



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

Case Reference : **LON/00BH/HIN/2021/0014**

Property : **288 Murchison Road, London E10 6LU**

Applicant : **Mrs Razia Chowdhury**

Representative : **In person**

Respondent : **London Borough of Waltham Forest**

Representative : **Mr John Fitzsimons, Counsel with Ms Sandra McGrath of Waltham Forest**

Type of Application : **An appeal in respect of an Improvement Notice under sections 1 and 2 and paragraphs 10-12 of schedule 1 to the Housing Act 2004**

Tribunal Members : **Tribunal Judge Dutton
Mr P Roberts DipArch RIBA**

Date of the Hearing : **22 March 2022**

Date of Decision : **4 April 2022**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was VCVF Remote. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents to which we refer are contained in bundles containing some 245 pages, the contents of which we have noted.

DECISION OF THE TRIBUNAL

The Tribunal determines that the appeal against the Improvement Notice should be dismissed for the reasons set out below but amends the Improvement Notice as provided for in the attached schedule.

BACKGROUND

1. On 7th July 2021 the Applicant Mrs Razia Chowdhury appealed to the Tribunal to against an Improvement Notice served upon her by the London Borough of Waltham Forest (the Council). The Improvement Notice is dated 18th June 2021 and became operative on 20th July 2021. Appended to the Improvement Notice was a schedule setting out the hazards under section 11 and 12 of the Housing Act 2004 (the Act). These consisted of mould growth and elevated damp meter readings in the Property at 288 Murchison Road, London E10 6LU (the Property). The hazards were broken down into two camps. One was damp and mould and the other was excess cold, the latter being a category 2 hazard. In schedule 2 to the Improvement Notice there was listed work that was required to be completed by 20th October 2021. The work was as follows under the heading Damp and Mould:
 1. Employ the services of a professional damp specialist company who is a member of the Property Care Association (PCA) to carry out a full survey of the whole dwelling to include an examination of all walls for the presence and condition of damp proof course. This should include any recommended measures to improve ventilation.
 - Supplying the Licencing Enforcement Officer with a copy of the report.
 - Carry out all works of recommendation to prevent further damp from occurring.
 - On completion of any installed damp proof course the specialist contractor is to provide a 20-year guarantee.
 2. Employ the services of a competent person who is a member of the National Insulation Association and who is also backed by suitable insurance such as the Cavity Insulation Guarantee Agency to carry out a survey in relation to cavity wall insulation to all external walls.
 - Supply the Licencing Enforcement Officer with a copy of the report.
 - Carry out all works of recommendation.
 - Ensure all works are carried out to comply with current building regulation approved document L.

3. Employ the services of a competent person to supply and fit adequate loft insulation to a depth of 270mm-300mm to reduce heat loss. All works should comply with current building regulation approved document L.
4. Supply and properly install a radiator in the bathroom capable of maintaining the room at a minimum temperature of 22°C when the outside temperature is -1°C.
2. In a bundle of documents provided by Mrs Chowdhury there was an expanded statement of reasons for appealing against the Improvement Notice. We have noted all that has been said. Without repeating all it seems that she had carried out painting and plastering works in May of 2021 before the Improvement Notice was served. She is of the view that the Improvement Notice was served so that she could not obtain possession from the tenants who are living in the Property and who she complains about in her documentation. In addition, she had provided to us and to the Council, a report from Prokil, a damp and timber specialist dated 1st July 2021 who had inspected the Property on 1st July 2021. In her statement she has included some of the photographs, which were attached to that report.
3. Her statement outlined matters that the report from Prokil had raised with her concerning the tenants' actions and she said that she had informed the tenants concerning damage to the Property which she believed also stemmed from the apparent use of the shower on the bathroom floor instead of in the bath. Indeed, possession proceedings have been commenced and we understand there is a hearing next month but we will return to this in due course. Her statement makes mention of problems associated with Covid and also the unfortunate illness from which one of her children suffers. She is particularly unhappy with the actions of Ms. McGrath from the Council and spent a good deal of time in her submissions to us complaining about Mis McGrath's involvement and the steps that she had taken.
4. In a bundle from the Respondent, we were provided with a number of documents. These included a detailed response from the Council prepared by the Barrister Mr Fitzsimons. This set out the law, the actions that could be taken by the Council, the process of the appeals, the evidence and the grounds for the appeal and the submissions made.
5. In addition to this submission we were provided with a witness statement of Sandra McGrath who is the Licencing Officer for the Council. We noted carefully all that she set out, which is a history of her involvement in the Property, the correspondence which Mrs Chowdhury sent throughout, details of her visits to the Property, which were fairly numerous and photographs that she took at the time of those visits. We carefully considered the photographic evidence.
6. The bundle confirmed that Mrs Chowdhury did have a licence for the Property which expired on 31st March 2020 and which we understand may be the subject of proceedings but is not before us today. It is not wholly clear why the correspondence concerning the licence was included within the bundle. In addition to the statement by Ms McGrath we also had the HHSRS calculations leading to the assessment that there were category 1 and category 2 hazards. We

