



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

Case Reference : **MAN/00BS/HIN/2020/0028/P**

Property : **48, Priory Lane, Reddish, Stockport SK5 6BJ**

Applicants : **Mr. Robert Charles Flynn &
Mrs. Janine Catherine Flynn**

Respondent : **Stockport Metropolitan Borough Council**

Type of Application : **Appeal against an improvement notice –
Schedule 1, Housing Act 2004**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member S.Wanderer**

Date of Decision : **27 July 2021**

DECISION

Order

1. In accordance with paragraph 15(3) of Schedule 1 to the Housing Act 2004, the Tribunal orders that the improvement notice of operative date 9 September 2020, (“the Improvement Notice”), is varied as set out in paragraphs 2 and 3 below, but is otherwise confirmed as issued.
2. Schedule 2 of the Improvement Notice is varied by deletion of the following requirements for remedial action:
 - 2.1 Damp and Mould: paragraph 1:
 - (1) “Ensure a suitable door is fitted to the bathroom to ensure moisture laden air can be contained within the bathroom”;
 - (2) “Take off and set aside skirting boards” and “Provide and fit an insulated plasterboard of a suitable thickness, suitably fix and then plaster and skim to a smooth finish. Refix previously set aside skirting boards with all necessary packing pieces, cover fillets etc”;
 - 2.2 Domestic Hygiene (Pests): paragraph 2:
 - (1) “Ensure the brickwork under the bathroom window is rebuilt and repointed to ensure it does not provide access to pests, and is secure. Remove remains of any existing dormant bees/wasps nests that may be within the eaves.”
 - 2.3 Food Safety: paragraph 3:
 - (1) “Ensure the waste water pipes serving the kitchen are not leaking, and are capable of carrying waste water safely away from the dwelling either into a drainage inlet or other proper means of disposal”;
3. The Improvement Notice is varied by inclusion of the following requirements for remedial work:
 - 3.1 Damp and Mould:
 - (1) Ensure that the concertina door in situ at the bathroom of the Property is properly affixed so as to ensure that it can be fully and securely closed when the bathroom is in use;
 - (2) Ensure that any tumble dryer located in the lean-to extension is properly vented to the exterior of the Property;
 - 3.2 Structural collapse
 - (1) Obtain a report from a suitably qualified chartered surveyor/structural engineer on the structural condition of the lean-to, detailing all (if any) necessary repairs.

4. The Tribunal orders that all of the remedial works in the Improvement Notice as varied by this Order shall be started within 14 days of the date of issue of this Order, and completed within 6 weeks.
5. The Applicants shall instruct a suitably qualified professional to provide the report referred to in paragraph 3.2(i) of this Order within 14 days of the date of issue of this Order and shall send a copy of the report to the Respondent within 7 days of its receipt.

Background

6. By an application dated 12 September 2020, (“the Application”), the Applicants appealed against the Improvement Notice.
7. Directions dated 2 February 2021 were issued pursuant to which both parties submitted written representations.
8. The Tribunal has determined the Application following a consideration of the written representations and supporting documentary evidence provided by the parties, but without holding a hearing. Rule 31 of the Tribunal’s procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).
9. The Directions provided that the Application be dealt with as a paper determination, in the absence of a request for an oral hearing from either of the parties. No request has been received from either of the parties.
10. Further, having reviewed the parties’ submissions, the Tribunal is satisfied that this matter is suitable to be determined without a hearing: the issues to be decided have been identified in the parties’ respective written submissions, which also set out their competing arguments sufficiently to enable conclusions to be reached properly in respect of the issues to be determined, including any incidental issues of fact.
11. Following their consideration of the papers, the Tribunal determined that it was appropriate to undertake an external inspection of the Property.

Inspection

12. An external inspection only of the Property was conducted by Tribunal Member Mr.S.Wanderer, on 15 July 2021 in accordance with Covid-19 restrictions. Neither of the parties attended or were represented at the inspection.
13. The inspection of the Property was made from ground level only.
14. The inspection was of the exterior of the Property generally with particular attention to the following two matters:
 - (1) the brickwork under the bathroom window at the rear of the Property;
 - (2) the condition of the brickwork in the front garden wall.

15. There was no defective brickwork apparent under or above the bathroom window.
16. The front garden wall was in a worse condition than appeared to the Tribunal from the photographs provided within the Respondent's evidence. In particular, it was apparent that, in addition to the absence of certain of the coping stones on the top of the wall, the mortar was missing from certain sections of the wall, making it unstable. The wall fronts onto the public pavement/highway.
17. There were no obvious defects in the lean-to structure.

