



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

Case number : **MAN/00BN/HIN/2020/0022**
MAN/00BN/HIN/2020/0023

Property : **Basement Flat, 52 Norman Road,
Manchester M14 5LE**
**Flats 1-5, 52 Norman Road, Manchester
M14 5LE**

Applicant : **Najeed Ahmed Bhatti**

Respondent : **Manchester City Council**

Type of Application : **Appeal against Improvement Notice:
Housing Act 2004, Schedule 1, Paragraph
10(1)**

Tribunal Members : **Tribunal Judge S Greenan
Valuer Member A Rawlence**

Date of Determination : **30 October 2020**

Date of Decision : **5 November 2020**

DECISION

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1. This is a decision by the Tribunal in relation to an appeal by Najeeb Ahmed Bhatti (“the applicant”) against two decisions by Manchester City Council (“the respondent”) to serve Improvement Notices on him in relation to a property at 52 Norman Road, Manchester M14 5LE.
2. We have determined the substantive application following a consideration of the written representations and supporting documentary evidence provided by the parties, but without holding a hearing. Rule 31 of the Tribunal’s procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the parties have given their consent. Moreover, having reviewed the parties’ submissions, we are satisfied that this matter is indeed suitable to be determined without a hearing: although the parties are not legally represented, the issues to be decided have been clearly identified in their respective statements of case, which also set out their competing arguments sufficiently clearly to enable conclusions to be reached properly in respect of the issues to be determined, including any incidental issues of fact.

Background

3. The applicant is the registered owner of 52 Norman Road. This is a large semi-detached house of traditional construction probably built in the late 19th or early 20th century. It has been divided into six flats: one in the basement; five on the ground floor, first floor and second floor.
4. In April 2019 the respondent’s Housing Support Team received a referral from the police in which a concern was raised about the condition of the basement flat at 52 Norman Road. As a result on 3 June 2019 a Notice of Entry in relation to the basement flat only was served on the applicant by Amanda Chadderton, a housing compliance and enforcement officer for the respondent. The following day the applicant contacted Ms Chadderton by email and informed her that the flat was no longer tenanted, and was in the process of being refurbished. She therefore cancelled her inspection, and told him that she would serve another Notice of Entry when the flat had been reoccupied. The applicant disputes this: he says that Ms Chadderton visited 52 Norman Road that day and went into all the properties, and took a video.
5. On 15 August 2019 a further Notice of Entry was served by Ms Chadderton in relation to all six flats. She visited the property on 21 August 2019 pursuant to that notice. The applicant was present at the property. Ms Chadderton states that she was not able to inspect the basement flat on that date because it was still empty and being refurbished. The applicant disputes this. He states that she did go into the basement flat.
6. It is not disputed that Ms Chadderton inspected the other five flats at the property on that date, and on 27th September an Improvement Notice pursuant to sections 11 and 12 of the Housing Act 2004 was served on the applicant in relation to those flats. That notice did not identify excess cold as a specific hazard nor require any works in relation to the heating systems at the property, but it did require the installation of an adequate number of plug sockets in all five flats. Damp and mould growth was observed in Flats 1 and 4.

The notice gave the applicant 70 days from 25 October 2019 in which to complete the works. This Improvement Notice is not the subject of any appeal.

7. On 26 October 2019 the applicant sent an email to Ms Chadderton stating that he had carried out all works. In his email he complained about the lack of a response to telephone calls which he had made to the respondent, which he says had gone unanswered.
8. On 31 January 2020 a further Notice of Entry was served in relation to the whole property. Pursuant to that notice Ms Chadderton visited the property on 6 February 2020 with her colleague Joseph Crookall. At the time of this inspection the applicant was out of the country although he emailed Ms Chadderton on the day to inform her of this and ask for the inspection to be rearranged. She was able to gain access to the basement flat and carried out a full housing inspection. This was, according to Ms Chadderton, the first occasion on which she had been able to get into the basement flat. Access to the remainder of the property was not available.
9. Ms Chadderton identified a number of category one and category two hazards in the basement flat and she therefore served a Improvement Notice on the applicant on 11 March 2020. This notice identifies excess cold as a specific hazard, together with a number of other hazards. The notice required the applicant to begin remedy works by 10 April 2020 and to complete them within 42 days. This notice is the subject of the applicant's appeal.
1. On 24 February 2020 Ms Chadderton attended 52 Norman Road again with Mr Crookall to carry out an inspection of Flats 1 to 5. The applicant was present. Ms Chadderton's view was that the majority of works required in the 27.11.19 Improvement Notice had not been completed. Ms Chadderton also took the view that the flats were colder than on her previous inspection in August and that the use of portable heaters was insufficient to heat the property. She states that she discussed this with the applicant and told him that a further Improvement Notice would be served.
10. That further Improvement Notice was served on 11 March 2020. It identified one category one hazard and a number of category two hazards, including an insufficient heating system in the property. Works were required to begin by 10 April 2020 and to be completed within 42 days. The applicant also appeals against this notice.
11. Ms Chadderton set out her intentions in relation to both Improvement Notices dated 11 March 2020 in an email to the applicant sent on 2 March 2020. In this email she informed him that the Improvement Notice in relation to the basement flat would be accompanied by a £300 demand notice, but that the Improvement Notice in relation to Flats 1 to 5 would not be accompanied by a demand notice because the omission of a requirements to install fixed heating had not been included in the earlier notice by oversight.
12. The applicant received the Improvement Notices on 14 March 2020 and appeals against both of them. In his application relating to Flats 1 to 5 he points out that the Improvement Notice of 27.9.19 had required him to provide