will return to those in due course. We were also provided with a copy of the EPC register for the Property which shows that it is currently rated D and that the performance certificate was valid until 5th May 2021. The certificate does indicate that there is a poor rating in respect of cavity wall insulation, and a very poor rating in relation to insulation in the roof and main heating control. It is fair to say there was some duplication in the bundle and the inclusion of correspondence that perhaps was not of great assistance.

7. The bundle resulted in the reply by Mrs Chowdhury consisting of some 19 pages. This included a suggestion that the number of items of correspondence in her view supported that the Council unnecessarily communicated with her and that Ms McGrath was in fact harassing her. She disputed the photographs and referred to those which had been appended to the Prokil report. She also told us that she had herself visited the Property and provided spray to be used to get rid of the mould.
8. Mention is made of a mice problem, but this appears to have been resolved by evidence of an inspection report from HighTech in February of 2021 and there is a complaint made by Mrs Chowdhury that the tenants appeared to go straight to Ms McGrath instead of contacting her. Mention is made of an extractor fan in the kitchen which she says was removed by the tenants and although she tried to replace it, it had not been possible. She also says that the tenants have been damaging the Property and are not paying rent. She did not think the Property suffered from excess cold as she stayed in the Property for some time and did not feel that it was cold and that further previous tenants had never complained. It is, she reminded us, a mid-terrace house. The statement makes further criticism of Ms McGrath and complains that she has now been served with a penalty Notice for not obtaining a property licence at the expiration of the previous one. This is not a matter that we can deal with today. It seems that there is also a rent repayment application which was dealt with on or about 14th March this year, but the outcome is as yet unknown. She confirmed that a radiator had now been installed in the bathroom and a new boiler had also been installed and there were photographs of both. Finally, she asks us to remove the Improvement Notice and to enable her to get back possession of the Property.
9. At the hearing we firstly heard briefly from Mr Fitzsimons on behalf of the Council. He said there were two hazards, one category 1 was mould and damp and the second was category 2 for excess cold. He reminded us that this was a re-hearing and that we could take into account matters that have occurred since the Improvement Notice was served. He then called Ms McGrath.
10. Ms McGrath told us she had been a licencing enforcement officer for seven years and had first visited the Property in January of 2020. At this visit she became concerned about the mould growth particularly in the bedrooms and the lounge but more so as this was a family with four young children. There were subsequent visits on 5th March 2020 and then following a Covid lockdown two visits on 15th and 18th December 2020. Photographs were taken on each occasion, and we will refer to those separately. She told us that she used a protometer to measure the damp in the Property. This was a piece of equipment that she was very familiar with having used it for some four years and received instruction.

11. She told us that she had visited the Property the day before the hearing and that there was still mould present. We were referred to page 123 in the Council's bundle which was a letter that she had sent to Mrs Chowdhury on 8th February 2021 following an inspection which set out in some detail the findings that she had made in her visit on 18th December 2020, which had been conducted under the provisions of section 239 of the Act.
12. She told us that there appeared to be no thermostatic control for the central heating, although accepted that the new radiator which had been installed in the bathroom did appear to have thermostatic control.
13. She told us that she had been advised by Mrs Chowdhury that roofing work had been undertaken but despite asking for evidence she received nothing more than an email confirming the name of the company and the cost.
14. Insofar as the HHSRS assessment was concerned, she told us that she had concluded that there was a one in ten risk of harm being caused in relation to the mould growth, particularly in the living room and bedrooms and had looked at worked examples although none were provided to us. She said that she was a trainee environmental health officer and had undertaken a two-day course on the question of these assessments. Further she said her assessment had been reviewed by her line manager, Ms Lovett, and that she always consulted seniors before moving forward.
15. Asked about the evidence to support her concerns relating to the lack of cavity wall insulation, she relied both on the EPC certificate but also photographs she had taken showing a pattern staining of black mould lining up to what would appear to be the mortar joints in the breeze block internal wall.
16. It was put to her that the Prokil report appeared to rule out the possibility of damp. Indeed, under the heading Inspection in the report it specifically says there was no evidence of rising damp or penetrative damp affecting the Property at present.
17. This persuaded her that it may be possible to change item 1 on the Schedule to the Improvement Notice to refer to the implementation of the Prokil report rather than the need for any new assessment.
18. She did say, however, that the extractor fan in the bathroom was not properly fitted in that there was no run on. She was expecting it to be at 20 minutes. In respect of the extractor fan in the kitchen, she said that this had been removed because it was not working, and a replacement was offered but apparently the tenant refused to accept it as they were of the view that it appeared to be second hand and that they had been asked to fit it.
19. Finally, she confirmed that as far as she was concerned, following her inspection the day before the visit there were still problems relating to the insulation to the Property and that in respect of the Improvement Notice items 2 and 3 still were required.

