



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

Case reference : **LON/00BG/HIN/2021/0002**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **538 Old Ford Road, London E3 2LY**

Applicant : **Mr Mubarok Hussain**

Representative : **Ms Shahanara Begum**

Respondent : **London Borough of Tower Hamlets**

Representative : **Jonathan Melnick Solicitor with
Respondent**

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
member(s)** : **Judge H Carr
Ms S. Coughlin MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **26th August 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V:. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle of 81 pages provided by the Applicant and a bundle of 95 pages provided by the Respondent, the contents of which have been noted.

The tribunal's decision

The tribunal determines that:

- (i) the appeal is allowed;
- (ii) the improvement notice dated 17th December 2020 is quashed; and
- (iii) the council shall within 21 days refund to the applicant the £519 improvement notice charge

The hearing

1. The Applicant appeared and was represented by his former wife at the hearing and the Respondent was represented by Mr Jonathan Melnick.
2. Mr Vincent the EHO who led the investigation was not present due to personal circumstances. The Applicant requested an adjournment to enable Mr Vincent to be cross-examined. The Respondent opposed the application.
3. The tribunal adjourned to consider the request,
4. It refused the adjournment on the following grounds:
 - a. It was unclear when or even whether Mr Vincent would be available to attend the hearing as he has unexpectedly taken early retirement and is now located in the Caribbean.
 - b. The tribunal considered it would not prejudice the Applicant for the hearing to proceed.

Background

5. On 5th January 2021, the tribunal received an appeal by the Applicant against an improvement notice dated 17th December 2020 served by the respondent council under section 12 of the Housing Act 2004 that same date by email.
6. The notice was served in respect of alleged hazards at 538 Old Ford Road, London, E3 2LY ("the property").
7. Directions were given on 23rd March 2021 for the determination of the appeal.
8. The property is jointly owned by the Applicant and his former wife, Shahanara Begum.
9. At the material time, the property was let as a House in Multiple Occupation (HMO). An HMO licence was granted by the Respondent under the mandatory licensing scheme contained within Part 2 of the Housing Act 2004. The licence commenced on 28th July 2020 and was expressed to expire on 27th July 2023.

The issues

1. The issues that the tribunal will need to consider include:
 - a. Has the Council gone through the necessary steps prior to issue of the improvement notice?
 - b. Do hazards exist and if so what category?
 - c. Should the Council have taken enforcement action?
 - d. If so, what enforcement action is appropriate?
 - e. If an improvement notice is the correct action, should the terms be varied (e.g. specified remedial works and/or timescale)?
2. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows:

The context

3. The Respondent says that it received a complaint of disrepair from one of the tenants of the property on 9th July 2020. The tenant said the landlord was City Rooms.
4. Mr Vincent, Environmental Health Officer with the Respondent visited the property on 19th October 2020 with Mr Muhammed Williams. Present were Ms Begum on the Applicant's behalf and Jason Zhou, a director of Oliver Walton Ltd which traded under the name of City Rooms.
5. Mr Vincent identified various hazards inside the property and in the garden. These included
 - a. a kitchen cupboard situated above the gas hob;
 - b. exposed wires in the kitchen and ground floor shower;
 - c. a blocked and overflowing garden drain;
 - d. rotten decking in the garden;
 - e. leaking or damaged window units.
6. Ms Begum informed Mr Vincent that the Applicant intended to serve notice on the tenants and move into the property himself. Mr Vincent advised her that whilst the property remained occupied by tenants certain work would need to be done. Other work such as kitchen renewal could be avoided.
7. Mr Vincent made clear by email the matters that needed to be addressed whilst the tenants remained in the property. The fire safety, the electrical safety and the drainage were the most pressing issues. Mr Vincent give the Applicant a two-week period in which the work was to be started.
8. On 3rd November 2020 Ms Begum emailed Mr Vincent to say that some progress had been made. She stated that the fire hazard posed by the cupboard above the hob had been remedied, that City Rooms had arranged for an electrical contractor to attend and the work required