additional sockets to allow the tenants to use heating appliances. He had complied with this notice, but when Ms Chadderton returned to the property “she changed her mind and stated that each flat now needed fixed heating... If fixed storage heaters were necessary in each flat, then why was this not mentioned in the [previous Improvement Notice]”. He suggests that Ms Chadderton had abused her position; alternatively, that she was negligent; and that she is “making difficulties for landlord/tenant”. It is he says “an abuse of position for a public officer to say something and then go back on it and mention something completely different.”

13. In his appeal in relation to the basement flat the applicant contends that Ms Chadderton had inspected the whole building before serving the Improvement Notice of 27.9.19. That notice did not require any works to the basement flat, and he queries why the works identified in the later notice were not included in the earlier one. Again he suggests that Ms Chadderton is abusing her position. He also points out that the effect of Ms Chadderton serving separate Improvement Notices for Flats 1 to 5 and for the basement flat is that he has to pay the £300 demand fee twice which is in his view unnecessary and unreasonable.

The law

14. The relevant provisions of the Housing Act 2004 are set out below.

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) *if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;*
 - (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).

- (4) 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 are 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.**
- (5) 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.**
- (6) 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.*
- (7) The operation of an improvement notice under this section may be suspended in accordance with section 14.*
- (8) In this Part “remedial action”, in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.*

Improvement notices relating to category 2 hazards: power of authority to serve notice

- (1) If—
 - (a) the local housing authority are satisfied that a category 2 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,*the authority may serve an improvement notice under this section in respect of the hazard.*
- (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 subsection (3) and section 13.*

- (3) *Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.*
- (4) *An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.*
- (5) *An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.*
- (6) *The operation of an improvement notice under this section may be suspended in accordance with section 14.*

Schedule 1 to the Act sets out the procedure for appeals:

- 15(1) *This paragraph applies to an appeal to **[F5]**the appropriate tribunal] under paragraph 10.*
- (2) *The appeal—*
 - (a) *is to be by way of a re-hearing, but*
 - (b) *may be determined having regard to matters of which the authority were unaware.*
- (3) *The tribunal may by order confirm, quash or vary the improvement notice.*
- (4) *Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.*

The proceedings

- 15. Directions are given in this case on 10 June 2020. They provided for the case to be determined on paper provided the parties did not object, and for both parties to file evidence. Neither party objected, and both parties have filed bundles of evidence. The applicant has filed two bundles in Word format: one in relation to the basement flat; one in relation to Flats 1 to 5. The respondent has filed a single bundle in PDF format.
- 16. The Tribunal has considered all the evidence filed by both parties in coming to its conclusions.

Findings

Improvement Notice 11.3.20 in relation to Flats 1 to 5

- 17. The Improvement Notice in relation to Flats 1 to 5 identifies in the case of each flat a single hazard of excess cold caused by “insufficient heating system in the property”. In each case the proposed remedy is the installation of a fixed heating system capable of maintaining the dwelling at an average temperature of not less than 19 C.

