



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

Case Reference : **MAN/36UD/HIN/2020/0016**

Property : **22 Hambleton Grove, Knaresborough, North
Yorkshire, HG5 0DB**

Applicant : **Mr Andrew John Wright**

Respondent : **Harrogate Borough Council**

Representative : **Ms Vodanovic of Counsel**

Type of Application : **Appeal against the service of an Improvement Notice
Schedule 1, paragraph 10(1) Housing Act 2004**

Tribunal Members : **Judge T N Jackson
Mr N Swain MRICS FAAV**

Date of hearing : **20th May 2022**

Location of hearing : **Harrogate Council Offices**

Date of Decision : **22nd June 2022**

DECISION

Decision

The Tribunal orders that the Improvement Notice dated 20th December 2019 is varied as set out below but is otherwise confirmed as issued:

Schedule 1

a) The deletion of items 18,20, 21, 23,25,34 and 35

Schedule 2

b) The deletion of items 18,20,21, 23, 25, 34 and 35

c) Delete item 9 and replace with:

‘Obtain a specialist report from a competent contractor registered with a recognised professional organisation in connection with the damp at the property as per points 9-11 of Schedule 1. Undertake all works specified in the report. A copy of the report is to be submitted before the work proceeds. Documentary evidence is required to demonstrate that the works have been completed. All works disturbed are to be made good’.

d) Delete item 10 and relace with:

‘Addressed in point 9 above’.

e) Delete item 17 and replace with:

‘Lift all loose, broken or uneven wall tiles to the bathroom and set aside for reuse. Where appropriate, prepare the walls to receive new tiling. Prepare and rebed previously set aside sound tiles and provide new tiles (to replace broken or missing ceramic tiles) as necessary. Fix securely to the walls, grout and leave sound and even on completion.

Where it is not appropriate to replace tiles, repair any broken areas and prepare and finish the area to a non -porous cleanable surface flush with the surrounding tiles.’

f) Delete item 19 and replace with:

‘Ensure that the guarding/ balustrade to the first floor landing and the balustrade/ banister on the stairs from first to second floors do not have openings which would allow a 100mm sphere to pass through and is strong enough to support the weight of people leaning against it to prevent falls.

If the guarding/balustrade is to be removed and replaced to achieve the above, the replacement should be at least 1,100mm high. The design and construction should discourage children climbing on it (i.e. not of ladder design)’.

g) Delete Item 22 and replace with:

‘Provide and fit a minimum of three twin sockets-outlets in the first floor front bedroom in line with BS 7671 IET Wiring Regulations. All electrical works must

be undertaken by a suitably qualified electrician registered with a Government approved self- certification scheme. All works to be in accordance with the current edition of the IET Regulations.

h) Delete item 24 and replace with:

‘Provide and fit a minimum of three twin sockets- outlets in the front second storey room in line with BS 7671 IET Wiring Regulations to be undertaken as addressed in point 22 above.’

i) Delete item 28 and replace with:

‘Addressed in point 24 above’.

The remedial works are to be started within 28 days of the service of this Decision upon the Applicant and each part of them is to be completed within 12 weeks of the date of service.

Reasons for decision

Introduction

1. The Applicant and Mrs S Wright jointly own the Property which was occupied by four tenants. On 20th December 2019, the Respondent Local Authority served an Improvement Notice on the Applicant and Mrs Wright. The Improvement Notice detailed both Category 1 and 2 Hazards and set out the remedial action to be taken and the time within which it should be taken. The Applicant appealed to the Tribunal by an appeal form dated 25th February 2020 received by the Tribunal on 4th March 2020. The appeal relates to the service of the Improvement Notice.
2. References within the Decision refer to page numbers within the Respondent Council’s bundle unless otherwise stated.

Background

3. On 9th August 2019, the Respondent Council received a complaint regarding the Property. It was reported that there had been a fire at the Property and that alarms had not gone off, there were insufficient detectors and there were no fire doors within the Property. On investigation, the ‘fire’ was smoke originating from a vivarium in the first floor rear bedroom.
4. On 22nd August 2019, Ms Woods, Area Environmental Health Officer at the Respondent Council, served a section 139 Housing Act 2004 Notice by first class post on the occupiers and the Applicant advising of an inspection on 28th August 2019.
5. At the inspection, Ms Woods met Mr Tipling, Watch Manager of North Yorkshire Fire and Rescue. Ms Woods completed an inspection form, took photographs and spoke to the four tenants. The Applicant was not present at the inspection.
6. Following the service of a further section 139 Housing Act 2004 Notice on both owners and the four tenants sent via first class mail on 16th September 2019, Ms Woods carried out a

further inspection on 20th September 2019, completed an inspection form and took further photographs. The Applicant was not present.