20. After a short adjournment Mrs Chowdhury gave her evidence. She told us that most of the points she wanted to be made had been covered in the two bundles that she had produced. She queried why the matter had taken from the end of 2019 until June of 2021 for an Improvement Notice to be issued. She said that jobs had been done in or about the Property since 2019. These included the replacement of all windows, two items of work to the roof including replacement of the roof covering, the installation of a new boiler in 2021, internal decorations in April of 2021 including moisture repellent paint and the installation of the radiator in the bathroom. She told us also that the back wall had been attended to and the render had been repaired.
21. She told us that she was concerned the tenants showered on the bathroom floor and this was the cause of the damp in the kitchen. She said also that builders had attended the Property but would not go back because the tenants had been both rude and unhelpful. As they were not paying rent and had damaged the Property, she was seeking eviction.
22. She then went on to complain about the involvement of Ms McGrath both attending her own property where apparently, she took some photographs and why she seemed to favour the tenants over her in all regards. She told us that the tenants never hung out clothes to dry but dried them on the radiators in the house which had caused the damp and that she herself had attended to clean the mould.
23. She told us that in reality she had no great objection to the Improvement Notice and would be willing to install cavity wall insulation to the front and rear of the Property, to carry out relevant checks and to review the position in respect of the roof. Indeed, she said that she had contacted the Council about grants for insulation but was told that this had to come from the tenants, who had refused to assist her.
24. She said that the Improvement Notice was causing her emotional and financial damage. She harked back to the complaint about pest control which she said was not her fault but an example of the tenants' actions at the Property and that in any event that had been attended to. She said that she would like time to deal with the Improvement Notice and would wish to do so after the tenants had vacated. She wanted the Improvement Notice quashed so that she could proceed to get an eviction at a hearing the date for which apparently was 11th April where she was being represented.
25. Mr Fitzsimons made some short closing submissions confirming that in his view a number of the issues had been resolved and that Mrs Chowdhury did not seem to have a difficulty with items 2 and 3 of the Improvement Notice. It was conceded that item 4 was no longer relevant and that the Prokil report could cover for item 1 provided the recommendations made were carried out.
26. In respect of the hearing, he told us that the date in April was a preliminary hearing and that there was no guarantee that possession would arise from that.

27. He reminded us that in the Council's view there were vulnerable people in the Property and it was clear that some steps had been taken but fundamental works were still required. But at present it was just a sticking plaster.
28. Mrs Chowdhury briefly said that there appeared to be no thought by the Council concerning her health or financial needs. If we were not prepared to quash the Improvement Notice she would like to have time to be able to carry out the works but she preferred that the Improvement Notice was in fact quashed.

FINDINGS

29. We were not in a position to inspect the subject Property. However, we did have available to us the numerous photographs taken by Ms McGrath on her visits. These started with photographs taken on 5th March 2020. They showed clear evidence of mould in the lounge and the bedrooms. There was also substantial mould to the ceiling of the bathroom.
30. At a visit on 15th December 2020 there was further evidence of substantial mould in the hallway as well as mould which had extended it seemed to us in the lounge and bedrooms and bathroom. In addition, damp meter readings were taken, and photographs of those readings shown indicated that they showed damp issues. At a third visit on 18th December 2020 this time under the provisions of section 239 of the Act, further photographs were taken showing the damp meter readings, which in each case were high and also showed that there appeared to be a damaged either smoke or heat detector in the kitchen, a misaligned drawer in the kitchen cabinet and the existence of what appeared to be mice droppings. It also showed extensive mould in the living rooms and bedrooms and a crack to the render to the rear of the Property. The bathroom also showed extensive mould which had spread since the photograph taken in March.
31. The final set of photographs were taken at a visit on 9th April 2021 which show no improvements in the existence of the mould and damp, indeed the mould appears to be spreading.
32. We understand that Ms McGrath visited the Property just before the hearing and said to us, although there was no photographic evidence, that the mould whilst it had been painted over was re-appearing.
33. We have considered the report from Prokil which seems to be unbiased. It sets out the limitations and the external observations raising the problems with regard to the render to the rear of the Property which needed to be attended to and which we understand has been. They also carried out the internal inspection and raised the need for a constant heating regime and the fact that some items of furniture had been placed against the outside facing wall which could cause issue. Further there appeared to be no facility for the drying of clothes and therefore they were dried internally. There is reference to constant heating being necessary to prevent condensation and mould formation. As far as the bathroom is concerned, the report indicates that the extraction was not working sufficiently, and that work was needed to be done to the bath and tiles. Reference was also made to the missing extractor fan in the kitchen. Under recommendations various matters are listed and there are photographs taken which certainly show

