FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/HIN/2021/0005** **CVP Remote**
Property	**:**	**71 Stratford Road, Thornton Heath, Surrey CR7 7QL**
Applicant	**:**	**Mr Samuel Thomas & Mrs Wilma Thomas**
Representative	**:**	**In person**
Respondent	**:**	**London Borough of Croydon**
Representative	**:**	**Ms Jane England**
Interested person	**:**	**-**
Type of application	**:**	**Appeal in respect of an Improvement Notice: Sections 11 and/or 12 and paragraphs 10-12 of Schedule 1 to the Housing Act 2004.**
Tribunal members	**:**	**Judge Professor Robert Abbey** **Mel Cairns MCIEH (Professional Member)**
Venue	**:**	**By video hearing on 17th June 2021**
Date of decision	**:**	**22 June 2021**

DECISION

Decision of the tribunal

(1) The improvement notice made by the London Borough of Croydon on 26 August 2020 in respect of 71 Stratford Road, Thornton Heath,

Surrey CR7 7QL is confirmed. The appeal by Mr Samuel Thomas and Mrs Wilma Thomas is therefore dismissed.

Reasons for the tribunal's decision

Introduction

1. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the safety concerns, restrictions and regulations arising out of the Covid-19 pandemic.

2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice Cloud Video Hearing Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it a pair of electronic/digital trial bundles of documents prepared by the parties, in accordance with previous directions.

3. The applicants appealed against the making of an improvement notice under sections 11 and 12 of the Housing Act 2004 by the London Borough of Croydon, in respect of a property known as **71 Stratford Road, Thornton Heath, Surrey CR7 7QL** In accordance with paragraph 15(2) of Schedule 1 to the Housing Act 2004, the appeal is to be by way of a re-hearing

4. The improvement notice issued by the respondent Council was dated 26 August 2020. The appeal to the tribunal was received and directions were issued on 2 March 2021 and the matter was heard on 17 June 2021 by way of a video hearing.

5. At the hearing, the applicants appeared in person and represented themselves; the respondent was represented by Ms Jane England from the London Borough of Croydon.

6. Relevant law and in particular sections 11 and 12 of the Housing Act 2004 can be found in the appendix to this decision and rights of appeal in regard to this decision on the appeal made by the applicant are in an annex to this decision.

Background

7. The property is a terrace house with 3/4 bedrooms toilet and bathroom and lounge. The freehold title is owned by the applicants.

8. The applicant let the property on 28 January 2012 and the occupant was Diana Sowell. (The property was let for some time prior to this letting in 2012). Subsequently, issues arose about the condition of the property and as a result, having considered the matter, the respondent Council decided to serve the improvement notice, which is the subject of this appeal. The local authority tried to secure works by an informal notice but that failed to obtain the desired outcome.

9. Following service of the improvement notice, the applicant lodged this appeal. Under Section 11 and 12 of the Act the Council required the applicant to carry out the works to remove or reduce the hazard/s listed in the notice and to begin them not later than 7 October 2020 and to complete them within a fixed period.

The law

10. Part I of the Housing Act 2004 (the Act) sets out a regime for the assessment of housing conditions and a range of powers for local authorities to enforce housing standards. Housing conditions are assessed by the application of the Housing Health and Safety Rating System (HHSRS). This includes Category 1 and Category 2 hazards. A hazard is any risk of harm to the health or safety of an actual or potential occupier of accommodation that arises from a deficiency in the dwelling, building or land in the vicinity. Health includes mental health.

11. Under sections 11 and 12 of the Housing Act 2004, an improvement notice requires the person on whom it is served to carry out remedial action within a certain time. Remedial action means action that will remove or reduce a hazard. It may refer to the dwelling itself and to common parts that relate to that dwelling. In the case of Category 1 hazards, the remedial action must, as a minimum, ensure that the hazard ceases to be a Category 1 hazard, but may go further. It may relate to more than one hazard

12. Where a hazard or several hazards in a property are rated as HHSRS category 1 hazards, the options for enforcement include, by section 5 of the Act, the power to serve an improvement notice under section 11 of the Act.

13. By section 8 of the Act, the authority must prepare a statement of the reasons for its decision to take the relevant action.

14. An improvement notice is a notice requiring the person on whom it is served to take remedial action in respect of the hazard, for example by carrying out the works.

15. The power to enter premises for the purpose of carrying out a survey or examination of the premises is contained in section 239(3) of the Act. By section 239(5), before entering any premises in exercise of the power is sub-section (3), the authorised person or proper officer must give at least 24 hours' notice of his intention to do so (a) to the owner (if known) and (b) to the occupier (if any). Where admission to the premises has been sought but refused, then by section 240 of the Act a justice of the peace may by warrant authorise entry onto the premises.

16. Appeals in respect of improvement notice are dealt with in Part 3 of Schedule 1 to the Act. Paragraph 10 of that schedule gives a relevant person a general right of appeal against service of an improvement notice. Paragraph 12 provides:

> *"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—*
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> *(a)making a prohibition order under section 20 or 21 of this Act;*
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> *(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).*"

<u>The grounds of appeal</u>

17. The appellant's case is "My challenge to the Improvement Notice brought by Jane England representative of Croydon Council is not an attempt to deny that improvements are needed to 71 Stratford Rd CR7 7QL. However, the discussion should be to decide of the works to be carried out which are the responsibility of the tenant and which are the responsibilities of the landlord which is myself." Accordingly, the applicant accepted that some works were required and for which he was responsible. But he also firmly maintained that there were some works that had been occasioned by the actions of the tenant and were therefore the tenant's responsibility to remedy.

