



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

Case Reference : BIR/OOFK/HIN/2022/0011

Property : 77 Goodale Street, Derby, DE23 8QF

Applicant : Mr Jaswinder Singh Khatkar

Respondent : Derby City Council

Type of Application : Appeal against improvement notice,
pursuant to Schedule 1, Paragraph 10 of
The Housing Act 2004

Tribunal Members : Judge C Kelly
Mr R Chumley-Roberts, MCIEH, JP

Date of Decision : 16 December 2022

DECISION

1. This is an application made pursuant to the provisions of Schedule 1, Housing Act 2004 (“the 2004 Act”) as an appeal against the issue of an improvement notice served upon the applicant, Mr Jaswinder Singh Khatkar (“Mr Khatkar”) in respect of the property 77 Goodale Street, Derby, DE23 8QF (“the Property”).
2. The Property is let by Mr Khakar to a tenant pursuant to an assured shorthold tenancy agreement, signed on 20 July 2020. Mr Khatkar appeared in person, and represented himself, with Mr Galsthorpe, a senior environmental health officer, representing the respondent council.
3. The property is a two storey, pre-1920, back of pavement, end of terrace house. It has a single family occupying the ground, first floor and basement areas. It is of solid brick wall construction with pitched, slate covered, main and back addition roofs and has a small ground floor back addition rear extension which has a flat felt roof. Double glazed windows are provided throughout the building together with a gas fired central heating system.
4. The council served an improvement notice, following it was said, concerns raised as to the state of the premises by third parties, on 11 April 2022.
5. As a consequence of those concerns, an inspection was arranged of the Property for 13 May 2022. Regrettably, Mr Khatkar could not attend at that appointment, given the short notice which he says was provided. It is perhaps worth pausing to note that the Property was subject to previous inspections by the respondent council, which had, on two prior occasions, issued improvement notices.
6. An inspection was subsequently arranged, for 15 June 2022, and it indeed did take place on that date.
7. On 21 June 2022, Mr Galsthorpe of the council contacted Mr Khatkar via email, and identified what he said were a number of category two hazards, together with a category one hazard under the heading “excess cold”. He explained that a number of areas were said to be in generally poor condition, and explained that where the council considered there to be a threat to health and safety of occupiers, it would take robust enforcement action. Accordingly, Mr Galsthorpe explained that the council intended to serve an improvement notice to ensure that remedial action was undertaken. Mr Galsthorpe explained that there was a right of appeal in respect of the notice to the First Tier Tribunal. Within that correspondence, Mr Galsthorpe noted that although time had been requested by Mr Khatkar to rectify the issues identified, they felt compelled to proceed to issue the improvement notice to ensure the works were completed.
8. The improvement notice served pursuant to sections 11 and 12 of the Housing Act 2004, identified what was said to be both category one and category two hazards under various headings.
9. The Tribunal panel inspected the Property on the morning on 16 December 2022. As a general observation, the Tribunal found the Property to be in a reasonably sound condition, it was warm and the majority of issues we identified were more

cosmetic in nature. Mr Khatkar accepted that he had had a number of works undertaken, although disputed that some of the works were ever truly necessary, or in fact, that works had been completed prior to the service of the improvement notice. It was not strictly necessary for the Tribunal to determine the state of the Property as at the date of service of the improvement notice, because the appeal proceeds by way of a rehearing, with the benefit of the state of the Property as it stands today, having been inspected by the Tribunal panel.

10. As a consequence of various improvements having been undertaken, it was accepted by the council that the category one hazard of “excess cold” no longer existed and it was clear in the inspection that there was a working wall heater, and accordingly, this hazard should be removed from the improvement notice.
11. Additionally, there had been an entire new kitchen, including base/wall units and worksurfaces fitted, and various rectification works had evidently been undertaken to other areas of the Property. Consequently, all category two hazards said to have previously existed were agreed by the council as being appropriate to remove from the improvement notice, save for those issues that follow, upon which the Tribunal was asked to make a determination as to whether they should remain.

