



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

**Case Reference** : **MAN/30UH/HIN/2020/0001**

**Property** : **36-38 Poulton Road, Morecambe, LA4 5HB**

**Appellant** : **Peter McChrystal**

**Respondent** : **Lancaster City Council**

**Type of Application** : **Appeal against an improvement notice under paragraph 10(1) of Schedule 1 to the Housing Act 2004**

**Tribunal Members** : **Judge P Forster  
Mr P Mountain**

**Date of Determination** : **29 June 2020**

**Date of Decision** : **10 July 2020**

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**DECISION**

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## The Decision

1. The appeal is not allowed. The improvement notice dated 6 December 2019 is confirmed.

## Introduction

2. This appeal is made by Peter McChrystal (“the appellant”) against an improvement notice dated 6 December 2019 issued by Lancaster City Council (“the respondent”) in respect of 36 & 38 Poulton Road, Morecambe, LA4 5HB (“the property”). The appeal is made under paragraph 10(1) of Schedule 1 to the Housing Act 2004 (“the Act”).
3. On 6 December 2019, the respondent issued an improvement notice under sections 11 and 12 of the Act addressed to the appellant and Audra Estelle McChrystal, as the persons having control of the property. The notice identified category 1 and category 2 hazards existing on the property and required them to carry out specified works of improvement to begin no later than 13 January 2020, to be completed within 12 weeks.
4. The appeal was made within the prescribed time. Directions were issued on 24 April 2020. In the light of the prevailing health emergency, the tribunal proposed to decide the appeal without a hearing on the papers unless either party objected. There was no objection. The parties were required to submit statements of case and copies of relevant documents to be considered by the tribunal.

## The applicant’s case

5. The property was purchased in 2012. It was previously a post office and launderette. The property was renovated and let to a tenant who intended to convert the ground floor to a corner shop with a flat above. It was not possible to obtain planning permission and the tenant broke the lease. The ground floor was then let for use as a bridal shop with the tenant living above. The tenant left after six months. The 1<sup>st</sup> floor flat was let to Samantha Baines and the ground floor premises stood empty for about two years. She lived there with her daughter and son. Ms Baines asked the owners to let her daughter live on the ground floor which was converted for use as a flat. Ms Baines and her son lived on the 1<sup>st</sup> floor and her daughter the ground floor. The daughter vacated the flat and the ground floor was left unoccupied. Ms Baines asked the owners to let the ground floor flat to her brother. He had significant mental health problems and she wanted to look after him. After he moved in, the owners had countless issues with the brother and there were incidents of antisocial behaviour.

6. The applicant disputes the respondent's claim that the property is a house in multiple occupation. An improvement notice was served requiring works to be carried out. The appellant understood the works were only required because the property was an HMO. He disputes that assertion because at no time has the property been let to more than one household. There are no shared facilities. Ms Baines' brother passed away at the end of March 2020. The property is now unoccupied and will not be re-let.
7. If the ground floor flat requires works of improvement to be fit for the rental market, the owners intend to look at the property as a whole and explore the possibility of converting it to one dwelling. They do not intend to undertake this until such time the 1<sup>st</sup> floor tenant vacates the property.
8. The appellant believes that a significant number of the items identified in the improvement notice relate only to the ground floor flat: items 1, 2 and 3. The ground floor flat will not be re-let and the issues will be addressed as part of a future renovation of the property.
9. Items 4, 5, 7, 8, 11, 13, 14, 15, 16, 17 and 18 are required because the property is classed as an HMO, which is disputed. This work would be included within a future renovation of the building.
10. Item 6 relates to the installation of the heating system which has now been completed.
11. In respect of item 9 and the need for a handrail to the seller, there is no need for the 1<sup>st</sup> floor tenant to access this area.
12. The appellant accepts the work is required in respect of items 10, and 12 but it is yet to be undertaken.
13. The appeal is against the classification of the property as an HMO and the subsequent improvement works required. The appellant appreciates that works may be required due to the age and type of building, however he feels that any further works should complement the building being offered as a single dwelling. The ground floor flat is no longer tenanted and will not be re-let. The owners intend to renovate the property as a whole when the current tenant of the 1<sup>st</sup> floor flat vacates the property.

#### The respondent's case

14. The property is a three storey, end terrace that consists of 2 self-contained flats. There is a 1 bedroom flat on the ground floor and a 3 bedroom maisonette on the upper 2 floors. A retrospective planning application was made in August 2016 to change the use of the ground floor shop to a 1 bedroom flat. The application was refused but a second successful application was made in April 2017. The respondent produces copies of the drawings submitted with the

retrospective planning application showing the layouts of both the ground floor flat and the first floor maisonette. There is no record of any building regulations application in respect of the conversion. Photographs of the property are also produced.

