



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

**Case Reference** : **MAN/00cF/HIN/2018/024**

**Property** : **32 Strauss Crescent, Maltby, S66 7QJ**

**Applicant** : **Ms Sarah Churchill**

**Respondent** : **Rotherham Metropolitan Borough Council**

**Representative** : **Miss Elizabeth Anderton**

**Type of Application** : **Housing Act 2004 – Schedule 1 Paragraph 10 (1)**

**Tribunal Members** : **Mrs A Rawlence MRICS  
Mrs Hillary Clayton JP**

**Date of Decision** : **2 May 2019**

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**DECISION**

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## **Order**

### **The improvement notice in relation to 32 Strauss Crescent, Maltby is part confirmed; part quashed and part varied**

#### **Application.**

1. The Applicant appealed, under Section 18 and Schedule 1, Paragraph 10 of the Housing Act 2004 (“the Act”) against an improvement notice relating to the property that comprises the residential accommodation at 32 Strauss Crescent, Maltby S66 7QJ (“the Property”). The notice was served by Rotherham Metropolitan Borough Council, the local housing authority (“the Authority/Respondent”). It is dated 24 September 2018 and is made under sections 11 and 12 of the Act, requiring certain works to be carried out to the Property to remedy hazards referred to in the Notice. The Appeal lodged on behalf of the Appellant is dated 10 October 2018, which is a date before the notice was to have taken effect.
2. The improvement notice is one of the courses of action that the Authority may take in order to seek to remedy the hazards identified and the Authority has given reasons why this is the course of action chosen.
3. The provisions of Paragraph 10 of Schedule 1 provide for the person on whom an improvement notice is served to have the right to appeal to a Residential Property Tribunal and although setting out certain specific grounds of appeal they do not restrict the overall generality of the paragraph. Thereafter a combination of Paragraphs 12 and 15 envisage an appeal by way of re-hearing, admitting matters not previously considered, to allow the Tribunal to confirm, vary, or quash the Notice.
4. Directions as to the future conduct of the appeal was given by a Deputy Regional Judge of the Tribunal and the matter then listed for the consideration of the Tribunal on 16 April 2019.
5. The property is situated fairly close to the town centre with its shops and amenities.
6. The property comprises a mid-terraced house, situated on a development of similar houses.
7. The building is brick and timber clad with concrete tile construction with PVCu double glazed windows and external doors. The property has gas central heating.
8. The accommodation comprises:

Ground Floor: Hall, Kitchen and Living Room

First Floor: Two Bedrooms and Bathroom.

The Living Room has French windows to the garden at the rear.

9. The Authority was satisfied that within the property there existed a one category 1 hazards within the meaning of the Act, relating to the Property.

10. The category 1 hazard was:

Housing Health & Safety Rating System (HHSRS) Hazard No. 24. Fire

Means of escape through high risk room with lack of suitable fire detection

Bedroom door missing

Front bedroom door of hollow construction

Windows to first, which are capable of being used as escape windows, have sill heights of 1100mm, which increases need for early detection of a fire.

Remedial action: smoke detectors in Living Room and First Floor Landing

Heat detector in the Kitchen

All doors to be of sound, solid construction with missing rear bedroom door replaced

11. The Authority was satisfied that within the property there existed a two category 2 hazards within the meaning of the Act, relating to the Property.

12. The category 2 hazards were:

HHSRS Hazard No 23 Electrical

Lack of sockets to Kitchen, Living Room and both bedrooms

Bathroom light not steam sealed,

Remedial action: provide additional double socket outlets in all the rooms,

Replace the light fitment to the bathroom with a sealed unit.

HHSRS Hazard No 21 Falling on stairs

Rear external steps have no handrail and risers are uneven in size

No external light to rear

Horizontal banister rail is not the correct diameter to grab and the balustrade is easily climbable.

The stairway balustrade is not to current requirements of the Building Regulations (a 100mm sphere not to pass through any opening in the guarding)

Remedial action: provide and fix a suitable handrail the entire length of the external stairs  
Provide and fix an additional handrail to the main staircase  
Provide additional guarding to the stairway balustrade  
Supple and fix an external light

## **Inspection**

13. On the morning of 16 April 2019, the Tribunal inspected the Property. The Applicant, by telephone, requested that representatives from Rotherham Metropolitan Borough Council did not attend the inspection. They left the property and the Tribunal was shown around the property by the Applicant's Tenant.
14. The property is in a fair condition. Works have been carried out since the Council's application and these included:
  - a. Interlinked two smoke detectors one in the Hallway (outside the Kitchen) and one on the first Floor landing.
  - b. All internal doors had been replaced and were of sound, solid construction
  - c. A suitable handrail had been erected to the external steps along with a suitable outside light with a PIR sensor
15. The Tribunal inspected the number of sockets and noted that an extension lead was in use to service the washing machine in the Kitchen.
16. They also noted the bathroom light and that there was no automatic venting to the Bathroom.
17. The balustrade was protected along half of the staircase by the wall. The gap between the balustrade was not more than 100mm.
18. In the event of a fire it was possible to exit the Living Room through the door to the garden. Although there is no door to the Kitchen the stairs from the first floor lead into the Hall.

