



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

Case Reference : **BIR/OOGA/HIN/2019/0006**

Property : **Moor Cottage, Widemarsh Common,
Hereford HR4 9NA**

Applicant : **Bernad Wojtczak**

Respondent : **Herefordshire Council**

Type of Application : **Improvement Notice**

Members of Tribunal : **Judge D Jackson
Mr P Wilson BSc (Hons) LLB MRICS
MCIEH CEnvH**

Date of Decision : **23 October 2019**

DECISION

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Background

1. On 8th May 2019 the Local Authority served an Improvement Notice on the Applicant (as the person having control or manager of a House in Multiple Occupation) in relation to Hazard No. 24 – Fire. The hazard was assessed as being in Band F, within the numerical score range 100 – 199 and is accordingly a category 2 hazard. In the opinion of the Local Authority the deficiency giving rise to the hazard was:

“Door between kitchen and utility room is not a fire door; the self-closer is missing off the door of bedroom 6; not all final exit doors are operated with a thumb turn lock and white goods located in escape routes”
2. On 9th May the Local Authority made a Demand for Payment of a Charge for Enforcement Action in the sum of £637 in accordance with section 49(2) of the Housing Act 2004 (“the 2004 Act”).
3. On 10th June 2019 the Applicant appealed to the Tribunal against the Improvement Notice.
4. On 4th July 2019 the Tribunal extended time for the appeal to be made under paragraph 14(3) of Part 3 of Schedule 1 to the 2004 Act and issued Directions.
5. On 23rd July 2019 the Tribunal received Statement of Case from the Local Authority. The Applicant’s Statement of Case was received on 9th August 2019.
6. The Tribunal determined this appeal on 17th September 2019. Neither party has requested an oral hearing.
7. On 24th September 2019 the Local Authority revoked the Improvement Notice as it was satisfied that the requirements of the Notice had been complied with.

Inspection

8. The Tribunal inspected the Property on the morning of 17th September 2019 in the presence of the Applicant and Lucy Harries, HMO and Housing Enforcement Officer.
9. Although described in the application form as a three bedroom detached house the Property has 6 bedrooms and has an HMO Licence for up to 7 persons. On the ground floor there are 3 bedrooms (numbered 4-6), a kitchen, dining/living room, bath/shower room and a utility room. The Tribunal notes that the only escape route for Bedroom 6 (as marked on sketch plan contained at Appendix 2 to the Local Authority Bundle) is via the utility room to the final exit door. There is a mezzanine floor which contains a bathroom. On the first floor there are 3 bedrooms (numbered 1-3).
10. A fire door had been had been fitted between the kitchen/living/dining room and the utility room which is the escape route from Bedroom 6 located at the rear of the utility room.
11. The self-closer to the door of Bedroom 6 had been reattached.
12. The rear exit door from the utility room had a thumb turn lock.
13. White goods had been removed from the utility room.

Deliberation

14. On 19th December 2018 the Local Authority carried out an inspection to check on Licence conditions. On 20th December 2018 a Formal Consultation letter was sent to the Applicant (Appendix 2) enclosing Schedule of Works and a floorplan. The Schedule of Works contains 9 separate specified works. Items 2-4 clearly specify

- Fire doors FD30S to risk rooms (as illustrated on enclosed floorplan)
 - Final Exit Door Locks
 - Clear escape route through rear utility.
15. On 4th March 2019 the Local Authority wrote to the Applicant, not having received a response to its letter of 20th December 2018. The Local Authority specifically mention in its letter progressing to the service of an Improvement Notice and charge for enforcement.
16. On 16th April 2019 the Local Authority inspected the Property again to check on the works set out in the Formal Consultation Letter. The inspection was pre-arranged with the Applicant who was present. The Notes made by the HMO and Housing Enforcement Officer following her inspection are at Appendix 7 of the Local Authority Bundle. It was specifically noted that:
- No fire door between kitchen and utility and closer missing from room 6
 - Front and French doors were thumb turn and back door from utility was key (as evidenced by photograph)
 - Utility still contained white goods and was not clear
17. The comments of the Applicant on 16th April 2019 are recorded as: “he did not agree that the escape route out of the rear utility was necessary for bedroom 6 and that they could escape through the kitchen/living areaHe told me that the fire service had agreed with him...”.
18. On 30th May 2019 the Applicant wrote to the Local Authority enclosing a copy of his letter of 14th May 2019 disputing that the works listed in the letter of 20th December 2018 had not been carried out.
19. We prefer the evidence of the Local Authority at Appendix 7. The photograph attached clearly shows that “back door from utility was key”. We do not, therefore, accept the Applicant’s claims in his letter of 14th May 2019 that “door on fire escape route, thumb turns were fitted before inspection”. We also prefer the evidence of the HMO and Housing Enforcement Officer that that there was no fire door between kitchen and utility, the closer was missing from Bedroom 6 and that the utility room had not been cleared of white goods. We prefer the evidence of the Local Authority because it is consistent with the Applicant’s verbal disagreement in relation to the fire routes and his insistence that the fire service agreed with him.
20. Accordingly, we find that as at the date of service of the Improvement Notice on 8th May 2019 that a category 2 hazard existed at the Property in relation to Hazard No. 24 – Fire. We also find, as of that date, that the following remedial action had not been undertaken to remedy the deficiencies found:
- Fire doors FD30S to risk rooms
 - Final Exit door locks
 - Clearance of Escape Routes
21. As a category 2 hazard exists the Local Authority has a power and not a duty to take enforcement action. We find that the Local Authority correctly took enforcement action and that the service of an Improvement Notice rather than any other kind of enforcement action was entirely appropriate. We reach that conclusion for two reasons. Firstly because of the seriousness of lack of a safe escape route from Bedroom 6 in the event of fire. (The risk room (kitchen) was not adequately

separated from the escape route. The presence of domestic appliances created a fire risk in the utility room which formed part of the escape route. The final exit door was lockable and not open by means of a thumb turn in the event of emergency). Secondly the Applicant had failed to comply fully with the Formal Consultation letter of 20th December 2018.

22. Accordingly, we confirm the Improvement Notice served on 8th May 2019.

23. This appeal is by way of re-hearing and may be determined having regard to matters of which the Local Authority were unaware. However, the Tribunal is looking at the decision of the Local Authority on 8th May 2019. The Tribunal cannot take into account the subsequent remedial works which lead to the revocation of the Notice on 24th September 2019.

Payment of Charge for Enforcement Action

24. The powers of the Tribunal in relation to Payment of a Charge for Enforcement Action are set out in section 49(7) of the 2004 Act:

“Where a tribunal allows an appeal against the [Improvement Notice], it may make such order as it considers appropriate reducing, quashing or requiring repayment of, any charge in respect of the notice...”

25. Accordingly, as the Tribunal has not allowed the appeal against the Improvement Notice the Tribunal has no jurisdiction to make any order in relation to the demand dated 9th May 2019 in the sum of £637

Decision

26. The Improvement Notice served on 8th May 2019 is confirmed.

27. For the avoidance of doubt the subsequent revocation of the Improvement Notice on 24th September 2019 is unaffected by this Decision.

28. The Demand dated 9th May 2019 in the sum of £637 in respect of a charge for the enforcement action is confirmed.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this Order to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the Decision to the party seeking permission.