



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

Case Reference: CHI/45UC/HIN 2020/009

Property: 46 Pryors Lane, Aldwick, Bognor Regis,
PO21 4JD

Applicant: Mr Juan Jose Perez

Representative: In Person

Respondent: Arun District Council

Representative: Mrs Shelley-Ann Flanagan

Type of Application: An appeal against the service of an
Improvement Notice -
Sections 11, 12 & Schedule 1, Pt 3 of the
Housing Act 2004 [The Act]

Tribunal Member: Judge A Cresswell

Venue of Hearing: On the Papers

Date of Decision: 4 December 2020

DECISION

The Application

1. The Respondent served a Notice of Improvement under section 11 of the Act in relation to hazards under the Housing Health and Safety Rating System dated 25 February 2020 on the Applicant, the owner of the property.
2. On 18 March 2020, the Applicant made an appeal to the Tribunal against the Notice of Improvement. His late application was accepted by the Tribunal.
3. The appeal was under Paragraphs 10(1) and 11(1) of Schedule 1, the Applicant submitting that there was no requirement for an Improvement Notice because the property was to be sold and that any responsibility should be shared by his ex-wife. The Applicant raised no challenge to the finding by the Respondent of the presence of Category 1 and Category 2 hazards at the property.
4. Given its findings and the admissions made by the Applicant it was not necessary for the Tribunal to undertake its own HHSRS (Housing Health & Safety Rating System) calculations.

Summary Decision

5. This case arises out of the Applicant's appeal, made on 18 March 2020, against the service of a Notice of Improvement. The Tribunal quashes the Improvement Notice and declares that a Hazard Awareness Notice would be an appropriate response in the circumstances.

Inspection and Description of Property

6. The Tribunal did not inspect the property as it was not practicable to do so. Numerous photographs were supplied as part of the Bundle of papers submitted and there was also a precis of an Inspection Report. The property in question is said to consist of a 2-storey 2-bedroom mid-terrace house.

Directions

7. Directions were issued on 16 April 2020. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
8. The directions provided for the matter to be heard on the basis of a consideration of the papers. The parties were given an opportunity to object to a determination on the papers, but did not do so.
9. This determination is made in the light of the documentation submitted in response to the directions

The Law

10. The relevant law is set out in sections 1(4), 2, 3, 4, 5, 9, 11, 12, 13, 28, 49 and Schedules 1 and 3 Housing Act 2004.
11. The Housing Act 2004 (the Act) introduced a new system for assessing the condition of residential premises operating by reference to the existence of category 1 and category 2 hazards.

12. By reason of Section 1(4), *residential premises* means a dwelling or *any common parts of a building containing one or more flats*.
13. Section 2 of the Act defines Category 1 and 2 hazards and provides for regulations for calculating the seriousness of such hazards. A hazard is defined in s. 2(1) as “any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).”
14. The applicable regulations are the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) (the HHSRS). More serious hazards are classed as category 1 hazards, whilst lesser hazards are in category 2.
15. 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 a local housing authority to inspect property in certain circumstances.
16. If on such an inspection the local housing authority considers that a category 1 hazard exists, section 5 imposes a duty to take the appropriate enforcement action. Section 5(2) sets out the various courses of action available to the authority including the service of an Improvement Notice. Although a duty is imposed on the authority to take action no timescale is specified in the Act.
17. If on such an inspection the local housing authority considers that a category 2 hazard exists, section 7 confers a power to take the appropriate enforcement action.
18. Enforcement action may include serving a notice, referred to as an Improvement 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.
19. Section 11 of the Act sets out the statutory provisions regarding Improvement Notices relating to category 1 hazards. Section 13 requires an Improvement Notice to comply with the provisions of that section.
20. Section 12 of the Act sets out the statutory provisions regarding Improvement Notices relating to category 2 hazards. Section 13 requires an Improvement Notice to comply with the provisions of that section.
21. The information which must be specified in relation to a hazard includes, by s. 13(2)(b) and (d), “*the nature of the hazard and the residential premises on which it exists*” and “*the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action*”. By s. 13(5) the premises in relation to which the remedial action is to be taken are referred to in Part 1 of the Act as the “*specified premises*”.
22. Paragraph 2 of Schedule 1 to the Act says that in the case of a dwelling which is not licensed under Part 3 of this Act, and which is not a flat, the local