Nature of Hazard: Personal hygiene, sanitation and drainage

“Waste water discharges not adequately directed and is pouring onto the rear yard. The cast iron hopper and downpipe to the rear left-hand wall is detached and causing water to spill over the surface of the wall.”

12. Insofar as this issue is concerned, the Tribunal determined that although the cast iron hopper and downpipe were no longer detached, the hopper head was in poor condition (it was rusted, poorly jointed to the adjacent rainwater/waste down pipe and was misaligned) additionally the rainwater pipes serving the adjacent roofs were truncated. As a result rainwater is likely to spill over into the rear garden area and adjacent walls. The question the Tribunal must consider, therefore, is whether this is likely to cause a hazard to the tenant, either imminently or within the next twelve month period. In our view, it most certainly would constitute a hazard that would require rectification on two fronts:
 - (a) in respect of the potential downfall of water into the rear garden, which may freeze over, and cause a hazard to the tenant;
 - (b) in respect of water ingress/damp arising to the external/interior walls as a consequence of water running down the walls and pooling over a period of time.
13. Accordingly, this item is to remain on the improvement notice, with a requirement for the existing hopper head to be removed and the new hopper head be provided and be properly connected to the existing downpipe. The existing rainwater pipes serving the two roofs should be extended so as to discharge inside the new hopper head.

Nature of Hazard: Damp and Mould Growth

“The flat roof to the bathroom has a hole in the roofing material and this roof is in poor overall condition having started to lift at the edges and being poorly finished.”

14. During the course of the inspection, the Tribunal members identified that there was something covering an area of the surface of the flat roof over the ground floor back addition extension bathroom, which all parties accepted, was a hole in the outer layer of felt to that roof. There are other layers of felt and likely to be insulation material under this top layer, which has the hole in it, and the Tribunal is of the view that any water would likely be stopped by those layers from causing any damage to the inside of the Property and thus presenting a risk to the tenant.
15. At the time of inspection, there was no evidence of any damage inside the Property from the superficial hole in the roofing felt.
16. The question, therefore, is whether there is likely to be any damage caused in the following twelve-month period, as a consequence of the hole to the roofing material. The Tribunal is not able to conclude that there is a real likelihood of such risk.
17. Accordingly, this item is to be removed from the improvement notice.

Nature of Hazard: Falling on level surfaces

“The tiled floor in the kitchen and bathroom is cracked in numerous places and there is a large section of missing tiles to the kitchen floor”.

18. The Tribunal inspected the kitchen area and noted that there were a limited number of cracked floor tiles, however these were firmly in place and did not present raised surfaces. The Tribunal was of the view that these relatively minor defects to the tiles, do not present a significant trip/slip/fall hazard to the occupants of the premises. Certainly, the tiles are unsightly, and there is a cracked tile in the kitchen area, which although Mr Khatkar insisted during submissions had been repaired, that was not the Tribunal’s recollection of that particular cracked tile.
19. Nevertheless, given the Tribunal’s conclusion that they are principally cosmetic in nature, the conclusion is that this item is to be removed from the improvement notice.

“The laminate flooring in the ground floor reception rooms is in poor condition (although this item may be considered the responsibility of the tenant it does contribute to the overall hazard rating)”.

20. It was accepted that this is a matter which is the tenant’s responsibility, and cannot, therefore, be considered to be a matter for which the applicant must be responsible.
21. Accordingly, this item is to be removed from the improvement notice.

“There are loose floorboards and holes in the front bedroom, on the landing, in the middle, rear and back addition bedrooms. The rear back addition bedroom floor is springy and spongy”.

22. The Tribunal recognised that there were loose floorboards, and that in the rear back addition bedroom, one was “*springy and spongy*” as set out within the improvement notice. However, this is clearly a building of c.100 years of age, and there was nothing out of character for a building of that age in respect of the floorboards generally and we considered that the state of the floorboards, which were in any event covered by carpet, did not present a risk to the tenant.
23. Accordingly, this item is to be removed from the improvement notice.

Nature of Hazard: Falling on stairs

“There are three loose treads to the top four stairs of the main flight, the first straight tread above the kite winders at the bottom of the flight is loose and the third tread from the bottom of the flight is a large kite winder which is also loose and unstable”.

24. The Tribunal panel inspected the stairs carefully and identified that there appeared to be a loose tread on the eighth and ninth straight step, just by the landing area, and it is satisfied that this does present a risk to the tenant. Accordingly, the Tribunal believes that reference to loose treads should remain within the improvement notice, albeit, to the correct steps identified during the course of the inspection, which are those on the eighth and ninth steps.
25. Accordingly, the Tribunal is satisfied that the improvement notice should be varied to that extent, and require the applicant to take off the treads on the eighth and ninth steps, provide block and wedges as appropriate, and then refit the treads and re-screw them to adjacent risers.

Nature of Hazard: Food safety

“There is no adequate mechanical extraction”.

26. The Tribunal noted that there was no mechanical extraction in respect of the kitchen or bathroom areas. Having regard, however, to the guidance issued by the Department for Communities and Local Government, in the publication “*Housing Health and Safety Rating System – “Guidance about inspections and assessment of hazards given under section 9”* (“the Guidance”), and in particular, paragraph 1.22 in Hazard Profile 1, “damp and mould growth” in Annex D, it suggests that there ought to be sufficient means of ventilation to cope with moisture from normal domestic activities, without the need to open windows, that could lead to heat loss, noise and security risks.
27. Having regard to the Guidance, the requirement for mechanical extraction relates to coping with moisture from normal domestic activities, without the need to open windows that could lead to heat loss and noise and security risks. The Tribunal was not satisfied that moisture from normal domestic activities would not dissipate

in the ordinary course without the necessity for mechanical ventilation to be installed.

28. It is right to recognise, however, that there had been a rusted radiator in the bathroom, the suggestion from the council being that that was likely caused by condensation which could not be adequately managed without opening the window, with consequent heat loss. There is no evidence as to the cause of the rusting of the radiator, nor is there any evidence that levels of condensation cannot properly be managed by other means within the bathroom, and the Tribunal considers it unnecessary and disproportionate to require the installation of mechanical ventilation in either the bathroom or kitchen areas at this stage absent evidence of moisture being uncontrolled without it.
29. Accordingly, reference to the inclusion of mechanical ventilation is to be removed from the improvement notice.

Nature of Hazard: Electrical

“The improvement notice (Schedule 2(b)) referenced an alleged required repair of “arranging for an electrical installation to be inspected by a qualified electrical engineer and obtain an electrical installation condition report (EICR) in the format recommended by BS7671... it further goes on, to require “repair or renew as necessary all fittings and wiring found to be unsafe or not in proper working order. Test and leave entire installation in a safe condition and in proper working order”

30. The Tribunal is of the view that this is not a proper inclusion within the improvement notice and appears to be something of an obligation to identify potential defects and take steps to rectify them. The Tribunal notes that the Applicant obtained a satisfactory EICR for the property in June 2020.
31. This alleged defect is to be removed from the improvement notice.
32. In the circumstances, therefore, the Tribunal concludes by varying the improvement notice, pursuant to paragraph 15 (3) of part 3 of schedule 1 of the Housing Act 2004. The only defects and repair works which shall now remain on the improvement notice, as category two defects, are identified above.

The Improvement Notice Fee

33. The council charges a fee of £668 when issuing the improvement notice. Mr Khatkar told us at the hearing that this fee should not be chargeable, although his application notice makes no mention of the fee being reduced or extinguished.
34. However, the Tribunal has considered whether the fee should remain. In short, we are satisfied that the council was entitled to serve the improvement notice, albeit, a number of the entries within it have now been removed either by consent or by determination from this Tribunal. We note, for example, that there has been replacement of the kitchen base/wall units and worktops, and that some works

remain outstanding. Additional works were carried out, such as in the toilet areas, assisting in compliance from a sanitation perspective.

35. Accordingly, we decline to interfere with the council's right to charge and recover the fee of £668 and this sum is therefore recoverable in full against Mr Khatkar.

Judge C Kelly