The Law

18. 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.
19. Hazards are categorised as Category 1 and Category 2 hazards.
20. 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. An improvement notice is an enforcement action open to a local authority.
21. 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).
22. 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).
23. 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)).
24. The Tribunal may confirm, quash or vary the improvement notice (para. 15(3)).

Evidence

25. The Applicant's grounds of appeal as set out in the Application are as follows:
 - (1) whilst acknowledging that there are "issues" with the Property, none of the problems have been notified to the Applicants by the tenant of the Property;
 - (2) because of the rent arrears, the Property has become a "financial burden", and the only solution is to sell it;

- (3) the Respondent has ignored the two issues of the non-payment of rent by the tenant, and the tenant's unwillingness to co-operate with the Applicants in relation to effecting repairs/arranging for contractors to attend at the Property;
 - (4) a section 21 notice has been served on the tenant which will expire on 24 October 2020.
26. The Applicants' written representations consisted of 2 separate written submissions received on or about 10 March 2021, and substantially reflected the grounds of appeal in the Application. They are summarised under the following headings:
- (1) the Applicants' intention to sell/recover possession of the Property as a solution;
 - (2) the arrears of rent and the tenant's ongoing failure to pay rent;
 - (3) the Respondent's failure to assist the Applicants in connection with the rent arrears (including issues arising out of the tenant's receipt of Universal Credit);
 - (4) the Respondent's failure to acknowledge the tenant's responsibility for damage at the Property;
 - (5) the tenant's failure to report defects to the Applicants in a timely way or at all;
 - (6) the tenant's failure to co-operate with the Applicants/their contractors for purposes of inspection of the Property and/or to carry out repairs. The Applicants claim that this was evidenced by the tenant's failure to co-operate with the HSE investigation;
 - (7) the Respondent's failure to acknowledge the impact of previous threatening and anti-social behaviour by the tenant;
 - (8) the Respondent's failure to investigate other issues raised with them by the Applicants, eg removal of the side gate at the Property;
 - (9) the Applicants' concerns at boiler repairs effected by the tenant and the Respondent's involvement;
 - (10) the deterioration in the Applicants' personal financial circumstances;
 - (11) the Respondent's delay in pursuing matters and the confusion caused by the issue of two different reports;
 - (12) the inadequacy of the lean-to as an utility room, as advised to the tenant at the commencement of the tenancy, and the availability of the garage and space under the stairs as more appropriate alternative sites for additional electrical appliances;
 - (13) the impracticality of the Respondent's remedial works to the lean-to as a long-term solution to the identified hazards, particularly in view of its structural defects and its failure to comply with current building regulations;

- (14) the impracticality of fitting a “standard door” to the bathroom as compared to the concertina door already in place;
 - (15) a claim by the Applicants that the Property is overcrowded.
27. Whilst the Applicants acknowledge that there are “some issues at the Property”, the Applicants request that the Improvement Notice is “suspended to allow us time to sell the property and get back on our feet financially”;
28. The Respondent’s reasons for opposing the Applicants’ appeal are set out in its response dated 29 March 2021, and are summarised as follows:
- (1) the Respondent addresses a number of specific procedural issues relevant to an appeal made under paragraphs 11 and 12 of Schedule 1 of the Act;
 - (2) the Respondent then addresses in detail all of the reasons for the appeal as summarised in paragraph 26 above, as follows:
 - (i) sale of the Property/possession proceedings: despite the Applicants having first indicated their intention of selling the Property with vacant possession in or about 2019, no evidence of this or of the initiation of possession proceedings has been provided by the Applicants;
 - (ii) rent arrears: rent arrears are not a matter to be taken into account when undertaking an HHSRS assessment. It is also not within the Respondent’s remit to undertake any investigation of the reasons behind any unwillingness/failure on the part of a tenant to pay rent. Enforcement of the terms of the tenancy agreement and obtaining possession where circumstances permit is a responsibility of the landlord. Nonetheless, the Respondent had offered advice and guidance to the Applicants on a number of occasions on the issue of obtaining possession in such circumstances, and also provided links to relevant websites, including relating to Universal Credit;
 - (iii) deterioration in the condition of the Property due to tenant behaviour/damage: it is the Respondent’s policy not to include deficiencies that have been caused by the occupiers of a property in an HHSRS report. In this case, the Respondent considered that it was reasonable to conclude that the defects noted in the kitchen cupboards were as a result of “wear and tear”. If disputed, the Applicants are entitled to retain a proportionate part of the tenant’s deposit and use the mediation services under the deposit protection scheme to resolve the issue;
 - (iv) Respondent’s failure to investigate matters raised by the Applicants eg missing side gate: such issues are not matters for investigation by the Respondent;
 - (v) the tenant’s failure to co-operate with the Applicants to permit inspections and/or access for contractors: the Respondent claims that repeated offers to assist the Applicants in securing access to the Property for their contractors were not taken up by the