18. Additionally, the applicant maintains that the tenant has neglected the property and that the condition of "the house is dirty". The applicant believes that the present condition of the property has adversely affected the resale value of the property. Of great concern to the applicant is the fact that he says that there are several months of rent arrears that have accrued and this has forced him to serve a notice to quit on the tenant, particularly as Mrs Thomas has now decided she wishes to sell the property.

19. The applicant also maintained that the Tribunal should "decide of all the repairs that they decide is my responsibly to allow me to choose my own professional workforce rather than to allow Croydon Council to employ their workforce. As their bill to me would be extremely high since they are in financial bankruptcy due to complete incompetence as a council and they may choose to use my property to help balance their books". The applicant made it clear that he wanted to complete the necessary works by using his workmen and at his own pace bearing in mind the problems that the Covid-19 pandemic have caused including problems getting workmen to attend the property and complete works during this difficult time.

The tribunal's reasons for rejecting the appeal

20. The property is in a poor state and this has clearly been the case for several years. It is apparent that there are significant issues with regard to the property as listed in the improvement notice that included a defective flat roof that caused water ingress, damp and mould growth a defective back door lock a defective kitchen floor a gas boiler incorrectly wired and no working smoke detectors. The applicant confirmed that the property had been rented out some time before the letting to Croydon Council in January 2012 but had not been refurbished or had programmed redecorations whilst let although some double glazing had been fitted in that period. We were also told that the applicants had not prepared any conditions report, inventory or photographic record at the time of letting to Croydon or the current tenant.

21. The inspections by the Council were the only record of conditions and the facts noted were not challenged by the applicants, only the liability for some items and additional complaints about cleanliness were raised. The Local Authority notices described a property in a poor state with numerous defects and deficiencies including a leaking flat roof, defective space heating and heat loss features, electrical and boiler defects, failed smoke detectors, mice infestation, loose coping stone and broken access paving, defective and missing internal doors, worn and holed stair carpeting, failed bathroom extractor fan and damp related mould growth.

22. For the most part the allegations against the tenant focused on the lack of cleanliness and the condition of doors. The notices contained no

requirements for cleaning; the applicant himself attributed damage to some doors from police action. Cleanliness issues are largely superficial whilst the notices essentially focused on building issues. The applicant's suggestion that cleanliness issues accounted for the mice infestation was not supported by a specialist report and was countered by the respondent highlighting potential points of ingress for the pest. In general, it appeared to the Tribunal that the applicant had not fully considered the effect of wear and tear over the long rental period or the need to periodically refurbish kitchens and bathrooms or programme regular redecoration.

23. The inspection by the respondent revealed a catalogue of serious hazards that had the potential to cause harm to the occupants. The HHSRS Enforcement Guidance issued by the Secretary of State in February 2006 states that an improvement notice might be appropriate:

> "*An improvement notice under section 11 or 12 of the Act is a possible response to a category 1 or a category 2 hazard. Under section 11, action must as a minimum remove the category 1 hazard but may extend beyond this. For example, an authority may wish to ensure that a category 1 hazard is not likely to reoccur within 12 months, or is reduced to category 2, or both. Such work would need to be reasonable in relation to the hazard and it might be unreasonable to require work which goes considerably beyond what is necessary to remove a hazard.*
>
> *Authorities should try to ensure that any works required to mitigate a hazard are carried out to a standard that prevents building elements deteriorating. It would be a false economy to allow work which only temporarily reduces a category 1 hazard to, say, a band D category 2 hazard. It is worth bearing in mind that a duty on the authority may arise again should conditions deteriorate. Authorities should avoid taking enforcement action which results in "patch and mend" repairs."*

24. While the applicant maintained that several of the listed problems identified by the respondent were caused by the tenant, the Tribunal was not provided with any convincing evidence supporting these assertions. For example, the Tribunal was not shown any schedule of conditions that had been prepared in 2012 when the tenant moved into the property. The applicant maintained that there was one prepared previously but not specifically in connection with the present letting. It also seemed to the Tribunal that the applicant was labouring under the misapprehension that much of the repairing liability could pass to the tenant. This is not the case as in may respects statute limits the repairing responsibilities of a short lease tenant. For example. section 11 of the Landlord and Tenant Act 1985 implies an absolute and non-excludable obligation upon landlords to carry out various repairs. The landlord must keep in repair the structure and exterior of the dwelling house and keep in repair and

proper working order the installations in the dwelling house for the supply of water, gas, electricity, sanitation, space heating, and heating water.

25. In the present case, the tribunal considers that the works covered by the improvement notice are all the responsibility of the applicant and that in the absence of convincing evidence to the contrary the burden of complying with the notice lies firmly with the applicant.

26. The Tribunal therefore confirms the contents of the improvement notice save that the applicants shall now have 70 days from the date of this decision to comply with the terms of the improvement notice issued by the respondents.

27. In all the circumstances, it is not considered that the decision to serve an improvement notice was disproportionate. The appeal is therefore dismissed.

Name:	Judge Professor Robert Abbey	**Date:**	22 June 2021

Appendix

Housing Act 2004

11Improvement 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.

12Improvement 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.

Annex
Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).