



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

Case Reference : **MAN/OOFC/HIN/2018/0031**
: **MAN/OOFC/HIN/2019/0007**

Property : **88, 88A, 90 & 90A Farebrother Street,**
: **Grimsby, DN32 0JU**

Applicant : **Mr Shaun Murphy**
Representative : **In person**

Respondent : **ENGIE North East Lincolnshire Council**
Representative : **Mr Carl Riley**

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

Tribunal Members : **Judge J. E. Oliver**
: **Tribunal Member P. Mountain**

Date of Determination : **28th August 2019**

Date of Decision : **17th September 2019**

DECISION

Decision

1. The Improvement Notice for 88 and 88A Farebrother Street, Grimsby and dated 1st November 2018 is confirmed except for the following that has been completed:
 - Examine the flat entrance doors, to ensure that the doors are fire doors and close as they are intended to. The fire doors must provide a half hour fire resistance and be complete with intumescent fire and cold seals, self-closing devices, that close the flat entrance doors. The doorframes should be rebated to 25mm.

Whilst this has been deleted from the Remedial Action the Applicant is still required to provide the signage for the doors as stated within the Remedial Action.

2. The Improvement Notice for 90/90A Farebrother Street, Grimsby dated 31st October 2018 is confirmed except for the following remedial action that has already been completed:
 - Provide an affordable whole property heating system to all rooms in the building that will achieve 21°C internal when the outside temperature of -1°C is reached. The heating system must include heating to all the rooms including the bathrooms, and be fully controllable by the tenants.

Whilst this has been deleted from the Remedial actions, the Applicant is still required to provide a safety certificate as required by the Remedial Action.

3. The work required in Remedial Actions of the Improvement Notices for both No 88/88A and No 90/90A is to commence within 28 days of the service of this decision upon the Applicant and is to be completed within 28 days thereafter.
4. The Applicant is to pay the demand for the payment of costs in the sum of £300.

Background

5. This is an appeal by Mr Shaun Murphy (“the Applicant”) in respect of two Improvement Notices relating to 88 & 88A Farebrother Street Grimsby (“No 88”) and 90 & 90A Farebrother Street (“No 90”).
6. The Improvement Notice for No 88 is dated 1st November 2018. The Improvement Notice for No 90 is dated 31st October 2019.
7. The Respondent to the application is ENGIE North East Lincolnshire Council (“the Respondent”).
8. The Improvement Notices state there are Category 1 hazards existing at both properties.

9. The Category 1 hazard at No 88 is Fire where the deficiencies are listed as:
- (a) the head of the interlinked fire alarm is covered in plastic.
 - (b) there is no record of the fire alarm having been tested, nor is there a testing log.
 - (c) There is no evidence of a fire assessment for the property.
 - (d) The flat entrance and exit doors are not to the required standard to provide a 30 minutes fire resistance and require fitting with intumescent fire and cold seals, self closing devices and the replacement of a missing seal.
 - (e) The electrical supply and consumer units are in the communal area and are within a cabinet made of MDF with no evidence this is fire rated to provide a 30 minutes fire resistance.
 - (f) The communal area is provided with sensor operated lighting, however the communal area is not provided with emergency lighting.
 - (g) Ensure that the property is provided with the correct signage of what to do in the event of a fire. The communal notice board should also be provided details of who to contact in the event of an emergency with the building.
10. The Category 1 hazards at No 90 are Fire and Cold where the deficiencies are listed as:
- (a) The bathrooms to both flats within the property have no heating.
 - (b) The property/building has got an interlinked fire alarm system installed. The operational safety of the fire alarm system cannot be validated with the lack of a fire alarm testing certificate and testing log.
 - (c) There is no fire assessment.
 - (d) The flat entrance and exit doors are not to the required standard to provide a 30 minutes fire resistance and require fitting with intumescent fire and cold seals, self closing devices and the replacement of a missing seal.
 - (e) The electrical consumer units are in the communal hallway and are not provided with 30 minutes fire resistance.
 - (f) The communal area has sensor-operated lighting but no emergency lighting.
 - (g) The stairway to the first floor flat and flat exit door has no emergency lighting.
 - (h) Ensure that the property is provided with the correct signage of what to do in the event of a fire. The communal notice board should also be provided details of who to contact in the event of an emergency with the building.