7. Following the two inspections, Ms Woods carried out a Housing Health and Safety Rating System (HHSRS) Assessment of the Property. Ms Woods consulted the HHSRS Operating Guidance 2006 (pages 391-438), the CIEH Guidance on the enforcement of Excess Cold Hazards in England 2011, the LACORS Housing Fire Safety Guidance and the Guidance on Minimum Provision of Electrical Socket Outlets In The Home published by Electrical Safety First. Extracts from the relevant Guidance is included within each Hazard assessment within the Respondent Council's bundle.
8. An Improvement Notice under sections 11 and 12 of the Housing Act 2004 was served on the Applicant and Mrs Wright on 29th October 2019. This included one Category 1 Hazard and nine Category 2 Hazards.
9. On 19th November 2019, the Applicant left a voice mail message for Ms Woods disputing the Improvement Notice. He subsequently spoke with Ms Woods by phone on 2nd December 2019 and a meeting was arranged for 11th December 2019.
10. By letter dated 29th November 2019 received by the Respondent Council on 2nd December 2019, the Applicant wrote in response to the Improvement Notice (pages 220-223).
11. Following contact between the Applicant and Ms Woods and a meeting at the Property on 11th December 2019 which both attended, the Improvement Notice was subsequently revoked on 20th December 2019 as it was apparent that several items within the Improvement Notice were no longer required but that an additional Hazard of Lighting had arisen. Having had further regard to the HHSRS Operating Guidance, the Respondent Council's Private Sector Housing Enforcement Policy (pages 381-390), the previous history and the actions taken by the Applicant, the Respondent Council determined it was appropriate to serve a further Improvement Notice which was served on the Applicant and Mrs Wright on 20th December 2019 and which included one category 1 Hazard and eight Category 2 Hazards (page 231-265).
12. On 14th February 2020, the Council received a letter from the Applicant dated 11th February 2020 (page 266). The letter was received after the date by which the works should have begun at the Property, namely 20th January 2020 and was also outside the 21 day period for appeal to the Tribunal. The Applicant had undergone a hip replacement on 3rd January 2020 which had caused the delay in response. In the letter, the Applicant identified the deficiencies giving rise to Hazards he said he would arrange to have rectified, namely 5,7,8 and 33. He also said he would arrange to investigate and enhance (sic) the deficiencies identified in items 6,9,10,11,17,32,34 and 35. He disputed all other deficiencies giving rise to Hazards saying that they would be the subject of his appeal and that regardless of the outcome of the appeal, the works would not be done, thus potentially leaving the four tenants homeless.
13. On 25th February 2020, the Applicant signed the appeal from which was received by the Tribunal Office on 4th March 2020.
14. Directions were issued on 12th February 2021.
15. Ms Woods carried out a further inspection on 19th April 2022 in the presence of the Applicant to establish what works had been carried out and took inspection notes and photographs. Items 3, 5,6 ,7, 8,15, of Schedule 2 had been fully complied with, item 33 had

been partly complied with but all other remedial works remained outstanding. Various items which the Applicant had said in his letter of 14th February 2020 that he would investigate and complete had not been completed.

The Improvement Notice

16. A full copy of the Improvement Notice was included within the Respondent Council's bundle (pages 231-265). Schedule 1 identified one Category 1 Hazard namely Excess Cold. Schedule 2 identified eight Category 2 Hazards namely Damp and Mould Growth; Lighting; Food Safety; Personal hygiene, sanitation and drainage; Falling between levels; Electrical Hazards; Fire; and Structural collapse and falling elements. The Improvement Notice set out the deficiencies giving rise to each of the Hazards and the remedial work to be carried out in relation to each Hazard. The Improvement Notice required the Applicant to begin specified remedial works in relation to both the Category 1 and 2 Hazards not later than 20th January 2019 (sic) and to complete them by 20th March 2020. We regard the commencement date of 20th January **2019** (as opposed to 2020) as a typographical error as the Improvement Notice was not served until December 2019. We do not consider the error to be fundamental as immediately following the erroneous date it states "*(being not less than 28 days from the date of this Notice)*". The Applicant has not raised the error, and we consider it reasonable, both from the date of the Improvement Notice and from the phrase referred to, for him to have understood the date to be 20th January 2020.

Inspection

17. The Tribunal inspected the Property in the presence of the Applicant and the occupiers and Ms Vodanovic of Counsel, her instructing solicitor Ms L Ashton and Ms E Woods, Area Environmental Health Officer. The Property was built pre 1920 and is a semi-detached stone-built house on three storeys; being accessed via a front and a back door. The layout consists of a ground floor, comprising a bedroom to the front (occupied by one tenant) and communal living room and kitchen to the rear; first floor comprising of two bedrooms (each bedroom occupied by separate tenants) and a communal bathroom; second floor comprising of two bedrooms (both rooms presently occupied by the same tenant who uses one of the rooms as a living room). The Respondent Council's bundle includes photos of both the interior and exterior of the Property.

Hearing

18. Although the hearing had been listed for a video hearing, as a result of anticipated IT difficulties, the Tribunal agreed that it was in the interests of justice for the matter to proceed as a face to face hearing. The Applicant was present and gave evidence. The Respondent Council was represented by Ms Vodanovic and Ms Woods gave evidence. The Applicant had submitted the application form which included a statement of the reasons for the appeal, a Statement of Case, a letter setting out the background to the matter and a letter signed by the four tenants. The Respondent had provided a bundle of 438 pages which was replaced by a bundle of 502 pages which included the Applicant's documents and an additional statement from Ms Woods following a recent inspection.

The Law

19. The Housing Act 2004 ('the Act') introduced a new system for assessing the condition of residential premises operated by reference to the existence of Category 1 and Category 2 Hazards. Section 2 of the Act defines Category 1 and 2 Hazards and provides for Regulations for calculating the seriousness of such Hazards. The relevant Regulations are

the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) which came into force on 6th April 2006.

20. Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review. Section 4 imposes a duty on an authority to inspect properties in certain circumstances. If on such an inspection the authority considers that a Category 1 Hazard exists, section 5 imposes a duty to take the appropriate enforcement action. Where the Hazards are rated as Category 2, section 7 provides that the authority has discretion to take action, including the service of an Improvement Notice. An Improvement Notice requires the party on whom it is served to take remedial action in respect of the Hazard, usually by carrying out specified works. Section 11 of the Act says that remedial action to be taken must, as a minimum, be such as to ensure that the Hazard ceases to be a Category 1 Hazard but may extend beyond such action.
21. Section 13 of the Act sets out the statutory provisions regarding the contents of Improvement Notices whether served under section 11, in relation to Category 1 Hazards, or section 12 in relation to Category 2 Hazards.
22. Section 8 of the Act requires the authority to prepare a Statement of Reasons explaining why they decided to take the relevant action- in this case an Improvement Notice- rather than any of the other kinds of enforcement action available to them.
23. Section 49 of the Act allows the authority to make such reasonable charge as it considers appropriate as a means of recovering administrative and other expenses incurred by it in determining whether to serve an Improvement Notice, identifying any action to be specified in the Improvement Notice and serving an Improvement Notice.
24. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. Paragraph 15 states that the appeal is to be by way of a rehearing but may be determined having regard to matters of which the authority was unaware. The Tribunal may confirm, quash or vary the Improvement Notice.
25. Section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about exercising their functions under the Act, in particular their functions under Chapter 2 of Part 1 of the Act relating to Improvement Notices. Section 9(2) provides that an authority must have regard to any such guidance.
26. In 2006, the then Office of the Deputy Prime Minister issued guidance under section 9 relating to HHSRS Operating Guidance (reference 05HMD0385/A) and HHSRS Enforcement Guidance (reference 05HMD0385/B), as amended.

Submissions

Nature of Property

27. The Applicant says that the Property has never been a commercial venture or intended to be a House in Multiple Occupation. It was let to solve the housing crisis of a friend and recognizes the need for housing for single men under pensionable age, which is not a priority under Council housing policy. There has never been any formal tenancy arrangement, the tenants pay a monthly 'rent' much lower than the going rate and the Applicant pays council tax, fuel and water bills. The tenants pick any new tenants rather than the Applicant. He accepts, however, that the Property falls within the definition of a House in Multiple Occupation ('HMO').

28. The Applicant further submits that the remedial works required change the Property from a family home more into a large commercial block used for housing many units of single person flats. It is a shared house with only four occupants and the standards being imposed are for units with at least five occupants (i.e the HMO Licensing regime).
29. He says that here is a large financial cost to completing the remedial actions. He does not want to carry them out as they would change the character of the Property from a family house and make it more difficult to sell. He is not prepared to do the work but would rather sell the Property as a family home resulting in the occupants being made homeless
30. The Respondent Council submits that the Property is 3 stories and is occupied by 4 unrelated individuals and therefore falls within the definition of an HMO, although as there are under 5 occupants, it does not need to be licensed.
31. The Respondent Council denies that it is imposing conditions required for properties with five occupants. It has had regard to the LACORS 'Housing- Fire Safety Guidance on safety provisions for certain type of existing housing' published in July 2008 which refers to the number of floors in a property and how they are used rather than the number of occupants. The Respondent Council refers specifically to Case Study D5 which refers to a shared house of 3 or 4 storeys, the composition of the current Property. The Respondent Council further submits that it had regard to the recent fire at the Property

Prior Council Involvement

32. The Applicant submits that following the involvement of the Respondent Council a few years prior, works had previously been carried out at a cost of over £2000 involving the installation of a fire alarm, the fitting of new carpets and handrails and the changing of a stairway from wooden panelling to skimmed plasterboard.
33. The Applicant says that the Property was then accepted by the Respondent Council as suitable for four tenants with the current arrangements, and nothing had since changed including the law, occupants or the condition of the building. He was therefore querying the basis on which the Improvement Notice the subject of this appeal was issued.
34. The Respondent Council confirms that an Improvement Notice had been served on the Applicant on 13th April 2015 in relation to two Category 1 Hazards namely Fire and Falling on stairs. Following completion of the works and an inspection, the Improvement Notice was revoked on 10th June 2016. The Respondent Council submits that the current Improvement Notice does not address the same issues as the previous Improvement Notice and that the service of a previous Improvement Notice does not prevent the Council from serving a further Improvement Notice when it is aware that Hazards exist. Indeed, it has a duty to do so if it is aware that a Category 1 hazard exists.

Inadequate notice of inspection

35. The Applicant says that the inspection of 28th August 2019 was given without adequate notice. He had received the letter on the Thursday afternoon before the visit on Friday morning but had not opened it until Friday midday after the visit had taken place. He says that he attended the Property on one occasion but could not recall the date.
36. The Respondent Council's evidence is that Ms Woods had no contact with the Applicant until 19th November when she received a voice mail. She had a phone conversation with

him on 2nd December 2019 during which the Applicant told Ms Woods that he had not received the notification of the second inspection until the Friday morning. The Respondent Council submits that appropriate Notices were served by first class mail and has adduced evidence of the letters (pages 45 to 46 and 104 to 105) and Ms Woods' oral evidence was that they were sent by first class mail.