Applicants. Further, the Applicants failed to notify the Respondent of the missed electrician's appointment at the time. This was successfully re-arranged because of the Respondent's subsequent involvement meaning that remedial works to the boiler and to a leak have been carried out;

- (vi) the Applicants' financial circumstances: in an acknowledgment of the Applicants' financial position, the Respondent waived their fee of £315;
- (vii) threatening and anti-social behaviour by the tenant: the Respondent is not aware of any such incidents since their involvement but have made repeated offers of support to the Applicants to minimise contact, and therefore conflict, between the tenant and the Applicants;
- (viii) two reports: the Respondent addresses the reasons for the small differences between the hazards identified in the warning letter on 10 October 2019 and those contained in the Improvement Notice. The Respondent points out that, even though the Applicants have acknowledged the need to do some of the remedial works, nothing has been done by the Applicants and they have not contacted the Respondent to accept their offers of assistance to ensure completion of works;
- (ix) delays by the Respondent: the Respondent acknowledges that there was a delay in re-allocation of the case following the officer's absence on maternity leave after service of the warning letter on 10 October 2019. The Respondent notes that the Applicants did not take the opportunity to effect any repairs during this period. On its reallocation in June 2020, the case was reviewed and further time for completion of the works was granted to the Applicants on an informal basis. The Applicants' continuing failure to initiate any repairs and their failure to communicate with the Respondent led to the decision to issue the Improvement Notice, but, as an acknowledgment of the deterioration in the Applicants' personal financial circumstances, to waive the fee of £315;
- (x) the Applicants' alternative proposal for the lean-to: the Respondent considers that, due to the size of the kitchen, the lean-to is a necessary extension. At their inspection, the Respondent did not notice the structural defects referred to by the Applicants but are surprised that, if known to the Applicants, they have not taken remedial measures;
- (xi) boiler defects: the Respondent considered that, in circumstances where the tenant reported they were unable to contact the Applicants, the steps taken by the tenant were not unreasonable but that it was incumbent on the Applicants to ensure the safety of any repairs undertaken. In particular, the Respondent had highlighted to the Applicants a possible electrical fault as the cause of the boiler malfunction which should have been addressed by the Applicants obtaining the EICR, as required

under the Improvement Notice. This remains to be actioned by the Applicants;

- (xii) delays in reporting of issues by the tenant: the Respondent reminds tenants of the need to report issues to their landlord. The Respondent raises a question as to whether the Applicants' contact details as provided to the tenant are up-to-date. This is the Applicants' responsibility;
 - (xiii) Overcrowding: the Applicants let the Property to a family of 5, and are therefore primarily responsible for any overcrowding. The Respondent's assessment is that the Property is slightly overcrowded and it will be kept under review. It is not a hazard which has been listed on the Improvement Notice.
- (3) The Applicants' request to suspend the Improvement Notice: in the absence of any evidence of the Applicants' initiating possession proceedings and/or selling the Property, and in the absence of any steps taken by the Applicants to undertake any of the remedial works, in circumstances where they acknowledge that there are "some issues" with the Property, it was appropriate for the Respondent to issue the Improvement Notice.