11. The Remedial Actions list all the necessary works that are to be completed to extinguish the hazards at both No 88 and 90.
12. The Improvement Notice for No 88 requires the necessary works to commence by 6th December 2018, being not less than 28 days from the date of the service of the notice and for the work to be completed within 18 days.
13. The Improvement Notice for No 90 requires the necessary works to be commenced by 6th December 2018, being not less than 28 days from service of the Improvement Notice and for the works to be completed within 18 days.
14. The Respondent has also served upon the Applicant a demand for payment of costs in the sum of £300 relating to the Improvement Notice for No 90.
15. By an application dated the 28th November 2018, the Applicant filed an appeal against the Improvement Notices and the demand for costs.
16. On 25th February 2019 directions were issued providing for both parties to file their statements and documents in support and thereafter for the matter to be listed for a hearing. It was subsequently agreed no hearing would be necessary and for the matter to be determined on paper with an inspection.
17. The application was listed on 28th August 2019.

The Property

18. Nos 88 and 90 are both mid-terraced properties, each of which have been converted into two flats, having a small communal hallway. The ground floor flats are described as studios. The first floor flats have a kitchen, living room, bedroom and kitchen.
19. At the inspection, representatives attended on behalf of both parties. The properties are let to Humbercare, and a representative from that organisation was also in attendance.
20. The Tribunal inspected No 88 where it was shown those items from the Improvement Notice that had been remedied and those that remained.
21. At No 88 the Respondent accepted the flat entrance doors now complied with its requirements. It was also accepted a fire assessment had been carried out on 8th November 2018 by Mr Quickfall on behalf of the Applicant. The remaining issues are:
 - (a) the cabinet housing the electrical supply and consumer unit has not been altered and still does not provide the necessary 30 minute fire resistance.
 - (b) no test certificate is available for the fire alarm system. Consequently, it cannot be confirmed the fire detection system is to the required standard.

- (c) there is no working emergency lighting system to the escape route from the building.
 - (d) There is no signage for what to do in the event of a fire.
22. At No 90, electric heaters had been installed in the bathrooms of both flats, the flat doors had been altered to conform to the required standards and a fire assessment had been completed. The Council had not seen the remedial work prior to the inspection and consequently has not seen any safety certificate for the electrical heaters installed in the bathrooms. The Council did confirm the heaters appeared satisfactory having controllable thermostats.
23. The matters that have not been addressed are:
- (a) provide a half hour protection to the consumer unit in the communal area.
 - (b) provide a test certificate for the fire alarm system to confirm it meets the current required standard and as specified in the Improvement Notice.
 - (c) Provide the correct signage.

The Law

24. The Housing Act 2004 (“the Act”) provides the framework for the assessment of the condition of residential properties and the remedies that can be used to enforce standards in respect of them.
25. The Housing Health and Safety Rating System (HHSRS) provides a rating system for hazards. The score will determine which category the hazard falls; a score over 1000 will be a Category 1 hazard and those below 1000 will be a Category 2 hazard.
26. Section 5(1) of the Act provides that if a Category 1 hazard exists then a local authority must take the appropriate enforcement action which can be an improvement notice, prohibition order, a hazard awareness notice, emergency remedial action, demolition order or declaring the area in which the premises are situate, a clearance area. The Act further provides that if only one course of action is appropriate, that course must be taken, or if there are two or more courses available, then the local authority must take the one deemed to be most suitable.
27. Section 12(2) requires the person upon whom the improvement notice is served to take remedial action in respect of any of the hazards that are specified.
28. Schedule 1, paragraph 14 (1) of the Act provides that a person upon whom an improvement notice has been served may appeal to the First-tier Tribunal within 21 days beginning with the day upon which the improvement notice

was served. The grounds for the appeal are set out in paragraphs 11 and 12 of the Act. Paragraph 13 provides an appeal may be made against the decision by a local authority to vary or revoke an improvement notice.

29. Schedule 1, paragraph 15 provides for the First-tier tribunal to deal with any appeal by way of re-hearing, thus allowing it to consider the property at the date of the hearing and take into account matters of which the local authority may not have been aware at the date the notice was served. The Tribunal has the power to confirm, quash or vary the improvement notice.