Unreasonable timescale for completion of works

37. The Applicant submits that despite being aware of the Applicant's mobility problems and that he was due to have an operation on 3rd January 2020, the Improvement Notice was served with an impossible timescale requiring works to be completed by 20th March 2020.
38. The Respondent Council submits that whilst the Applicant had made them aware at the meeting on 11th December 2019 that he was due to have an operation, that no firm date had yet been fixed.

Lack of complaint from tenants

39. The Applicant says that there was no complaint from any of the tenants which had led to the Improvement Notice. Once the minor agreed 'hazards' were completed, the Property's condition is considered by the residents to be good. He has produced a letter signed by the four tenants who confirm that, in their view, the Property is comfortable, warm and safe, that there have been no accidents, the fire/smoke alarms work and are maintained regularly by the Applicant. They accuse Ms Woods of 'nitpicking' and that not all the work identified is desired by the tenants, such as additional electrical sockets or cosmetic work such as matching an area with existing décor and that, as tenants, they are capable of decorating when they choose.
40. The Respondent Council submit that it is irrelevant whether there has been a complaint from a tenant as once the Respondent Council is aware of a Category 1 Hazard, it has a duty to take action. The Respondent Council set out in the "Statement of Reasons for decision to take enforcement action" dated 20th December 2019 sent with the Improvement Notice (pages 241-242) the reasons as to why an Improvement Notice (rather than any other formal Notice or Order or indeed no formal action) was appropriate.

Hazards and Remedial Action

41. In his application to the Tribunal dated 25th February 2020, the Applicant accepts the deficiencies giving rise to a Hazard identified at items 5,6,7,8,9,10,32 and 33 and says that the work has either been carried out or that he intends to carry it out. Whilst not accepting that they are a deficiency giving rise to a Hazard, he says that the works related to items 34 and 35 will be done. He further accepts the deficiencies at items 26,27,29,30,31 but says that these were not specified by the Respondent Council's Officers at the time of the 2015 Improvement Notice.
42. The Applicant disputes that the remaining items constitute deficiencies giving rise to the identified Hazard. He objects particularly to Hazard 1 Excess Cold as he says that he pays all the fuel bills, and no tenant has complained regarding being cold.
43. The Respondent Council adduces as evidence Ms Woods HHSRS assessments of, and the relevant extracts from the HHSRS Operating Guidance and other relevant Guidance for each Hazard, (pages 267 to 333).

44. At the commencement of the hearing the Respondent Council confirmed that errors had been made and identified certain items in the Improvement Notice that should be deleted. Item 18 of Schedule 1 which related to a crack to the glazing to the bathroom light was incorrectly assessed and did not meet the criteria as outlined in the Operating Guidance. and therefore item 18 of Schedule 1 and the corresponding remedial action at item 18 of Schedule 2 should be deleted. Following the further inspection on 9th May 2022, Ms Woods identified further electrical sockets which had not initially been visible due to furniture and therefore items 21, 23 and 25 of Schedules 1 and 2 should also be deleted as they had sufficient sockets.
45. Both Ms Woods and the Applicant confirmed that remedial works identified as items 3,5,6,7,8,15 in Schedule 2 had been carried out, and in relation to item 33 of Schedule 2 had been part carried out after the Improvement Notice had been served and we noted this on our inspection.

Deliberations

46. We consider the matter by way of a rehearing. We are looking at matters afresh; but what we are looking at is **the Respondent's decision** rather than making a decision based on what we have seen at the inspection. We should make a decision considering the evidence that was available to the Respondent when it made its decision, although we may have regard to matters of which the Respondent was unaware.

Nature of Property

47. The Applicant accepts that the Property is an HMO. We agree that the Property falls under the 'standard test' of section 254 of the Act which defines HMOs. The Respondent Council accepts that as there are four occupiers the Property does not fall under the licensing regime for HMO's. However, as an HMO, the Property falls within the definition of 'residential premises' in section 1(4) of the Act but does not fall within the exclusions set out in Schedule 14 of the Act and is therefore subject to the provisions in Part 1 of the Act regarding housing conditions. The precise terms of the tenancy arrangements with the occupiers and the amount of rent charged are not relevant. As an HMO, the Property must meet certain conditions irrespective of whether this may result in the character of the Property changing from a 'family home'. Whilst ever the Property is being used as an HMO, it is not a family home/house and has to comply with housing standards. We therefore reject the Applicant's argument. Whether the Applicant wishes to sell the Property as a family home to avoid having to carry out the works is entirely a matter for him and the implied threat regarding any subsequent impact on the current tenants of such a sale is irrelevant to the issue before us. The cost of remedial works is not relevant unless it can be shown that the remedial works are unreasonable or disproportionate. If the Applicant had considered that the remedial works were too costly, it was open to him to discuss alternative options for remedial action with the Respondent Council which he did not do.

Prior Council Involvement

48. We agree with the Respondent Council that a local authority is not prevented from serving an Improvement Notice where it has previously served such a Notice. If it becomes aware of a Category 1 Hazard, as it has in this case, then it has a **duty** to take action.