an improvement to the Property since those taken in April. The report did recall that there did not appear to be rising or penetrative damp at the time of the inspection.

34. We accept that the decision we make is following a re-hearing and we can take into account matters that were not known to the Council at the time.
35. It does seem to us that despite the concerns that Mrs Chowdhury has with the involvement of Ms McGrath, she was in truth doing no more than she was required to do as an employee of the Council charged with considering the problems from which the Property appeared to suffer. There is no doubt that if category 1 and 2 hazards are discovered the Council has an obligation to act upon them. This is contained at section 5 of the Act.
36. Although the photographs taken by Prokil would on the face of it indicate that matters had been attended to, nonetheless there is still some evidence albeit much less than previously, of some mould particularly in the ceiling to the bathroom and on one or two of the walls. However, it is clear to us from the photographs taken by Ms McGrath on her visits that there is a problem with regard to the insulation to the front and rear walls. The existence in the photographs of an outline of the breeze blocks clearly indicates to us that there is an insulation problem which we do not think the works so far undertaken will cure. Indeed, this was accepted by Mrs Chowdhury as something that needed to be addressed.
37. Insofar as the roof is concerned, she was not able to produce any evidence to show what works had been undertaken other than she had spent £1,200 on having the felt re-laid. It seems to us that there needs to be a further inspection to determine what insulation, if any, there may be in the roof, and in accordance with up to date building regulations it would be necessary to install some form of insulation to assist in the retention of heat within the Property. How this is done would be a matter for Mrs Chowdhury to agree with an expert and to run past the local authority.
38. We have no doubt on the evidence that we received from Ms McGrath in the photographs that she had taken that there is a problem at the Property which needs to be addressed and that the service of an Improvement Notice was a reasonable way of achieving this. We amend the Improvement Notice to make provision for the Prokil report to stand in respect of item 1 on the schedule, but this is on the clear understanding that Mrs Chowdhury implements the recommendations that the expert has put forward. This may for example include the purchase and fitting of a tumble dryer. In addition, it seems to us that some form of thermostatic control is necessary to the heating system although Mrs Chowdhury said that the new boiler contained such feature.
39. Accordingly, whilst we amend the first part of the Improvement Notice, we find that items 2 and 3 should stand and that item 4 has been dealt with and that element of the Improvement Notice is quashed. We have attached to the schedule for this decision the steps that we consider should be taken by Mrs Chowdhury to ameliorate the problems from which the Property suffers. This will enable the Improvement Notice to be removed and if that is a bar to

obtaining possession then that is a step that she will need to take. We are prepared to give her four months from the date this decision is sent to the parties to carry out these works but must make it clear to her that if the tenants have not vacated, she still needs to go ahead and get the work done or face the consequences.

Andrew Dutton

Judge:

Andrew Dutton

Date:

4April 2022

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Amended Schedule 2 to the Improvement Notice of 18th June 2021

1. Relying upon the report from Prokil dated 1st July 2021 Mrs Chowdhury is to implement the recommendations made and to confirm with the Council that those works have been done and facilitate an inspection to ensure that that is the case.
2. Employ the services of a competent person who is a member of the National Insulation Association and who is also backed by suitable insurance such as the Cavity Insulation Guarantee Agency to carry out a survey in relation to cavity wall insulation to all external walls.
 - Supply the Licencing Enforcement Officer with a copy of the report.
 - Carry out all works of recommendation.
 - Ensure all works are carried out to comply with current building regulation approved document L.
3. Employ the services of a competent person to supply and fit adequate loft insulation to a depth of 270mm-300mm to reduce heat loss. All works should comply with current building regulation approved document L.
4. This item is quashed.
5. The works are to be completed within 4 months of this decision being sent to the parties