



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

Case Reference : **CHI/45UC/HIN/2018/0020**

Property : **Gladwyn, The Street
East Preston
Littlehampton
BN16 1HT**

Applicant : **Mrs J Simmonds**

Representative : **In person with Mr Paul Beamish in attendance**

Respondent : **Arun District Council**

Representatives : **Mr S A Flanagan (Legal representative)
Mrs H Stevens (Empty Property Officer)**

Type of Application : **Appeal against an Improvement Notice
Ref: 16158/HS dated 13 July 2018
issued under Sections 11 & 12 Housing Act 2004**

Tribunal Member : **Mr BHR Simms FRICS (chairman)
Mr RA Wilkey FRICS (surveyor member)**

**Date &
Venue of Hearing** : **18 December 2018
Havant Justice Centre**

Date of Decision : **20 December 2018**

DECISION

DECISION OF THE TRIBUNAL

1. The Tribunal dismisses the Appeal and confirms the Improvement Notice 16158/HS dated 13 July 2018 (“the Improvement Notice”) but varied to substitute **30 June 2019** as the date for completion of the remedial actions set out in the Improvement Notice and in Schedule 3.

THE APPLICATION

2. The application is dated 03 August 2018 and is made under paragraph 10 to Schedule 1 of the Housing Act 2004 (“the Act”). This is an appeal against the issue of the Improvement Notice.
3. On 15 & 30 August 2018 the Tribunal issued Directions for the conduct of the case with various subsequent time extensions and permission for an expert witness.
4. In accordance with the Directions the Respondent Council supplied a bundle of documents including the HHSRS¹ calculations, Statements of Case and Reply with additional documents. The Tribunal also had witness statements from Mrs Stevens and Mr P K Shaw, the Applicant’s expert.
5. Neither party made an application for reimbursement of fees or for costs.

FACTUAL BACKGROUND

6. The property has been recorded by the Respondent Council as unoccupied and unfurnished since 20 April 2015. In August 2016 the Council received a complaint regarding the condition of the property and the length of time it had been empty. There followed correspondence and telephone calls between the Owner and Respondent resulting, in September 2016, in an understanding that the property was to be sold and the Respondent hoped that this would enable the site to be tidied.
7. In July 2017 Mrs Stevens attempted to contact the owner in order to give advice on bringing the property into use as a home. Further attempts to make contact were made in September 2017 and November 2017 without success and a formal statutory request for information was provided resulting in a telephone call from Mr Paul Beamish indicating that renovations would be progressing.
8. In February 2018 Mrs Stevens found that the work had not progressed and discussions took place between the Respondent and the owner’s representative resulting in excuses for delays and assurances that progress would be made. A visit in May 2018 found that the works had not progressed and the Council commenced enforcement action by arranging a formal inspection in May 2018. Mr Beamish was in attendance and represented himself to the Council as a joint owner and gave reassurances that the property would be refurbished. Relying on these assurances the Respondent delayed taking any formal action until July 2018 having discovered that there had been no progress with any work.

¹ The Housing Health and Safety Rating System (England) Regulations 2005

9. On 03 July 2018 the Applicant was warned by letter of the impending enforcement action and on 13 July 2018 the Improvement Notice was served.
10. On 03 August 2018 Mrs Simmonds appealed the Notice resulting in this hearing.

INSPECTION

11. The Tribunal members inspected the Property by arrangement at about 09:30 prior to the hearing in company with Mrs Simmonds, Mr Beamish and Mr Shaw for the Applicant and Mrs Flanagan and Mrs Stevens for the Respondent. Having been advised of the dangerous state of the building and having been provided with extensive photographs it was agreed that an internal inspection was not required
12. The Tribunal found a large detached two-storey house on a substantial plot in a residential area on the outskirts of East Preston village. The building is dilapidated and has boarded-up windows and doors, collapsed guttering, damaged windows and is generally in a very poor condition. The gardens surrounding the building are overgrown and strewn with discarded builders materials and detritus. There are concealed trenches and pits but the Tribunal members picked their way around the building and obtained a good general impression of its condition.
13. The site is temporarily secured but there is easy access for uninvited visitors over low walls and hedges.