Inadequate Notice of Inspection

49. We have noted the letters dated 22nd August 2019 and 16th September 2019 advising of inspections on Wednesday 28th August 2019 at 10.30am and Friday 20th September 2019 at 12pm. The Applicant's oral evidence was that he had received a letter on a Thursday but had not opened it until after midday on the Friday by which time the inspection had taken place. As the Applicant's evidence refers to a Friday inspection, we find that he was mistaken in his evidence that this referred to the August inspection, as the latter was on a Wednesday. Ms Woods evidence corroborates that the Applicant had told her that the inspection he missed was on the Friday.
50. We find that despite not opening the letter until the Friday, the Applicant had actually received the letter on 19th September 2019 giving notice of the inspection on 20th September 2019.

Unreasonable timescale for completion of works

51. Whilst we find that the Respondent Council was aware that the Applicant was due to have an operation, they had not been advised of the date of the operation prior to the service of the Improvement Notice. The Applicant contacted the Respondent Council by letter dated 11th February 2020 to advise that he had had an operation on 3rd January 2020 and had been advised not to do any work for 6 weeks after the operation. Whilst accepting that he would rectify some 'hazards' and investigate other 'hazards', the letter did not ask for an extension of time to carry out the remedial work but rather advised that he was to submit an appeal.
52. Having regard to the nature and extent of the specified remedial works, the Respondent Councils lack of knowledge of the operation date and the failure by the Applicant to ask for an extension of time to complete the remedial works, we find that the timescale for completion of the majority of the works was reasonable. However, in relation to the remedial action in relation to damp, we determine that 8 weeks is unreasonable and therefore determine that the timescale for completion of works for the Improvement Notice should be 12 weeks.

Lack of complaint from tenants

53. Whilst we note the letter of support from the tenants, and that they have not complained, this does not oust the Respondent Council's **duty** to take action where it considers there to be a Category 1 Hazard. Tenants may be reluctant to complain for a variety of reasons including pressure from a landlord and a fear of being evicted or that they are happy to live in premises which, based on an objective assessment against national guidance, a professional officer considers to be in poor condition and where there are health and safety hazards for the occupiers and any visitors. We therefore do not accept the Applicant's argument that there should not be an Improvement Notice as the tenants have not complained. The original inspection arose from a complaint other than by the tenants.

Hazards and Remedial Action

54. The Applicant accepts that the matters identified as items 2,3, 5-11 inclusive, 14,15,16,17,26,27,32, 33,34 and 35 of Schedule 1 require attention although does not accept that they give rise to Hazards under the HHSRS framework. The Applicant has completed Items 3,5,6,7,8 and 15 and part completed item 33 of the remedial works set out in Schedule 2. The remaining items have not been completed.

55. We have had regard to the written and oral evidence of Ms Woods regarding the three inspections, the photographic evidence taken at the time, and her HHSRS risk assessments. As a result of the Respondent Council advising that they wished particular items in Schedule 1 to be deleted as a result of the recent inspection and also as a result of deletions we have made as explained in the paragraphs below, we have reassessed the Hazards where necessary and as detailed below.

Hazard 1 (Excess Cold).

56. On the inspection we clearly saw the blown windows referred to in items 1 and 2 of Schedule 1 and noted that the Applicant has replaced the blown window in the kitchen referred to in item 3. Whilst we had regard to the Applicant's submission in relation to item 4 that the bathroom is enclosed on five sides and that no one had complained of cold, we noted that there was no opportunity for a tenant to control the temperature in the bathroom. The bathroom has a large window on one side. The Applicant's evidence was that he had a radiator for the bathroom and the relevant piping to the bathroom but he did not think it was necessary to fit a radiator. Having considered the HHSRS assessment by Ms Woods (pages 267-280), we agree that the deficiencies identified gave rise to a Hazard and which was appropriately categorised as Category 1. Having regard to the nature of the Hazard, the photographs in the Respondent Council's bundle and the written and oral evidence of Ms Woods, we find the remedial action detailed in items 1 to 4 inclusive of Schedule 2 of the Improvement Notice to be appropriate and proportionate.

Hazard 2 (Damp and Mould Growth)

57. The Applicant accepted the deficiencies in items 5,6,7 and 8 and had carried out the remedial action necessary. The Applicant also accepted that there was damp as referred to in items 9,10 and 11, but objected to the remedial action required. The Applicant disagreed that item 12 was a deficiency. Having considered the HHSRS assessment by Ms Woods (pages 273-280), we agree that the deficiencies identified at items 5-12 gave rise to a Hazard and that the Hazard was appropriately categorised as Category 2. Having regard to the nature of the Hazard, the photographs in the Respondent Council's bundle and the written and oral evidence of Ms Woods, we find the remedial action detailed in items 5 to 8 inclusive of Schedule 2 of the Improvement Notice to be appropriate and proportionate.

58. The Applicant did not agree the remedial action identified in items 9,10 and 11 of Schedule 2 which was to obtain a specialist damp report. He preferred to follow best practice from neighbouring houses which had the same problems. He proposed to paint a diluted pva solution on the ground floor of the Property as his view was that the damp was caused by the porous stone from which the Property was constructed. He also proposed to place cowls on the chimneys which did not have gas fires. The Applicant had not made the Respondent Council aware of these plans until a week before the hearing. The Applicant had taken some steps to remedy the area identified in item 10 of Schedule 1 by placing lead in the hopper on the guttering outside immediately next to the area. Ms Woods accepted that the damp in the living room was not related to a leak in the bathroom but appeared to have been caused by misuse of the shower which had since ceased and the area was drying out. However, there remained a dispute as to the cause of the damp in the living room as the Applicant had suggested it was caused by condensation caused by leaving the door wedged open.

