



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

Case reference : **BIR/37UB/HIN/2021/0004**

Property : **43 Sutton Road, Huthwaite, Notts, NG17
2NZ**

Applicant : **Prime Properties (NW) Ltd**

Representative : **None**

Respondent : **Ashfield District Council**

Representative : **Ashfield District Council Legal
Department**

Type of application : **Appeal against an Improvement Notice
issued under Housing Act 2004**

Tribunal members : **Judge C Goodall
Mr A Lavender**

**Date and place of
hearing** : **Paper hearing**

Date of decision : **16 November 2021.**

DECISION

Background

1. On 30 July 2021, Ashfield District Council (“the Council”) issued an improvement notice (“the Notice) in respect of 43 Sutton Road, Huthwaite in Nottinghamshire (“the Property”) to the Applicant in this appeal. On the same date, it invoiced the Applicant for the costs of serving the Notice in the sum of £500.00.
2. The Notice identified three category 1 and five category 2 hazards at the Property. The alleged deficiencies were identified, and the remedial action which the Council considered necessary was specified.
3. On 17 August 2021, the Applicant appealed against the Notice (paying a fee of £100.00) and the claim for costs. The Tribunal issued directions for the conduct of the appeal and statements of case were received from the Applicant and the Council. The appeal was set down for a paper determination, preceded by an inspection.

Preliminary issue

4. In the course of preparation for the determination, the Tribunal noted that the Notice did not appear, on its face, comply with sections 13(2)(e) and section 13(3) of the Act, except in relation to hazard 1a in the Notice (relating to lack of a current EICR and suspected electrical deficiencies). The statutory provisions referred to require that an improvement notice must specify the date when remedial action is to be started, which must be not earlier than the 28th day after the date on which the notice is served. The Notice was sent by post on 30 July 2021, which was a Friday.
5. If an improvement notice is served by post, service takes place two working days after posting. In a High Court practice direction found at [1985] 1 All ER 889, Saturday and Sunday are said not to be working days. The Notice was therefore served on 3 August 2021. The 28th day after the date of service is therefore 31 August 2021.
6. The date by which remedial action was required to be started in the Notice in relation to all hazards except hazard 1a was earlier than 31 August 2021.
7. In *Odeniran v Southend on Sea Borough Council* [2013] EWHC 3888, an improvement notice that required remedial action before the 28th day after service of the Notice was held to be defective.
8. Prior to the date for determination of the appeal, the Tribunal drew the attention of the parties to the preliminary issue and invited submissions.
9. The Applicant submitted that the Notice should be cancelled.

10. The Council stated that it “withdraws its opposition to the Applicants appeal in full and intends to revoke the improvement notice.” It also confirmed that:

“The [Council] submits that it could have decided to continue to defend the appeal in relation to the category 1 hazard listed in schedule 1a of the notice but has decided on this course of action in the hope that compliance with all of the hazards identified in the improvement notice can be achieved without the need for enforcement action.

As such no part of the case remains to be determined.”

Disposal

The appeal against the Notice

11. The Council’s position is that the appeal is now not opposed. On an appeal, the Tribunal has jurisdiction to “confirm, quash or vary” the Notice (paragraph 15(3) of Part 3 of Schedule 1 to the Act). Clearly, in asking for the Notice to be cancelled, the Applicant is seeking an order that the Notice be quashed. We accordingly order that the Notice be quashed.

The appeal against the costs invoice

12. Section 49 of the Act allows a local housing authority to make a reasonable charge to cover administrative expenses of serving certain notices, including an improvement notice.
13. Section 49(7) of the Act provides that:

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

14. In the Tribunal’s view, it would not be appropriate for the Applicant to be required to pay the administrative costs incurred in preparing and serving a notice that was largely defective, and which the Council decided not to seek to defend. Accordingly, we order that the costs invoice dated 30 July 2021 be quashed. If it has already been paid (we have not been told), we order that such sum as was paid be repaid to the Applicant.

The application fee

15. On its own initiative, the Tribunal may order a party to reimburse to any other party the whole or any part of any fee paid to bring the appeal. Its discretion to do so is unrestricted (see rule 13(2) and (3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

16. The Tribunal's view is that if a substantially defective improvement notice is issued which results in an appeal against it being entirely successful, it would not be just for the appealing party to have to bear the fee for the appeal. Accordingly, we order that the Council reimburse the Applicant the application fee of £100.00.

Appeal

17. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)