- would be done, that the trip and fall hazard posed by the decking had been remedied and that the drainage problem had been resolved.
9. Other matters such as window repairs were said to be taking longer to remedy because of the lockdown and Ms Begum asked to have until the end of the year.
 10. Mr Vincent inspected on 25th November 2020. In his opinion very little work had in fact been done since the visit of 19th October. The garden drain was still blocked, the decking was still in poor state of repair, the kitchen needed a considerable amount of work. None of the hazards was so serious as to be a Category 1 hazard.
 11. Mr. Vincent resolved to take further action and decided that an Improvement Notice was the most appropriate course of action. He waited a further period of time, until 17th December 2020, before drafting and serving the Notice.
 12. The Notice was served on 17th December 2020 and required the works to commence by 14th January 2021 and to be completed within six weeks of that date i.e. by 25th February 2021.
 13. When Mr. Vincent attended the Property on 17th December 2020 to deliver a copy of the Notice to the tenants he was informed that nothing further had been done since his previous visit. He was invited into the Property and was satisfied that there had been no further progress. He did not take photographs.
 14. On 16th January 2021 Ms Begum emailed Mr Zhou and copied in Mr Vincent indicating that City Rooms would be surrendering the tenancy of the property by 24th February 2021. Ms Begum asked Mr Zhou to contact Mr Vincent to let him know the position and to ask if the notice and the charge for the Improvement notice could be withdrawn.
 15. Mr Vincent replied on 11th February 2021 saying that the Improvement Notice would remain for so long as the property was an HMO and asking Ms Begum to let him know immediately of any changes to the occupation of the property.
 16. On 9th April 2021 the Respondent was informed that the tenants had vacated the property and that the Applicant had been in sole occupation since 23rd February 2021.
 17. Mr Vincent visited the property on 4th May 2021 and informed the Applicant that the notice would be withdrawn.
 18. At the date of the hearing the notice had still not been withdrawn. The respondent undertook that it would be withdrawn immediately.

The Applicant's Appeal

19. The Applicant argues that the imposition of the notice is wholly unreasonable, irrational, procedurally unfair and wrong and asks that the order be quashed.
20. The Applicant says that despite his personal circumstances much of the necessary work was done via Ms Hussain or the agents. He says that Mr Vincent should have exercised his discretion taking into consideration the circumstances of the case, whether granting an extension to complete the work would be appropriate and in all the circumstances considering whether it was judicious to impose a fine/improvement notice.

21. In particular the Applicant considers that more attention should have been given to the fact that he intended to terminate the tenancy and occupy the property himself.
22. He points out that he had very little resources, he had not been paid rent by City Rooms for 12 months and the circumstances of the pandemic made getting work done difficult. He also says that the damage to the decking was caused by the tenants.

Has the Council gone through the necessary steps prior to issue of the improvement notice?

23. The Applicant raises no issues in connection with this.
24. The Respondent says that it has carried out the necessary steps prior to the issue of the improvement notice.
25. Where a dwelling is an HMO licensed under Part 2 of the Housing Act 2004 the Notice must be served on the licence holder (Schedule 1, Paragraph 1(2) Housing Act 2004). The Respondent submits that the Notice itself was properly served on the person responsible.

Do hazards exist and if so what category?

26. The tribunal was very concerned about the Improvement Notice. Section 13 (2) (c) of the Housing Act 2004 requires that the deficiencies are identified in the notice as well as the nature of the remedial action. The tribunal does not consider that the notice served in this satisfied the requirements of s.13(2) (c).
27. The hazard ratings provided by Mr Vincent indicate that none of the hazards were higher than an average property of its age and type and some of the alleged defects were clearly rated under the wrong hazard. The photographic evidence of the condition of the property prior to service of the notice and the lack of detail in Mr Vincent's witness statement means that it is not possible for the tribunal to make a decision about whether hazards existed and what category those hazards might be.

Other defects in the notice

28. There was no statement of reasons for the decision to take enforcement action which complied with section 8 of the Housing Act 2004. That statement of reasons is required by the statute to accompany the notice.
29. The respondent argued that the notice itself was a statement of reasons, since it was contained within the first schedule of the notice. There is no prescribed form and that the notices are not generally drafted by lawyers and therefore what was provided was in the opinion of the Respondent sufficient. The tribunal was not persuaded by this argument. It reminds the Respondent that the matter is a rehearing and it does not consider it has sufficient information to confirm the notice. The position may have been different if Mr Vincent had been available to explain his actions. However he was not available and therefore the tribunal orders the notice to be quashed.

30. In our opinion the notice itself is so defective, lacking clarity on both the nature of the deficiencies as well as the works needed to remedy them that it would have been difficult for the recipient to have complied with it. There is therefore no need for the Tribunal to consider the remaining issues. The Tribunal also orders that the administration costs of serving the notice be refunded to the Applicant.

Name: Judge H Carr

Date: 26th August 2021

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.