THE HEARING

14. Mrs Simmonds introduced her evidence by asserting that as there is no intention that the existing house is occupied any defects to the property cannot be described as a Hazard for the purpose of HHSRS. This was expanded in her response to the Respondent's case.
15. She had no argument with the fact that in general terms the schedule of work set out in the Improvement Notice was required but she had a genuine intention to redevelop the site. If redevelopment was not possible she would refurbish and extend the house to provide a new home.
16. Since the house became empty following her mother going into a home and then dying there has been a losing battle to keep the property in good condition. However as soon as she discovered that there was development potential nothing further had been done to the house by way of repair.
17. She felt that it was too draconian for the Council to insist on repairs now when the house could be demolished to allow redevelopment.
18. The Applicant did not produce any plans, building estimates, valuations or other reports to support her view that a redevelopment was the best way to proceed. Mr Beamish attempted to supply some figures but these were too vague to assist the Tribunal. Mr Shaw, her expert, had no details for the Tribunal and could not even give any very rough figures for the eventual development value and building costs versus a value for the refurbished house. He was not a qualified valuer but he had advised Mrs Simmonds that a redevelopment was the way forward.

19. A planning application had been submitted but only a few days prior to the hearing and the Council had not listed the application. Mr Shaw had not obtained any informal view from the planning officer about the likelihood of the terrace of three houses being permitted. Apparently staff shortages at the Council no longer permitted this useful guidance.
20. Mrs Simmonds concluded her written statement that if the application for three terrace houses is not successful then Gladwyn will be renovated.
21. Mrs Flanagan for the Council explained in detail, by reference to the HHSRS Operating Guidance (a copy of which was contained in the bundle), that following the Council's duty to review housing conditions in their districts² it has to assess the potential for harm and provide a safe and healthy environment for any potential occupier or visitor. There does not have to be an actual occupier for a hazard to exist it is any potential occupier or visitor for whom the standard applies. Until the likelihood of any occupation is removed the duty of care exists.
22. The property has been empty since 2015 and although the Applicant, or her representative, continually indicated to the Respondent that either remedial work will be carried out, or redevelopment was proposed, nothing had happened. No detailed evidence of planning proposals have been given in evidence and there is no record at the Council of an application being made but this could be because it is only a few days old. The Applicant has had ample opportunity prior to the hearing to provide the Respondent with information in support of her case.
23. Mrs Flanagan asserts that although redevelopment may be an option she has not seen any information regarding costings or viability, source of finance, details of proposed properties or any other evidence to reassure the Respondent that demolition is the only likely option. To the contrary Mrs Simmonds always considers that the refurbishment of Gladwyn may eventually be the only option.
24. In the meantime the Council has a derelict building in an otherwise pleasant residential area where complaints are being received. Anyone entering the site or property by invitation or otherwise is at risk. The dereliction encourages anti-social behaviour.
25. The Respondent insists that the Improvement Notice is a reasonable and only solution to the problem. A hazard awareness notice would not result in any action, a prohibition order doesn't solve the problem of a dangerous building and although it is not on the table a demolition order would be considered if the Applicant does not comply with the Improvement Notice.

THE LAW

26. The Act replaces the housing fitness standard as set out in section 604 of the Housing Act 1985 with a new Housing Health and Safety Rating System (HHSRS) which evaluates the potential risk to health and safety from any deficiencies identified in dwellings using objective criteria.

² S.3 Housing Act 2004

27. Local Authorities apply HHSRS to assess the condition of residential property in their areas. HHSRS enables the identification of specified hazards by calculating their seriousness as a numerical score by a prescribed method. Hazards that score 1000 or above are classed as category 1 hazards, whilst hazards with a score below 1000 are category 2 hazards.
28. Section 2(1) of the Act defines hazard as:
29. *“any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)”*.
30. Section 2(3) provides:
31. *“Regulations under this section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur”*.
32. The regulations referred to in section 2(3) are the HHSRS.
33. Section 9 of the Act requires the Authority to have regard to the HHSRS Operating Guidance and the HHSRS Enforcement Guidance.
34. Sections 11-19 of the Act specify the requirements of an improvement notice for categories 1 and 2 hazards. Section 11(2) defines an improvement notice as a notice requiring the person on whom it is served to take such remedial action in respect of a hazard as specified in the notice. Section 11(8) defines remedial action as action (whether in the form of carrying out works or otherwise) which in the opinion of the Local Authority will remove or reduce the hazard. Section 11(5) states that the remedial action to be taken by the Notice 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. Section 12 deals with an improvement notice for a category 2 hazard, and contains similar provisions to that in section 11.
35. An appeal may be made to the Tribunal against an improvement notice under schedule 1 of the Act, paragraph 10, part 3. There are no statutory limits on the grounds of Appeal, although the Act contains provision for specific grounds, which under paragraph 11 includes the ground that one or other persons as an owner or owners of the specified premises ought to take the action concerned.
36. The Appeal is by way of a re-hearing and may be determined by the Tribunal having regard to matters of which the Authority is unaware. The Tribunal may confirm, quash or vary the improvement notice. The function of the Tribunal on an Appeal against an improvement notice is not restricted to a review of the Respondent’s decision. The Tribunal’s jurisdiction involves a re-hearing of the matter and making up its own mind about what it would do.