18. The Tribunal finds that the evidential basis for the service of such a Improvement Notice is not made out on the basis of the material placed before it.
19. Ms Chadderton's evidence in relation to this issue is brief and unspecific. In a document headed "Summary of responses to grounds of appeal" she states that "on the reinspection all flats were significantly colder than[sic] the inspection in August and it was clear that the portable heaters were not sufficient to heat the property". In her witness statement at paragraph 15 she repeats those comments, and adds: "the lack of fixed heating would be treated as an excess cold hazard and rated accordingly, going off my previous experience this would be rated as a Category 1 hazard and I therefore had a duty to act".
20. Mr Crookall's witness statements do not add anything to Ms Chadderton's evidence.
21. The Improvement Notice itself does not add any detail in relation to this hazard.
22. The Tribunal has not been provided with any evidence of the following relevant matters:
 - a. the external temperature at the time of the inspection on 24.2.20;
 - b. the internal temperature of any of the flats at the time of that inspection;
 - c. what heating, if any was in use at the time of the inspection: some portable heating appliances can be seen in the photographs taken on that occasion, but there is no evidence as to whether they were in use or not, nor any indication whether those photographs provide an exhaustive record of the heating appliances in use throughout the property;
 - d. whether any of the occupants of any of the flats had complained of inadequate heating.
23. Ms Chadderton has not provided any calculations or technical information to justify her finding that the hazard of excess cold existed in any of the flats.
24. It may be that Ms Chadderton is right. The Tribunal does not know. The only evidence before the tribunal is Ms Chadderton's subjective assessment that the flats felt colder in February than they did in August. In the absence of any other evidence, it is the finding of the Tribunal that this Improvement Notice did not have a proper evidential basis. The Tribunal therefore quashes this Improvement Notice.

Improvement Notice 11.3.20 in relation to the basement flat

25. The Tribunal finds that there is evidence to support the service of this Improvement Notice in part. It therefore varies the Improvement Notice in accordance with the findings set out below, which refer point by point to the hazards identified in Schedule 1 of the notice (respondents bundle P118).

Excess Cold – Insufficient heating system in the property

26. The Tribunal repeats its findings and observations set out in the previous section of this decision. Ms Chadderton and her colleague do not provide any additional evidence in relation to the basement flat. There is no proper evidential basis for this hazard and the first item in schedule one and item 1 in Schedule 2 are quashed.

Fire – Damaged fire separation

27. In Schedule 2 this is identified as damage to the ceiling around the lighting installations. The photographs exhibited to Ms Chadderton's witness statement at AC10 (all references below to photographs refer to this set of photographs) show holes around ceiling lights into rooms, together with a hole around some cables going through a ceiling, apparently in the entrance room. This hazard is made out and item 2 in Schedule 1 and item 2 in Schedule 2 are confirmed.

Fire – The electric meter units are not enclosed correctly within a fire door.

28. Schedule 2 indicates that the fire door to the room in which the electric meters are situated lacks proper intumescent strips and smoke seals. The photographs show that the cupboard contains a number of electrical installations, apparently for more than one flat, and therefore presents a significant hazard. This hazard is made out and item 3 in Schedule 1 and item 3 in Schedule 2 are confirmed.

Crowding & Space (Actual) – Inappropriately sited bedroom

29. Schedule 2 indicates that the bedroom concerned which is just off the kitchen, and has no door, lacks adequate ventilation and natural light. The bedroom can be seen in the photographs. It contains a double bed, which fills the entire width of the room. It appears to have no external or internal window, and no other ventilation or natural light. The Tribunal agrees that this bedroom is inappropriately sited and laid out. This space should not be used as a bedroom without a redesign as suggested in Schedule 2. The Tribunal therefore confirms item 4 in Schedule 1 and item 4 in Schedule 2.

Electrical hazards – Inappropriate and damaged light fittings

30. in Schedule 2 the notice states: "Due to the low ceilings in the property, the current light fittings are inappropriate. Replace all light fittings with flush fitting such as spotlights. Upon completion of any new lights being fitted; ensure they are secure, there are no exposed wires and were no holes in the ceiling around the lights."
31. The respondent has not provided any evidence as to the ceiling height in the basement flat. It is not possible from the photographs to take a view as to the ceiling heights. In one photograph an adult can be seen carrying a small child:

there appears to be a significant amount of clearance above her head, but the Tribunal does not know how tall she is.

32. The respondent has not provided sufficient evidence for a finding that the ceiling heights in the basement flat require the installation of flashlight fittings.
33. The Tribunal notes that the photographs show at least three light fittings which are insecure and/or have holes adjacent to the rewiring visible. This item is therefore varied to read: “ensure all light fittings are secure, without exposed wires, and with no holes around them”.

Electrical hazards – Inappropriately placed electrical socket near the oven

34. It is a requirement that plug sockets should not be situated within 30 cm of the edge of a free standing cooker. The photographs show a double socket which is within this distance of the electric cooker. That the socket is in use is evidenced by the fact that there is an appliance plugged into it, probably the washing machine. This hazard is properly evidenced and the Tribunal confirms Schedule 1 item 6 and Schedule 2 item 6.