- housing authority must serve the Improvement Notice on the person having control of the dwelling.
23. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. Paragraph 10 provides that a person on whom an Improvement Notice is served may appeal against the notice to the first-tier Tribunal (Property Chamber). Paragraph 15(2) provides that the appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority are unaware. Paragraph 15(3) provides that the Tribunal may by order confirm, quash or vary the Improvement Notice.
 24. 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 a local housing authority must have regard to any such guidance.
 25. The office of the Deputy Prime Minister issued guidance under section 9 relating to Operating Guidance (reference 05HMD0385/A) and Enforcement Guidance (reference 05HMD0385/B).
 26. The Enforcement Guidance says the following in relation to Empty Property:
 - 4.20 As the hazard score is based on the most vulnerable potential occupant, HHSRS can be used to assess an empty property. Property condition may be a factor in an authority's empty property strategy, and they may decide to target properties, in part, because of their condition so that the property can be improved at the same time as it is brought back into use for housing. But authorities will need to take care that, aside from the intention to bring housing back into use, they deal with hazards in an empty property in an appropriate way. For example, should an improvement notice be issued when a house has been unoccupied for some time and the owner has no intention of letting it? If there is no occupant there will be less risk of an accident or ill health. Should the authority intend to carry out works itself it may do so with the co-operation of the owner. Where such co-operation is not forthcoming, Part 7 of the Act contains provisions that enable authorities to gain access. (See Part 7 of this guidance, "Powers of access").
 - 4.21 Aside from the authority's empty property strategy, where category 1 hazards have been identified in two units of accommodation – either in the same building or in separate premises – and one of the units is unoccupied whereas the other is occupied, the fact that the property is occupied raises the priority for intervention.
 27. Relevant statute law is set out in the Annex below.

The Issues Before the Tribunal

The Applicant

28. The Applicant raised a number of points in his application, as follows:
 - (a) The Applicant is currently living abroad and in the process of divorcing his wife, the joint owner of the property, who does

not communicate with him and he does not know her whereabouts.

(b) He is trying to get permission to sell the property which he cannot do without the co-operation of Mrs Perez nee Mrs Parker;

(c) The property is currently empty and he does not wish to rent it out, only to sell it;

(d) The Applicant is not working and has no savings or investments and cannot afford to carry out repairs;

(e) The Applicant does not need to do anything in order to make the property saleable;

(f) The Applicant fails to see why has to spend money in order to sell it;

(g) New owners will see what needs doing and the price will be lower as it needs some work doing;

(h) The price of property will not be able to be increased by £25,000 because Arun District Council think repairs should be carried out;

(i) The cooker was given to sister who was in rented accommodation which did not have one so this one does not need one as nobody lives in it;

(j) Windows are secure however sealed units need replacing; New owners will know this and be able to stick with them and replace windows or replace sealed units;

(k) There is no central heating – new owner may agree it isn't needed as mid -terrace – Applicant rarely had heating on – it does not require a heating system to sell a property;

(l) The Respondent is persecuting him;

(m) The Applicant objects to being told in law to do anything to the property;

(n) His ex-wife should also bear the costs.

The Respondent

29. The Respondent provided the history of the matter.
30. Ms Helen Louise Stevens is an Empty Homes Officer employed by the Respondent council.
31. The property was shown on council tax records as being occupied by the Applicant as a main residence and with a single person discount. A subsequent search at the Land Registry showed the freehold of the property to be owned by the Applicant jointly with Gail Elizabeth Parker (“the owners”).
32. She said that after a complaint being received on 13 August 2019, she visited the property on 15 August 2019. There were indications that the property was empty. She entered into communication with the Applicant.
33. On 16 January 2020, she visited the property to check its condition. Its condition was poor externally.
34. On 23 January 2020, she wrote to the owners, notifying them of her intention to carry out a HHSRS assessment. Subsequently, a date was agreed with the Applicant for this to happen.
35. On 14 February 2020, with entry granted by the Applicant, the property was inspected under HHSRS.
36. The inspection revealed three Category 1 hazards, being Excess Cold, Electrical and Fire. There were also six Category 2 hazards identified as follows: Damp and Mould, Domestic Hygiene Pest and Refuse, Food, Personal Hygiene Sanitation and Drainage, Fall on the level and Collision and Entrapment.
37. On 25 February 2020, Ms Stevens served Improvement Notices on the owners, detailing the above hazards and specifying how they could be removed.
38. On 3 June 2020, she wrote to the owners asking for contact if they were having difficulties complying with the Improvement Notices due to the current pandemic. They were advised to contact her if they required an extension of time.