THE FINDINGS

37. The issues for the Tribunal are whether the Property suffers from hazards which pose risks to the health and safety of potential occupiers, and, if it does, to determine the extent of the formal action required of the owner to mitigate the hazards. From the evidence submitted the Tribunal is satisfied that the council officers are properly qualified to undertake these assessments.
38. The Applicant's approach was not to challenge the findings or the hazards but to challenge whether the standards applied to an unoccupied building.
39. The Tribunal is satisfied from its own inspection that the hazards identified exist and that the Respondent is required under the Act to take action.

WHETHER AN IMPROVEMENT NOTICE SHOULD BE ISSUED?

40. The legislation is structured in such a manner that if a category 1 hazard is present on a property appropriate enforcement action must be taken to reduce the hazard. Where there are category two hazards there is discretion to take action to reduce the hazard.
41. The Tribunal finds that this property has both category 1 & category 2 hazards and considers that the Respondent was justified in taking enforcement action against the category 2 hazards as well as the category 1 hazard, particularly as the two categories of hazard combined to give an overall view of the condition of the Property.
42. The question, therefore, is whether the Improvement Notice was the most appropriate enforcement action to take in respect of hazards identified.
43. The Respondent argued that the hazards were significant and a serious risk to occupiers and visitors to the Property. The Respondent weighed up the alternative options and concluded that the issue of an improvement notice was the most appropriate enforcement action to take.
44. The Applicant had no comments on which type of enforcement action was appropriate simply that no enforcement action was appropriate.
45. Turning first to the improvement notice itself, section 5(2) of the Act identifies seven types of enforcement action. In the Tribunal's view, five of the seven types of action were not appropriate to the circumstances of this Appeal. There was no imminent danger to the health and safety of an occupant which ruled out the options of emergency remedial action and an emergency prohibition order. The prospect of possible redevelopment, based on the history and evidence presented, was too remote to justify the radical options of demolition or clearance. The option of a prohibition order was not appropriate because feasible remedial action could be taken to reduce the risks posed by the category 1 and 2 hazards and prohibition would not prevent unauthorized access to the site or building.
46. The choice, therefore, is between a hazard awareness notice, and an improvement notice with the variant of suspending or varying the Improvement Notice.
47. The hazard awareness notice advises the owner of the property of the existence of a hazard and of the deficiency causing it. The notice requires no action to remedy the deficiency on the part of the owner, and there is no formal procedure to ensure that the person has followed the advice. The Enforcement Guidance suggests that a hazard awareness notice is a reasonable response to a less serious hazard, where the Housing Authority wishes to draw attention to the desirability of remedial action.

48. A hazard awareness notice may also be appropriate where an owner or landlord has agreed to take remedial action.
49. The Tribunal does not consider in this case that a hazard awareness notice is appropriate in respect of those hazards covered by the improvement notice. First the scale of hazards militate against the issue of a hazard awareness notice and informal offers to undertake a course of action have not materialised.
50. Second, the Applicant was not prepared to enter into negotiations with the Respondent to resolve these issues, and insisted that he would appeal the Improvement Notice.
51. The Tribunal is satisfied that an improvement notice is the only realistic option to remedy the deficiencies in the Property. The option of suspending the improvement notice was not appropriate for the reasons given against the issue of a hazard awareness notice.
52. The final step to consider is whether the remedial works proposed by the Respondent in the Improvement Notice were reasonable and practicable. The Applicant raised no substantive points about the proposed works.
53. Although the Applicant has consistently failed to carry out promised remedial works the Tribunal considers that some additional time should be given for her to comply with the Improvement Notice. Although clearly set out in the Act and in the Improvement Notice, Mrs. Simmonds seemed unaware of the serious consequences of not complying. Accordingly the Tribunal extends the date to comply with the Improvement Notice to 30 June 2019.

DECISION

54. The Tribunal dismisses the Appeal and confirms the making of the Improvement Notice but varied to substitute 30 June 2019 as the date for completion of the remedial actions set out in the Improvement Notice and in Schedule 3.

B H R Simms (chairman)

20 December 2018

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking