



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

<b>Case reference HMCTS Code</b>	:	<b>CAM/00KG/HIN/2021/0005 and 8 T: BTMM REMOTE</b>
<b>Property</b>	:	<b>36 Church Street, Grays, Essex RM17 6EG</b>
<b>Applicant</b>	:	<b>Abundant Life Housing Services Limited</b>
<b>Respondent</b>	:	<b>Thurrock Borough Council</b>
<b>Representative</b>	:	<b>Christopher Cooper, Principal Environmental Health Officer</b>
<b>Type of application</b>	:	<b>Appeal against an Improvement Notice and expenses</b>
<b>Tribunal member(s)</b>	:	<b>Judge Wayte Regional Surveyor Hardman FRICS</b>
<b>Date of decision</b>	:	<b>6 July 2022</b>

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing by telephone. A face-to-face hearing was not held because all issues could be determined in a remote hearing. The tribunal had the original hearing bundle from the council, the appellant's expert's report and access to subsequent statements and exhibits from both parties.

**The tribunal determines that:**

- (1) The Improvement Notice is varied by limiting the works to those required by the agreed expert in respect of damp at the property, to be completed by 31 October 2022.**
- (2) The council's expenses of £562 are confirmed.**

## **Application**

1. This is an appeal against the decision of the Council on 2 July 2021 to issue an improvement notice, pursuant to paragraph 10 of Schedule 1 to the Housing Act 2004 and the decision to charge £562 expenses for issuing the notice.
2. The appeal was received on 14 July 2021 and directions were issued on 13 August 2021. At that stage the grounds of the appeal mainly focussed on the inability to do the works with the tenants in occupation due to the quantity of their belongings, although both the works and the length of time allowed were also challenged. The appeal in respect of expenses was said to be on the basis that the appellant did not agree with the improvement notice served.
3. The appeal was set down for a hearing and inspection on 4 November 2021. By that date, some of the works required by the Improvement Notice had been carried out and it became clear that the main item in dispute was the finding of excess cold and the remedial works to deal with that hazard, namely the installation of central heating or new storage heaters. Following a short discussion, the parties agreed that the council's contractors would install central heating and the matter was adjourned to 31 January 2022 to allow those works to proceed. The applicant also agreed to commission a salt test to the external walls to check for evidence of rising damp. It was hoped that the Improvement Notice could be revoked if the council were happy that the main hazard had been addressed.
4. The central heating was eventually installed by the end of June 2022, after the tribunal had proposed relisting the appeal for the first open date after 1 July 2022. Unfortunately, less progress had been made in respect of the damp as the test for rising damp on one sample was inconclusive and the applicant was unwilling to expend further monies due to the cost of further investigation and doubts that the problem at the property was due to rising damp.
5. The appeal therefore came back to be dealt with by telephone on 5 July 2022. The applicant company was represented by Mr Thomas, a barrister and Mr Odeniran. Mr Cooper attended on behalf of the council. Both parties agreed that the sole remaining issues were the damp and the appeal in respect of the expenses.

## **Background**

6. The Property is a semi-detached two storey Victorian house, with a single storey rear extension of more recent construction. The property is owned by Mr Odeniran, who is the director of the appellant company. Thurrock's Private Sector Housing Team had been involved with the

property since 2008 following complaints from previous occupants about dampness, defective plaster and defective heating. Improvement Notices had been served in 2008 and 2012.

7. On 3 December 2020 the council were contacted by the current tenants Mr and Mrs Rees, principally about the heating but also raising concerns about damp and mould. Due to the pandemic, the property was not inspected until 6 May 2021. Mr Cooper found a number of defects and carried out a Housing Health and Safety Rating System (HHSRS) Assessment; identifying two category 1 hazards and 7 category 2 hazards.
8. On 28 May 2021 Mr Cooper sent a part 1 consultation notice to the appellant and his mortgagees, allowing 21 days for representations. On 17 June 2021 Ola Bakare from the appellant company responded but as Mr Cooper was dissatisfied with progress he served the Improvement Notice on 2 July 2021. Shortly afterwards, work started at the property, even though an appeal was made against the notice.
9. Discussions continued between the parties alongside works being carried out at the property both before and after the hearing on 4 November 2021. By the second hearing on 5 July 2022 the only outstanding issue for the council was in respect of the damp and mould.

### **Damp and mould**

10. As stated above, the dispute was really due to Mr Odeniran's concern that Mr Cooper's emphasis on rising damp was incorrect and his reluctance to instruct damp specialists as he felt they were inclined to recommend their own treatment for commercial reasons. Following discussions with the council, he was prepared to offer to instruct an expert of his own choice, to be approved by the council and carry out any recommended works within 12 weeks. No argument was maintained in respect of the service of the notice itself.
11. Following its own inspection in November 2021, the tribunal had indicated that they considered the damp and mould was due to a variety of causes, including water penetration from long standing issues with the rear extension drainage, exterior render and potentially leaking from the windows. There was no obvious sign of rising damp and the mould was likely to be due to condensation, given the poor heating and occupation by the tenants. Now central heating has been installed, it would seem sensible to use the heating to try and dry out the property, at least to some extent. Windows would obviously need to be kept open to enable the moisture to escape and to avoid further condensation and arrangements made with the tenants about the timing of the exercise and of course the cost, given the current energy prices.

12. The tribunal therefore proposed varying the Improvement Notice so that the only works outstanding were in respect of the instruction of an appropriate expert to carry out a damp report on the property, provide a copy to the council and to carry out any recommended works, to be completed by 31 October 2022. Mr Odeniran accepted that proposal, subject to some assurance from Mr Cooper that if there were delays beyond Mr Odeniran's control, the deadline could be extended.

### **Appeal against the council's costs of £562**

13. Section 49 of the Housing Act 2004 gives the local housing authority the power to charge for serving an improvement notice, limited to the reasonable costs incurred in determining whether to serve the notice, identifying any action to be specified in the notice and serving the notice. Section 49(7) of the 2004 Act states that where a tribunal allows an appeal against the underlying notice it may make such order as it considers appropriate reducing, quashing or requiring the repayment of any charge under this section made in respect of the notice or order.
14. Mr Thomas submitted that the costs should be quashed, having regard to all the circumstances of the case and in particular the reduction in the scope of the notice.
15. Although the works are now limited to damp, that is due to other works having been carried out following service of the notice back in July last year. Given that the tribunal has upheld the notice (albeit varying the works required), we do not consider that the appeal has been allowed. In any event we consider that the charges are reasonable, taking into account the work done by Mr Cooper and the state of the property on the date of his first inspection. To the extent that the tribunal has any power in respect of those costs, they are confirmed.

**Name:** Judge Wayte

**Date:** 6 July 2022

### **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).