The Tribunal

39. The Tribunal notes that the state of the premises and presence of Category 1 and 2 hazards at the property and the liability for issuing an Improvement Notice are not themselves in issue.
40. It further notes that the Notices of Improvement were served upon both owners. The Applicant was properly served in accordance with Paragraph 2 of Schedule 1 to the Act as the person with control of the property. He was joint

owner of the property, registered with the local council for council tax purposes as a single resident, and had the key to gain access.

41. Whilst the Tribunal has much sympathy with the Applicant's current circumstances as detailed in his application, estranged from his wife, unable to contact her, requiring her consent to sell the property, short of funds, stuck in Spain due to the pandemic, none of these are reasons such as to prevent the proper service of an Improvement Notice or other form of enforcement notice, where an assessment of all circumstances requires such action.
42. Nor does an intention to sell, rather than rent, the property, of itself, avail him so as to prevent enforcement action. The HHSRS standards apply just as much to a privately occupied dwelling as they do to a rented property, as Section 11 includes any residential premises.
43. The Improvement Notice resulted from the presence of a significant number of Category 1 and Category 2 hazards, detailed in the Schedule of the Improvement Notice and discussed above.
44. The Tribunal conducted a re-hearing in accordance with Paragraph 15 of Schedule 1 (see above) and concluded that the Improvement Notice in respect of the property specifically relating to use for residential purposes was one that was properly available to the Respondent to consider under Section 11 of the Act.
45. The Tribunal could see no evidence available to it, which could lead it to conclude that the Respondent was in any way persecuting the Applicant.
46. The Tribunal cannot, as a relevant issue in this appeal, look into the arrangements subsisting between the owners in respect of the property. Responsibility is shared by the owners.
47. The Tribunal, as part of its re-hearing, considers all relevant factors.
48. The Respondent does not dispute that the property is empty and has been empty now for at least some 16 months.
49. There is no evidence of any past or present attempts to rent out the house. There is no realistic prospect of the house being rented out in its current condition. The Applicant is abroad and the pandemic persists. He evinces an intention to sell the property.
50. Whilst the house is mid terrace, the electricity is switched off and the inspection report speaks of concerns about potential electrical risks when the supply is reconnected and the requirement of an expert view before that happens, and there is no obvious likelihood of any spontaneous causes of fire.
51. The house is mid terrace, but there is no suggestion of the other hazards being a risk to neighbouring properties.

52. The Respondent does not mention the relevant Enforcement Guidance. The Tribunal, however, does take it into account in this re-hearing. The Enforcement Guidance asks the following very relevant question in the context of this appeal: *For example, should an improvement notice be issued when a house has been unoccupied for some time and the owner has no intention of letting it? If there is no occupant there will be less risk of an accident or ill health.*
53. The Applicant has, perhaps, been his own worst enemy in the truculent attitude he has shown to Ms Stevens, but the Tribunal must not let that poor behaviour cloud its judgment as to the fair and proper method of dealing with the situation pertaining when all factors are considered.
54. The Tribunal finds itself in agreement with the Enforcement Guidance. A lot of work is required to remove the Category 1 and 2 risks at the property, but an Improvement Notice, at this stage, is not the proper response. The situation could have been met with a Hazard Awareness Notice. The Respondent could then monitor the situation and re-inspect in the event of a change of circumstances.
55. The Tribunal, accordingly, quashes the Improvement Notice and declares that a Hazard Awareness Notice would be an appropriate response in the circumstances.

APPEAL

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.

Annex

Housing Act 2004

1 New system for assessing housing conditions and enforcing housing standards

(1) *This Part provides—*

(a) *for a new system of assessing the condition of residential premises, and*
(b) *for that system to be used in the enforcement of housing standards in relation to such premises.*

(2) *The new system—*

(a) *operates by reference to the existence of category 1 or category 2 hazards on residential premises (see section 2), and*

(b) *replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c. 68).*

(3) *The kinds of enforcement action which are to involve the use of the new system are—*

(a) *the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices),*

(b) *the new emergency measures contained in Chapter 3 (emergency remedial action and emergency prohibition orders), and*

(c) *the existing kinds of enforcement action dealt with in Chapter 4 (demolition orders and slum clearance declarations).*

(4) *In this Part “residential premises” means—*

(a) *a dwelling;*

(b) *an HMO;*

(c) *unoccupied HMO accommodation;*

(d) *any common parts of a building containing one or more flats.*

(5) *In this Part—*

“building containing one or more flats” does not include an HMO;

“common parts”, in relation to a building containing one or more flats, includes—

(a) *the structure and exterior of the building, and*

(b) *common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats;*

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“external common parts”, in relation to a building containing one or more flats, means common parts of the building which are outside it;

“flat” means a separate set of premises (whether or not on the same floor)—

(a) *which forms part of a building,*

(b) *which is constructed or adapted for use for the purposes of a dwelling, and*

(c) *either the whole or a material part of which lies above or below some other part of the building;*

“HMO” means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, without the exclusions contained in Schedule 14);

“unoccupied HMO accommodation” means a building or part of a building constructed or adapted for use as a house in multiple occupation but for the time being either unoccupied or only occupied by persons who form a single household.