Reasons

29. The Tribunal noted that in the Application the Applicants have not challenged the Respondent's assessment of the hazards at the Property, (save for claims that certain of the identified hazards are the result of damage/neglect by the occupants) or the appropriateness of the Respondent's choice of enforcement action.
30. Further, the Tribunal is satisfied that the Applicant's appeal has been made under the general right of appeal under paragraph 10 of Schedule 1 to the Act.
31. In reaching its decision, the Tribunal has considered the following issues, in particular:
- (1) it appears to the Tribunal that the Applicants have failed to understand the Respondent's remit/powers in the context of an HHSRS assessment, and any subsequent enforcement action. This has been compounded by the Applicants' failure to enforce their rights and obligations as landlord, particularly in respect of rent arrears/possession proceedings;
 - (2) the Tribunal considers that the Applicants were given considerable time and opportunity to take voluntary action to address the defects identified at the Property in the period between the issue of the warning letter in October 2019 and the issue of the Improvement Notice in June 2020;
 - (3) the Tribunal notes that the Applicants have acknowledged that there are "some issues" at the Property, although they have failed to specifically

identify what these are and have taken no action to undertake any repairs;

- (4) whilst the Tribunal accepts the difficulties presented to a landlord where there is a lack of co-operation on the part of a tenant to permit access to contractors, effectively preventing the undertaking of remedial works, in this case it is satisfied that the Applicants have not availed themselves of repeated offers of help from the Respondent to secure access. The Tribunal considers that it is reasonable to conclude, having regard to the contractor's successful visit to inspect the boiler/repair a leak, that this could have enabled access to the Applicants' contractors to effect other remedial works;
 - (5) having regard to the size of the kitchen, the Tribunal accepts the Respondent's submission that the lean-to is a "necessary extension" to the kitchen. Further, the Tribunal do not consider that use of the garage/understairs space for additional electrical appliances are reasonable alternatives when compared to ensuring that the lean-to is a safe and usable space as an utility room;
 - (6) with regard to the deterioration of the Applicants' personal financial circumstances, the Tribunal notes that there is no evidence before it of their financial circumstances or of the initiation of possession proceedings and/or any marketing of the Property for sale by the Applicants, even though the Applicants have stated that selling the Property is the only way for them "to get back on our feet financially". The Tribunal also notes the Respondent's decision to waive their fee of £315.
32. Having regard to the issues set out in paragraph 31, the Tribunal determined to confirm the issue of the Improvement Notice, subject to the variations set out in paragraphs 2 and 3 of this decision.
33. In determining to vary the Improvement Notice as set out in paragraphs 2 and 3 of this decision, the Tribunal took into account the following matters:
- (1) bathroom door: the Tribunal accept the Applicants' submissions regarding the impracticality of fitting a "standard door" to the bathroom. It therefore considered that the appropriate remedial action is to ensure that the existing concertina door (visible to the Tribunal from the photographs of the Property forming part of the Respondent's submissions) provides an effective closure to the door aperture when the bathroom is in use;
 - (2) lean-to: the Tribunal considered that the impact of the remedial works to the lean-to, comprising the removal of mould growth, sterilisation of walls, installation of heating and proper venting of any tumble dryer, should be assessed to see if they satisfactorily resolve the damp and mould hazards before requiring more intensive works including the removal of skirting boards, installation of plasterboard walls and plastering of the same;

- (3) brickwork under the bathroom window: the Tribunal considered that there was an error in the Improvement Notice in that the reference should have been to the brickwork **above** the bathroom window. In either case, neither the photographic evidence nor the evidence from the Tribunal's inspection revealed any defective brickwork above or below the bathroom window;
 - (4) the Tribunal did not inspect the eaves of the Property and was unable to determine whether there was any evidence of a bees/wasps
 - (5) kitchen water waste pipes: the Tribunal considered that the mould/damp seen in the photographs of the cupboard under the kitchen sink was inconclusive as to cause. The Tribunal noted that the Respondent had not provided any information from its inspections of a leak from the water waste pipes or that they were not draining into an appropriate inlet or other proper means of disposal.
34. Front wall: the Tribunal considered that the evidence from the Tribunal's inspection confirmed the need for the remedial works to the wall as set out in the Improvement Notice.
35. Decking: Schedule 1, paragraph 2: the Tribunal did not consider that it was appropriate to vary this paragraph. However, in requiring that, following the remedial work, there should be "a smooth and continuous slip resistant surface", the Tribunal think that it should be acknowledged that this will require ongoing regular maintenance. The responsibility for such maintenance will be determined in accordance with the terms of the tenancy agreement.
36. Having regard to the Tribunal's decision to substantially confirm the terms of the Improvement Notice (subject to the variations as set out in paragraphs 2-3 above), the time afforded to the Applicants to undertake works prior to the issue of the Improvement Notice, and to the Applicants' concession that works were required at the Property (albeit unspecified), the Tribunal considered that it was appropriate to order that the start and completion of the remedial works be carried out within the same time limits as set out in the Improvement Notice.

C Wood
Tribunal Judge
27 July 2021