



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

Case Reference : **CAM/22UG/HIV/2019/0001**
P : PAPERREMOTE

Property : 61 Mile End Road, Colchester CO4 5BU

Applicant : John Martin Peartree

Respondent : Colchester Borough Council

Type of Application : appeal against service of a suspended improvement notice [HA 2004, ss.11, 12, 14, 15 & Sch 1 Pt 3]

Tribunal : Judge G K Sinclair

Date of determination : 6th May 2020

Date of this decision : 17th June 2020

DECISION REFUSING PERMISSION TO APPEAL

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1. On 7th May 2020 the tribunal issued its decision dated 6th May 2020 following determination of this application on the basis of the written documents and submissions filed by the parties.
2. On 10th June 2020 the tribunal office received an application for permission to appeal by the respondent local authority. By rule 52(2) a request for permission to appeal must be sent or delivered to the tribunal so that it is received within 28 days after the date that the tribunal sends to the person making the application written reasons for the decision. Prima facie the respondent's application is out of time but, as it claims to have received a copy of the decision only on 13th May and the tribunal is inclined to make allowances for disruptions to staff and more generally during the present coronavirus pandemic, the tribunal is prepared to treat the application as being within time.

3. Despite that the tribunal has considered the application by the respondent for permission to appeal and determines that :
 - a. it will not review its decision; and
 - b. permission be refused.
4. The tribunal is satisfied that, in accordance with the criteria adopted by the Upper Tribunal, there are no reasonable grounds for arguing :
 - a. That the tribunal wrongly interpreted or applied the relevant law
 - b. That it took account of irrelevant considerations, or failed to take account of a relevant consideration or evidence, or
 - c. That there was a substantial procedural defect.
5. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the proposed appellant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

Reasons for this decision

6. The tribunal's decision was based on the evidence and submissions put before it in writing. This included a statement by the appellant explaining in greater detail why he sought to challenge the amended improvement notice served upon him.
7. At paragraphs 6 and 7 of the council's application, concerning the hazards allegedly created by the steps and stairs, the council states :

The decision then goes on to state that the council gave no proper explanation for increasing the average level of likelihood of risk that is found in the guidance. The tribunal do not seem to have given weight or consideration to the process of HHSRS methodology in making these observations

and

The tribunal do not state why they cannot be satisfied with the assessed likelihood. It is also noted that this paragraph relates solely to the issue of stairs. The assessed likelihood for the falling on stairs hazard is 1 in 32 (page 84 of Respondent's bundle).

8. The council appears to forget that the appeal to the tribunal against service of the disputed notice is "by way of rehearing", i.e. that the burden is upon it to satisfy the tribunal that the assessments made under the HHSRS and the action taken were reasonable.
9. The council has nowhere in its evidence or submissions explained why the usual likelihood of risk for the hazard "falling on stairs" of 1:180 for a property of this age (and hence the highest level of likelihood listed in the Operating Guidance), which would produce a score within Band F (Category 2), was increased by three representative scale points, past 1:100 and 1:56 (still within Category 2) to 1:32.
10. The tribunal's decision explored in detail the factual issues involved with each set of steps and the internal stairs and why, in its determination (and in the opinion

of the freeholder), such a score was simply not justified. In paragraph 30 of its decision the tribunal states that it “cannot be satisfied with the level of assessed likelihood, which has a dramatic effect on the final scoring”, so the assertion by the council in paragraph 9 of its application that

...the tribunal did not state that the hazard did not exist nor that it should not be assessed as a category 1 hazard

is to say the least bold.

11. As for the Category 2 hazard concerning damp, the tribunal was entitled to take into account the evidence presented by the freeholder of the professional advice received and acted upon by him to resolve the damp and leaking pipe issues.
12. As for the grounds of appeal set out in paragraphs 14 to 16 of the application for permission, these presuppose – without any proof – that a Category 1 hazard existed at the property. On the tribunal’s analysis there is and was nothing that warranted such a high hazard banding as would come within Category 1. This is a clear challenge to the council’s unproven assertion that such a hazard existed.
13. As for the ground stated at paragraph 17, the object of this part of the legislation is to achieve an overall improvement in housing standards, preferably following negotiation with the property owner/landlord. In this case the tribunal is and was satisfied with the improvements undertaken or suggested by the freeholder and hence the service upon him of a notice was wholly unnecessary.
14. The tribunal is therefore satisfied that, in accordance with the criteria for appeals adopted by the Upper Tribunal, there are no reasonable grounds for arguing that the tribunal failed to take account of a relevant consideration or evidence.

Dated 17th June 2020

Graham Sinclair
First-tier Tribunal Judge