(6) In this Part any reference to a dwelling, an HMO or a building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the dwelling, HMO or building (or any part of it).

(7) The following indicates how this Part applies to flats—

(a) references to a dwelling or an HMO include a dwelling or HMO which is a flat (as defined by subsection (5)); and

(b) subsection (6) applies in relation to such a dwelling or HMO as it applies in relation to other dwellings or HMOs (but it is not to be taken as referring to any common parts of the building containing the flat).

(8) This Part applies to unoccupied HMO accommodation as it applies to an HMO, and references to an HMO in subsections (6) and (7) and in the following provisions of this Part are to be read accordingly.

5 Category 1 hazards: general duty to take enforcement action

(1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated by subsection (3) or (4)—

(a)

servicing an improvement notice under section 11;

(b) making a prohibition order under section 20;

(c) serving a hazard awareness notice under section 28;

(d) taking emergency remedial action under section 40;

(e) making an emergency prohibition order under section 43;

(f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);

(g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

(4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.

(5) The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard—

(a) either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or

(b) another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under section 289(2F) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.

(6) To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is “available” to the authority in relation to the hazard, see the provision mentioned in that paragraph.

(7) Section 6 applies for the purposes of this section.

11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(1) If—

(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) An improvement notice under this section 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 in accordance with subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

(a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

(b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;

(c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a) that the deficiency from which the hazard arises is situated there, and

(b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) The remedial action required to be taken by the notice —

(a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but

(b) may extend beyond such action.

(6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(7) The operation of an improvement notice under this section may be suspended in accordance with section 14.

(8) In this Part “remedial action”, in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

S12 Improvement notices relating to category 2 hazards: power of authority to serve notice

(1) If-

(a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section 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 in accordance with subsection (3) and section 13.

(3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

(4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

SCHEDULE 1

Section 18

PROCEDURE AND APPEALS RELATING TO IMPROVEMENT NOTICES

PART 3 APPEALS RELATING TO IMPROVEMENT NOTICES

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).

11 (1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—

(a) take the action concerned, or

(b) pay the whole or part of the cost of taking that action.

(2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant

must serve a copy of his notice of appeal on the other person or persons concerned.

12 (1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.

(2) The courses of action are—

- (a) making a prohibition order under section 20 or 21 of this Act;
- (b) serving a hazard awareness notice under section 28 or 29 of this Act; and
- (c) making a demolition order under section 265 of the Housing Act 1985 (c. 68).

Powers of residential property tribunal on appeal under paragraph 10

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

(2) The appeal—

- (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.

(4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

16 (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 11.

(2) On the hearing of the appeal the tribunal may—

- (a) vary the improvement notice so as to require the action to be taken by any owner mentioned in the notice of appeal in accordance with paragraph 11; or
- (b) make such order as it considers appropriate with respect to the payment to be made by any such owner to the appellant or, where the action is taken by the local housing authority, to the authority.

(3) In the exercise of its powers under sub-paragraph (2), the tribunal must take into account, as between the appellant and any such owner—

- (a) their relative interests in the premises concerned (considering both the nature of the interests and the rights and obligations arising under or by virtue of them);
- (b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned; and
- (c) the relative degree of benefit to be derived from the taking of the action concerned.

(4) Sub-paragraph (5) applies where, by virtue of the exercise of the tribunal's powers under sub-paragraph (2), a person other than the appellant is required to take the action specified in an improvement notice.

(5) So long as that other person remains an owner of the premises to which the notice relates, he is to be regarded for the purposes of this Part as the person on whom the notice was served (in place of any other person).

17 (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 12.

(2) When deciding whether one of the courses of action mentioned in paragraph 12(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.

(3) Sub-paragraph (4) applies where—

- (a) an appeal under paragraph 10 is allowed against an improvement notice in respect of a particular hazard; and
- (b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 12(2) is the best course of action in relation to that hazard.
- (4) The tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned.