerable person (e.g. a child or vulnerable adult) irrespective of the status of the actual occupant(s).
- 14 Mr Barry gave evidence for the Applicants. He had been introduced by Mr T Thorne as an expert witness but the Tribunal told him that although it did not doubt his expertise and would permit his evidence as a witness, it could not accept him as an expert witness

because he had not filed a witness statement, had not made an expert's declaration and had not signed a statement of truth. The Tribunal also reminded him that as an expert his duty was to the Tribunal which overrode any duty to the person instructing him. His letter (pages 49-50) and note on page 51 suggest that his evidence was not impartial.

- 15 The only written evidence from Mr Barry is contained in a letter addressed to Mr Thorne (pages 49-50). He confirmed in oral evidence that the letter had been written prior to any visit by him to the property itself which he only carried out in the presence of the Tribunal on the morning of the hearing. Mr Barry's letter is unsupported by any evidence. He said that he had previously been a fire officer and had taught on courses. No CV had been produced to verify this information and he confirmed that he was not a member of the Expert Witness Institute. He was adamant that the property was both Building Regulation and Lacors compliant, that the means of escape was adequate and that he would 'take this [issue] as far as it can go'.
- 16 The Tribunal found Mr Barry's evidence to be unsatisfactory. He purports to be an experienced expert witness but failed to produce a proper witness statement or any substantiated evidence to support his assertions. He appeared to be viewing the issue solely from the point of view of historic Building Regulations and without regard to the provisions of the Housing Act 2004 under which the disputed notice had been served.
- 17 For the Respondents, Mr Eliot spoke to his witness statement which supported their case as set out above (paragraph 11).
- 18 It was evident to the Tribunal on inspection that the Category 1 fire hazard as described by the Respondent (page 122) was present and that there were limited options to resolving this issue because of the layout of the property.
- 19 The Respondent explained to the Applicants that where, as here, the Respondent had found the existence of a Category 1 hazard they were under a statutory duty to take action and that the fire and other safety provisions were focussed on less able occupants, although provisions protecting from e.g. fire or falls from upper windows, were applicable and of benefit to all occupants.
- 20 Although the Tribunal is sympathetic to the Applicants' views their inspection of the property supports the evidence found by the Respondent that a Category 1 hazard in relation to fire exists at the property. In such a case, as explained to the Applicants, the Respondent is under a statutory duty to take action which they have done by serving an Improvement Notice, the terms of which the Tribunal considers to be reasonable in the circumstances. The Tribunal therefore confirms the Notice.
- 21 The Tribunal offered the parties the opportunity to discuss a way to resolve this problem but ultimately no agreed solution could be found.

- 22 The Law:
Housing Act 2004 Sched 1 *Appeal against improvement notice*

10 (1) The person on whom an improvement notice is served may appeal to a residential property tribunal against the notice.
(2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

14(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

(2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.

(3) A residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

15(1) This paragraph applies to an appeal to a residential property tribunal under paragraph 10.

(2) (a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order confirm, quash or vary the improvement notice.

Judge F J Silverman as Chairman

01 October 2019

Note:

Appeals

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.

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.