## **Submissions**

19. Both parties made submissions which were copied to the Tribunal and to the other party

## **The Law**

20. The law relating to the service and content of Improvement Notices as they relate to a situation where there is a category 1 hazard is set out in Sections 11-13 Housing Act 2004 and appear below:

21. Section 11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(1) If—

(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

Serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action)

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

(a)...

(b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts.

(c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4)

(1) The notice may not, by virtue of subsection 3 (b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority is satisfied—

(a) That the deficiency from which the hazard arises is situated there, and

(b) That it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats

(2) the remedial action required to be taken by the notice—

(a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard, but

(b) may extend beyond such action

(3) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

Contents of improvement notices

- (1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.
- (2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—
  - (a) whether the notice is served under section 11 or 12,
  - (b) the nature of the hazard and the residential premises on which it exists,
  - (c) the deficiency giving rise to the hazard,
  - (d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,
  - (e) the date when the remedial action is to be started (see subsection (3)), and
  - (f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.
- (3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.
- (4) The notice must contain information about—
  - (a) the right of appeal against the decision under Part 3 of Schedule 1, and
  - (b) the period within which an appeal may be made.
- (5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

22. Section 12 of the Act makes similar provision to Section 11 in relation to category 2 hazards, save that the authority may serve an improvement notice, rather than being under a duty to do so.

23. Section 262(7) of the Act defines an owner in relation to the premises as a person... who is for the time being entitled to dispose of the fee simple (the freehold) of the premises whether in possession or in reversion.

24. Paragraph 3)2 of Schedule 1 of the Act provides that in the case of a dwelling which is flat and is neither licenced under parts 2 or 3 of the Act the local authority must serve the notice upon a person who is:

- (a) An owner of the flat, and,
- (b) In the authority’s opinion ought to take the action specified in the notice.

## **Decision**

25. The Tribunal reminds itself that it is considering this matter by way of a rehearing and may, if there is such a situation, take into account any factors that have arisen since the notice was issued, or were not apparent

to the parties at that time. As the matter is a rehearing the Tribunal has the power to confirm, quash, or vary notice (Schedule 1, paragraph 15 of the Act)

26. The Tribunal is satisfied that the Appellant is a proper recipient of the notice.
27. The Applicant expressed concerns that the property had been visited on 3 September against the Landlord's express refusal to give consent. The Respondent had first suggested this date on 1 August 2018 and the Applicant replied on 4 August that the Respondent should obtain access through a court order. The Respondent wrote to both the Applicant and the tenant on 30 August 2018 with regard to an inspection on 3 September 2018 and the Applicant responded on 31 August 2018.
28. The Tribunal finds that the required 24 hours' notice was given to both the Applicant and the occupier with copy correspondence dated 30 August 2018 provided in the Respondent's bundle. However, the Applicant had refused to allow access and it would have been prudent to seek a warrant to authorise entry.
29. The Tribunal notes the Applicant's assertion and the Occupier's statement dated 22 January 2019 that the occupier of the property had not received the letter dated 30 August 2018. However, the occupier did allow the Respondent to enter the premises on that date.
30. It is necessary for the Tribunal to consider the current state of the premises and compare the situation with that existing when Mrs. Catherine Lunn assessed the hazards present at her inspection on 3 September 2018. Some work has been done to the premises and the Tribunal noted this see paragraph 14 above. There are however some issues that remain unresolved:

31. Hazard No 23 Electrical

The Tribunal notes that the number of double sockets does not meet with current guidance.

The washing machine is served by an extension lead from the Hall.

The bathroom light is not a sealed unit

32. Hazard No 21 Falling on stairs

The current handrail to the main staircase is not sufficient to grab in the case of a fall

33. The Tribunal states the Improvement Notice to be quashed, confirmed and varied as follows:

Schedule 1 and 2 Item Fire Hazard 24 Items 1a and 1b quashed.

Electrical Hazard 23 2a varied to provide additional socket in the Kitchen for the washing machine, one double socket in each Bedroom and 2b confirmed to replace the light fitment to the bathroom with a sealed unit.

Falling on Stairs Hazard 21

Item 3a and 3d Quashed with regard to providing an external handrail and external light

Item 3c Quashed with regard to providing guarding to the stairway balustrade

Item 3b Confirmed with regard to providing and fixing an additional hand rail to the main staircase

34. The Tribunal states that this work should begin within 3 weeks of the decision upon this appeal and be completed within 6 weeks of the decision.
35. The Tribunal determines that the Improvement Notice was served correctly and the charge for investigating the case and preparing the notice are payable.
36. If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made to the First-tier Tribunal within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
37. The Upper Tribunal (Lands Chamber) may be contacted at: 5<sup>th</sup> Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710); or by email: [lands@hmcts.gsi.gov.uk](mailto:lands@hmcts.gsi.gov.uk) .

**Judge Anthea J Rawlence**  
**2 May 2019**