59. As the cause of damp in the various places is unclear, we find that the remedial action to obtain a specialist damp report is appropriate and proportionate as that will determine the

causes and propose the relevant solutions for each area rather than the Applicant adopt a 'hit and miss' approach. However, we find that the wording of item 9 in Schedule 2 goes beyond what is required. Whilst the Respondent Council may prefer for a specialist firm to provide a guarantee that is a matter for the property owner as he remains responsible should any damp works be unsuccessful. Whilst one would hope that a responsible property owner and landlord would wish to seek the protection of a contractor with a guarantee, the risk is one to be managed by the property owner. We are also unclear why the Respondent Council would need to see a copy of the estimates. If a property owner considers the costs to be excessive, they can advise the Respondent Council to discuss alternatives. We therefore vary item 9 of Schedule 2 by deleting the whole and replacing with:

'Obtain a specialist report from a competent contractor registered with a recognised professional organisation in connection with the damp at the property as per points 9-11 of Schedule 1. Undertake all works specified in the report. A copy of the report is to be submitted before the work proceeds. Documentary evidence is required to demonstrate that the works have been completed. All works disturbed are to be made good'.

60. As it has been accepted that the damp was not caused by a leak from the bathroom then we vary item 10 of Schedule 2 by deleting:

'In addition, if it is identified that the damp is a result of a leak from the bathroom, employ a competent plumber registered with a recognised professional organisation to carry out works to prevent any further water leaking'.

61. Item 10 of Schedule 2 as varied will read:

'Addressed in point 9 above'.

62. We agree the remedial action in item 11 of Schedule 2.

63. In relation to item 12, the Applicant does not accept that any water which goes onto the window and sill will cause any dampness to the windowsill and seals. From the photographs, Ms Wood's evidence and our inspection we noted that due to the position of the shower and the absence of a shower curtain between the window and the shower, water will go onto the windowsill and window. The windowsill is tiled whereas the window has a wooden frame which is likely to deteriorate with time due to water damage. Both Ms Woods and the Applicant had noted mould to the seal and window frame. We agree with Ms Woods HHSRS assessment that it is a deficiency which when considered with the other deficiencies under this heading, give rise to a Category 2 Hazard (pages 273-280). Having regard to the nature of the Hazard, the photographs in the Respondent Council's bundle and the written and oral evidence of Ms Wood, we find the remedial action detailed in items 12 of Schedule 2 of the Improvement Notice to be appropriate and proportionate.

Hazard 3 (Lighting)

64. The Applicant accepted the deficiencies in items 1, 2 and 3 which are duplicates of the deficiencies identified at items 13, 14 and 15 under the Hazard of Lighting. The Applicant had confirmed that he had replaced the window referred to in item 3. The Applicant did not accept that blown windows which affect the ability to see out of the window could affect a tenant's mental health and cause psychological harm. As it is an HMO, it is likely that the tenants will spend a substantial amount of time in their bedrooms. We agree with

Ms Woods HHSRS assessment that the deficiencies give rise to a Category 2 Hazard (pages 328-331). Having regard to the nature of the Hazard, the photographs in the Respondent Council's bundle and the written and oral evidence of Ms Woods, we find the remedial action detailed in items 13,14 and 15 of Schedule 2 of the Improvement Notice to be appropriate and proportionate.

Hazard 4 (Food safety)

65. The Applicant accepted that the lino was torn in the kitchen as identified in item 16. We agree with Ms Woods HHSRS assessment that the deficiency gives rise to a Category 2 Hazard (pages 281-286). Having regard to the nature of the Hazard, the photographs in the Respondent Council's bundle and the written and oral evidence of Ms Woods, we find the remedial action detailed in item 16 of Schedule 2 of the Improvement Notice to be appropriate and proportionate.

Hazard 5 (Personal hygiene sanitation and drainage)

66. The Applicant accepts, as identified in item 17, that there are cracked and missing tiles to the bathroom walls but says that he cannot access sufficient replacement tiles to match existing. He has plastered the area where the boiler was previously located but it is not flush to the surrounding tiles nor capable of being cleaned.

67. We agree with Ms Woods HHSRS assessment that the deficiency identified in item 17 gives rise to a Category 2 Hazard (page 287-294). However, whilst it would look better cosmetically for the tiles to be replaced, (whether or not they match the existing tiles), that is not the only method to mitigate the risk.

68. We vary item 17 of Schedule 2 by deleting the whole and replacing as follows:

‘Lift all loose, broken or uneven wall tiles to the bathroom and set aside for reuse. Where appropriate, prepare the walls to receive new tiling. Prepare and rebed previously set aside sound tiles and provide new tiles (to replace broken or missing ceramic tiles) as necessary. Fix securely to the walls, grout and leave sound and even on completion.

Where it is not appropriate to replace tiles, repair any broken areas and prepare and finish the area to a non -porous cleanable surface flush with the surrounding tiles.’

69. Ms Vodanovic has confirmed that item 18 in Schedule 1 should be deleted for reasons previously explained. We agree and also delete the corresponding remedial action at item 18 of Schedule 2.

Hazard 6 (Falling between levels)

70. The Applicant accepts, as set out at item 19 that the gaps between the banisters have gaps of up to 15 cm and that gaps should be no more than 10 cm but says that it is a feature of the house. We agree with Ms Wood's HHSRS assessment of this as a deficiency giving rise to a Category 2 Hazard (pages 295-299).