Electrical hazards – Inappropriate light in the bathroom

35. in Schedule 2 Ms Chadderton indicates that the current light fitting needs to be replaced with one which is appropriately IP rated. There is no photograph of the bathroom light fitting (which the Tribunal can identify). The Tribunal access the evidence of Ms Chadderton in relation to this light, and confirms Schedule 1 item 7 and Schedule 2 item 7. If the applicant can demonstrate to the respondent that the bathroom light is IP rated, this item can be deleted.

Electrical hazards – electrical socket in the entrance room is not secured to the wall.

36. The reference is to a light switch in the entrance room, which can be seen in the photographs to be hanging off the wall. This hazard is amply demonstrated and the Tribunal confirms Schedule 1 item 8 and Schedule 2 item 9.

Damp and mould – Evidence of damp and mould in the property

37. in Schedule 2 the respondent requires investigation of the source of dampness and mould, followed by appropriate works, and the installation of adequate ventilation. No further detail is supplied. The evidence of Ms Chadderton and her colleague do not provide any further detail. The Tribunal has considered the photographs but they are not of a quality which provides any proper evidence of dampness or mould growth. The Tribunal therefore finds that this hazard is not evidenced with sufficient clarity to justify the service of a Improvement Notice, and the remedy proposed is too imprecise. The Tribunal therefore quashes Schedule 1 item 9 and Schedule 2 item 8.

Position & Operability of Amenities – Oven is inappropriately placed with insufficient workspace

38. In Schedule 2 the respondent suggests that the cooker should be moved away from the bathroom door and positioned so that there is workspace adjacent to it. It is also suggested that the applicant should ensure that the service behind the cooker is easy to keep clean.
39. In the photographs it can be seen that the electric cooker is placed against the wall, with what appears to be a door frame to the right (directions given from facing the cooker) and a washing machine to the left. There is a work surface above the washing machine, which terminates some inches short of the edge of the cooker, with an unfinished cut edge.
40. The tribunal access at this hazard is no doubt. The tribunal does not regard the proposed remedy as appropriate: what is required is that there is workspace on at least one side of the cooker. The photographs do not provide evidence that the surface behind the cooker is difficult to keep clean.
41. The Tribunal therefore upholds this hazard and confirms 1 item 10 but varies Schedule 2 item 10 to read: “reposition the cooker to ensure that there is a workspace directly adjacent to it”.

Domestic hygiene, Pest and Refuse – Hole in the kitchen and entrance room ceiling

42. This appears to be a reference to the holes in the ceiling around the light fittings referred to previously. This hazard is made out and the Tribunal confirms Schedule 1 Schedule 2 item 11.

Domestic hygiene, Pest and Refuse – Worktop has not been sufficiently sealed

43. This defect is clearly evidenced in the photographs which show that the dark-coloured worktop above the washing machine has an unsealed edge. This hazard is made out and Schedule 1 item 12 and Schedule 2 item 12 are confirmed.

General observations in relation to this notice

44. There is a dispute between Ms Chadderton and the applicant about whether or not Ms Chadderton inspected 52 Norman Road on 7 June 2019. The applicant in his witness statement states that he met her at the property on that date and that she inspected the whole property.
45. Ms Chadderton states that although she had served a Notice of Entry on 3 June 2019, she was contacted by the applicant and told that the basement flat was no longer occupied, so she cancelled the inspection. She says that this was discussed with the applicant over the phone.
46. The Tribunal has seen the email sent by the applicant to Ms Chadderton at 22.50 on 4.6.19 in which he offers to make access available on 7.6.19.

47. On balance the Tribunal regards it as unlikely that a Housing Compliance and Enforcement Officer would inspect an empty flat. It is also unlikely that Ms Chadderton would have expected the other flats in the building on that date, as no notices had been served and the occupiers would not have been expecting that such an inspection would take place. The Tribunal therefore finds Ms Chadderton's account the more probable.
48. It is the view of the Tribunal however that this point is of little relevance to the decision which it is required to make. The primary issue for the Tribunal in relation to both Improvement Notices is whether the hazards identified were present at the time of the inspection. In the case of the Category 1 hazards, service of an Improvement Notice is mandatory. In the case of the Category 2 hazards, service is discretionary. In this case the respondent was already required because of the presence of Category 1 hazards to serve a Improvement Notice, so the inclusion of Category 2 hazards within that notice was appropriate and proportionate.

Charge for enforcement action

49. The respondent is entitled to make a reasonable charge as a means of recovering administrative and other expenses pursuant to s49 of the Housing Act 2004. The sum charged by the respondent is, in the experience of the Tribunal, within the range of fees charged by housing authorities in England in relation to this type of notice. The Tribunal therefore finds that the charge is reasonable and it remains payable in relation to the Improvement Notice for Flats 1 to 5.

S Greenan
Tribunal Judge
5 November 2020