15. In response to a complaint about dampness in the ground floor flat, the respondent carried out an inspection on 2 December 2019. At the time, there was a single occupant in the ground floor flat and two family members living in one household in the upper flat. The property was found to have been poorly converted without regard to the requirements of the building regulations. The defects found on the property were scored as category 1 and category 2 hazards. This gave rise to the service of the improvement notice.
16. The respondent concluded that the property conformed with the definition of a house in multiple occupation as set out in section 257 of the Act. The building consists of 2 self-contained flats where building work undertaken in connection with the conversion did not comply with relevant building standards and still does not comply.
17. The HMO status of the property is not relevant to the decision to serve the improvement notice which was served because of the duties and powers vested in the Council by sections 5 and 7 of the Act.
18. Even though the ground floor flat is currently unoccupied, the council is under a duty to act in respect of the category 1 hazards. The condition of the ground floor flat contributes significantly to the hazards throughout the building. The majority of the works required throughout the building still need to be completed without delay.
19. The service of an improvement notice and the works required were a necessary and proportionate response to the hazards present the building.

### The Law

20. Part 1 of the Housing Act 2004 provides the statutory scheme for assessing the conditions in residential premises and for enforcing housing standards. Schedule 1 to the 2004 Act sets out the law in respect of the service of improvement notices and appeals against such notices.

### The Decision

21. The Act provides for a 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 works by identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.

22. Those hazards which score 1000 or above are classed as category 1 hazards. If a local housing authority makes a category 1 hazard assessment, it becomes mandatory under s. 5(1) of the Act for it to take appropriate enforcement action. Hazards with a score below 1000 are category 2 hazards, in respect of which the authority has a discretion whether to take enforcement action.
23. S.5(2) of the Act sets out seven types of enforcement action which are “appropriate” for a category 1 hazard. If two or more courses of action are available, the authority must take the course which it considers to be the most appropriate. One of those is an improvement notice. S.11(2) defines an improvement notice as 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.
24. There are no specific limits to the grounds of appeal against an improvement notice. An appeal against an improvement notice is by way of re-hearing and accordingly the tribunal must consider the state of the property as at the time of the determination of the appeal. The tribunal’s powers under paragraph 15(3) are to confirm, quash, or vary the improvement notice.
25. The tribunal did not inspect the property. On the evidence of the drawings and photographs it accepts the respondent’s description of the property as a three storey, end terrace, consisting of 2 self-contained flats. There is a 1 bedroom flat on the ground floor and a 3 bedroom maisonette on the upper two floors. The appellant’s description of the property is less detailed but is consistent with that evidence. The property was renovated and sometime before August 2016 the ground floor commercial premises was converted into a flat. At the date of the improvement notice, the maisonette on the upper two floors was occupied by Ms Baines and her son, and the ground floor flat by her brother. The ground floor flat is now unoccupied.
26. Under s.254(1)(e) of the Act, a building or part of a building is a “ house in multiple occupation” if it is a converted block of flats to which s. 257 applies. The property falls within that section. A “converted block of flats” means a building or part of the building which has been converted into and consists of two self-contained flats. Further, the section applies to a converted block of flats if building work undertaken in connection with the conversion did not comply with the appropriate building standards, and still does not comply and less than two thirds of the self-contained flats are owner occupied. The appellant did not challenge respondent’s evidence that the conversion works were and did not comply with building regulations. Neither of the flats is owner-occupied. To meet the relevant test, is not necessary to show that the property is let to more than one household or that there are no shared facilities.

27. The appellant does not dispute any of the defects identified by the respondent and the assessment of category 1 and category 2 hazards. The appellant does not challenge any of the specified remedial works required by the improvement notice. There is no factual dispute in this respect. Therefore, there is no need for the tribunal to look at each and every item in detail.
28. The appeal is primarily based on the assertion that the property is not a house in multiple occupation. The tribunal finds against the appellant on this point. This deals with the appellant's objections to items 4, 5, 7, 8, 11, 13, 14, 15, 16, 17 and 18.
29. At the date of determining the appeal, the ground floor flat is not occupied but that does not relieve the respondent of the duty to take action in respect of category 1 hazards found there. The ground floor flat has been let to tenants and might be again. Assurances from the appellant that the ground floor flat will not be re-let provides no comfort. This deals with the appellant's objections to items 1, 2 and 3.
30. In respect of item 6, which relates to the installation of a heating system, it appears this work has now been completed and that the appellant has complied with the improvement notice.
31. In respect of item 9, the suggestion that the tenant of the upper flat has no need to access the cellar does not abrogate the need to install a handrail.
32. The Tribunal agrees with the respondent's submission that the service of the improvement notice was necessary and proportionate. The appeal is not allowed, and the improvement notice is confirmed.

**Judge P Forster**

**29 June 2020**

#### RIGHT OF APPEAL

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.

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.

If the person wishing to appeal does not comply with the 28 day time limit, that 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.

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.