71. However, the wording of the remedial action at item 19 of Schedule 2 is capable of different interpretations, perhaps deliberately so to allow the Applicant flexibility in how to resolve the matter. However, the inclusion of the phrases ‘*It should be at least 1,100mm high*’ and ‘*The design and construction should discourage children climbing on it (i.e. not of a*

ladder design) and it should be strong enough to support the weight of people leaning against it' could be read as requiring the whole guarding to be replaced as currently there is no suggestion that the existing guarding is lower than 1,100mm high. The matter could be resolved by boxing in the balustrades with a material of suitable construction such as hardboard or, if the visual aspect of the feature is to be retained, by a transparent material of suitable construction. However, if the guarding/balustrade is to be completely replaced then it is appropriate to ensure a minimum height and design and construction.

72. We vary item 19 of Schedule 2 by deleting the whole and replacing with the following:

'Ensure that the guarding/ balustrade to the first floor landing and the balustrade/ banister on the stairs from first to second floors do not have openings which would allow a 100mm sphere to pass through and is strong enough to support the weight of people leaning against it to prevent falls.

If the guarding/balustrade is to be removed and replaced to achieve the above, the replacement should be at least 1,100mm high. The design and construction should discourage children climbing on it (i.e. not of ladder design)'.
'

73. In relation to item 20, whilst we accept that the floors to the second floor are steep, at the inspection we checked the bannister at the bottom of them but did not find it to lack sturdiness nor was there was any movement or play in it. We were not advised that any work had been done to it since Ms Woods' inspection. Neither Ms Woods' written or oral evidence, nor the assessment describe why she considers the current bannister to be 'unsturdy'. Is it due to the original design and construction and is therefore inherently unsturdy or is it due to disrepair? Neither the description of the deficiency nor the remedial action sufficiently describes exactly what the issue is to be addressed and how the Applicant would know when 'sturdiness' had been achieved. We therefore delete item 20 of Schedules 1 and 2.

Hazard 7 (Electrical Hazards)

74. Ms Vodanovic confirmed that items 21, 23 and 25 identified as deficiencies giving rise to a Hazard in Schedule 1 should be deleted for reasons previously explained. We agree and for the same reasons delete items 21, 23 and 25 in Schedule 2.

75. In relation to item 22, (first floor front bedroom), the assessment states that there is 1 double socket whereas at the latest inspection Ms Woods confirmed that there was 1 double and 3 single sockets. The Guidance on Minimum Provision of Electrical Socket Outlets In The Home published by Electrical Safety First ('the Electrical Guidance') suggests that there should be a minimum of 3 double sockets in total for a double bedroom and 2 double sockets for a single bedroom for rooms up to 12m². We consider the room to be a double bedroom and therefore a further single socket is required in accordance with the Guidance and there is a deficiency as identified by Ms Woods.

76. In relation to item 24, (front second storey room which is a bedroom currently used as a living area), the assessment states that there are 2 double sockets, as confirmed at the latest inspection. The minimum sockets required under the Electrical Guidance is determined by the use and size of the room. At the inspection, the room was measured at 10.2m².

77. The Electrical Guidance states that use as a main living area, single bedroom, double bedroom and study require minima of 4,2,3, and 4 double sockets respectively. We do not consider the room to be used as a main living area as there is such a room on the ground

floor for use by all the tenants. This room is used exclusively by one tenant and is in addition to his bedroom which is across the landing. Neither do we consider the room to be a study which suggests the need for numerous sockets due to the need for office equipment such as computers, copiers, printers etc. It is not ideally located for a study being at the very top part of the house and at the top of a flight of steep stairs.

78. The Electrical Guidance is not specific to HMOs or shared houses. It does comment that in open plan spaces all applicable allowances from each area should be taken into consideration. Whilst not open plan, the tenant has exclusive use of both rooms on the second storey including the room referred to at item 25, (second floor rear room). Following the latest inspection, Ms Woods confirmed that there were 2 double and 1 single socket in that room. Across the two rooms of which the tenant has exclusive possession and which are used as a living area and bedroom there is a total of 4 double sockets and 1 single socket.
79. As the Property is restricted to under 5 occupants, as otherwise it would fall under the HMO licensing regime, it is likely that the second floor will be used exclusively by any future tenant in a similar format to the current tenant. On inspection, Ms Woods noted that that extension cables were being used extensively in the room used as a living room which suggests that despite the total number of sockets on the second floor there is still a lack of sockets in the necessary location. On balance, and having considered the corrected number of sockets, we determine that there is a deficiency in the number of sockets in the room identified in item 24 used as a living room. We have considered the Electrical Guidance recommending main living areas have a minimum of 4 double sockets and double and single bedrooms have a minimum of 3 and 2 double sockets respectively. We consider the room to be the size of a single bedroom. We have had regard to the fact that the room is used exclusively by one person as a living area and that it is not the main living area for the house, which could justify a departure from the requirement for 4 double sockets. However, we have also had regard to the fact that the tenant is likely to spend the majority of his time in the room carrying out all activities other than sleeping, bathing and cooking and therefore is likely to use several appliances in the room so there will be a general need for more sockets, as is evidenced by the use of extension cables. We have also had regard to the current total of sockets across the two rooms. We consider that the minimum number of sockets in the living room is 3 double sockets. There is therefore a deficiency.
80. At the hearing, Ms Woods said that following her recent inspection where she had identified the actual number of sockets in each room, she had adjusted her original assessment of the likelihood of harm (pages 300-310) under this Hazard. Whilst the likelihood of harm had decreased from her initial assessment, as she had accepted that some rooms now had sufficient sockets, and only items 22 and 24 remained as deficiencies, the decrease was not so significant as to avoid there being a deficiency giving rise to a Category 2 Hazard. We agree with that assessment.
81. To provide clarity in the remedial action, we delete item 22 in Schedule 2 and replace with the following:

Provide and fit a minimum of three twin sockets-outlets in the first floor front bedroom in line with BS 7671 IET Wiring Regulations. All electrical works must be undertaken by a suitably qualified electrician registered with a Government approved self- certification scheme. All works to be in accordance with the current edition of the IET Regulations.

82. We delete item 24 in Schedule 2 and replace with the following:

‘Provide and fit a minimum of three twin sockets- outlets in the front second storey room in line with BS 7671 IET Wiring Regulations to be undertaken by a suitably qualified electrician as addressed in point 22 above.’

Hazard 8 (Fire)

83. We do not accept the Applicant’s submission that the Respondent Council was applying the HMO standard regarding fire safety. The Respondent Council’s evidence was clear that they had applied the LACORS Guidance which was based on the number of storeys of a building as opposed to the number of occupiers and had placed reliance on Case Study D5 note 8 regarding shared houses which requires a lower standard than that required for HMOs (page 322). In relation to items 29 and 30, we note the Applicant’s evidence that the tenants don’t lock the front or back doors and therefore a thumb turn key lock is not necessary. However, we cannot take into account the characteristics of the particular occupiers as future occupiers may lock the doors. The Applicant accepted the deficiency identified in item 32. We agree with Ms Woods’ HHSRS assessment of items 26-32 as deficiencies giving rise to a Category 2 Hazard (pages 311-322). Having regard to the nature of the Hazard, the photographs in the Respondent Council’s bundle and the written and oral evidence of Ms Woods, we find the remedial action detailed in items 26-32 of Schedule 2 of the Improvement Notice to be appropriate and proportionate.

Hazard 9 (Structural Collapse and falling elements)

84. In relation to item 33, the Applicant had removed the loose timber although one piece remained and he agreed that it needed to be removed. We agree with Ms Wood’s HHSRS assessment of item 33 as a deficiency giving rise to a Category 2 Hazard (pages 323-327). Having regard to the nature of the Hazard, the photographs in the Respondent Council’s bundle and the written and oral evidence of Ms Woods, we find the remedial action detailed in items 33 of Schedule 2 of the Improvement Notice to be appropriate and proportionate.

85. In relation to items 34 and 35 of Schedule 1, we noted the photographs taken at the inspections and had inspected the Property ourselves. We agree that the under boarding plaster under the stairs leading from the first to the second floor is in disrepair and that there is missing plaster in the plasterwork in the front second storey room where an aerial cable has been removed. However, the justification provided in the HHSRS assessment as to why these deficiencies give rise to a Hazard is weak, and in our view, inadequate (page 323). The two items are certainly examples of disrepair and are not aesthetically pleasing, but on the basis of the justification presented, in our view, the deficiencies are not such to give rise to a Hazard. We therefore delete items 34 and 35 of Schedules 1 and 2.

Requirement for an Improvement Notice as opposed to other form of action

86. After excluding items 18,20,21,23,25,34 and 35 of Schedule 1, having regard to the Respondent Council’s Enforcement Guidance, the nature, number and Categories of the remaining Hazards, the background, including the issue of previous Improvement Notices, the Appellant’s failure to attend the inspections, the fact that that the inspection arose from a complaint regarding a fire, and the lack of progress in relation to works following an informal approach in relation to Hazards properly categorised as Category 1, (in relation to which the Respondent has a **duty** to act), and Category 2, we do not consider the

Respondent Council's action in serving an Improvement Notice to have been unreasonable. We consider that an Improvement Notice, rather than any other formal Notice or Order or indeed no formal action, was appropriate. We agree with the considerations as to the appropriate option as set out in the Respondent Council's Statement of Reasons dated 20th December 2019 (pages 241-242).

87. We are satisfied that the Respondent complied with statutory requirements in relation to the issue and service of the Improvement Notice.

Date to start and complete the works

88. On 11th December 2019, the Applicant raised with Ms Woods that he was due to have an operation on a date yet to be fixed. It was only on 11th February 2020, that the Applicant contacted the Respondent Council to advise it that he had had the operation and that whilst he was sufficiently fit to do paperwork he would not be able to undertake any work on site. The works were required to be completed by 20th March 2020 i.e an 8 week period. Having regard to the nature and extent of the remedial works as originally required, we determine that, with the exception of the remedial action regarding the issue of damp, an 8 week period was appropriate. However, we think that 8 weeks for the damp issue was likely to be unachievable. We have therefore determined that 12 weeks for all remedial action is appropriate.

89. The remedial works are to be started within 28 days of the service of this Decision on the Applicant and each part of them is to be completed within 12 weeks of the date of service.

Costs

90. Neither party has made an application for costs and we therefore make no costs award.

Appeal

91. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson
22nd June 2022