Submissions

30. The Applicant appealed against the Improvement Notices stating them to be incorrect and questioning whether the HHSRS ratings had been undertaken. It was his understanding they had not and consequently no reliance could be placed upon the findings that gave rise to the Notices. The Applicant also questioned the qualifications of Mr Riley who had carried out the inspections and whether he was qualified to do so.
31. The Applicant stated that although both properties are “Section 257 HMO’s” they are not governed by the Management of Houses in Multiple Occupation Regulations 2007 (“the 2007 Regulations”). Consequently, the assessment by Mr Quickfall has been undertaken in accordance with a Section 257 HMO.
32. The Applicant instructed Mr Graham Quickfall to carry out a fire assessment of both No 88 and No 90. His reports are dated 8th November 2018.
33. At No 88 he makes the following observations:
 - (i) No fixed wiring test has been carried out. One should be and any observations carried out.
 - (ii) Refuse bins outside the building should be relocated. This is not relevant to the Improvement Notice.
 - (iii) There was no documentation to show the fire detection system was certified and a test certificate should be obtained.
 - (iv) The fire detection system should be tested weekly.
34. At No 90 he made the following observations:
 - (i) There was no documentation to show the fire detection system was certified and a test certificate should be obtained.
 - (ii) The fire detection system should be tested weekly.
35. Mr Quickfall further stated there was no requirement for emergency lighting, the premises being small, the occupants being familiar with the buildings and there being sufficient external lighting. In this he referred to LACORS Housing-Fire Safety Guidance 23.

36. The report stated the last fixed wiring test had been completed on 18th January 2018. It further stated the fire system appeared to be installed in accordance with BS 5839 Part 6 2013 Grade D Category LD2.
37. Mr Quickfall's reports stated the signage referred to in the Improvement Notices was not necessary.
38. Mr Riley, for the Respondent, filed a statement, in which he said the Applicant had been given sufficient opportunity to carry out the required works at both No 88 and No 90, but had failed to do so. No 90 had been converted without building control or planning consent.
39. Humbercare, the tenant of the properties, made the initial complaint concerning necessary repairs that were not being completed.
40. Mr Riley accepted the fire detection system may be of the required standard, but until tested, the system cannot be validated. A certificate and testing log are both necessary.
41. Mr Riley challenged the Applicant's assertion that No 88 and No 90 are not governed by the 2007 Regulations quoting Paragraph 1 (2) of the Regulations that states "*Regulations 2-11 apply to any HMO in England which is an HMO to which sections 257 of the Housing Act 2004 applies and Regulation 12 applies to any HMO in England to which Part 2 of that Act (licensing of houses in multiple occupation) applies*".
42. Regulation 5 requires the manager of a property to ensure the fire alarms are maintained in good working order.
43. In respect of the matter of the emergency lighting, Mr Riley submitted the defects at the properties include there being no 30 minute fire protection to the consumer units and electrical supply. The tenants of the first floor flats have only one means of escape and that is through the front door. In the event of an electrical fire, there is the potential for no lighting in the communal area. The external street lighting is not directly outside either of the properties and consequently there is not sufficient external lighting. Mr Riley referred to local authorities increasingly turning off street lighting, such that it cannot be relied upon.

Determination

44. The Tribunal considered the submissions made by both parties. It noted the Applicant's criticisms of Mr Riley but did not find them well founded.
45. At the inspection the Respondent accepted the necessary heating had been installed at No 90, although no safety certificate had been produced. The Tribunal finds that a safety certificate is required to show the heating has been installed to an appropriate standard and is to be produced to the Respondent by the Applicant.

46. The Tribunal noted the Applicant has not provided testing certificates for the fire alarm system in either property, despite this being a recommendation by his own assessor. Such testing would confirm the systems to be of the required standard. The Tribunal therefore determines the fire alarm testing should be carried out as required by the Improvement Notices. Where the systems do not meet the requirements of the Improvement Notices, the work specified within the Notices should be carried out.
47. At the inspection the Respondent confirmed the necessary works to the doors had been completed where fitted. However, in No 90 where refurbishment work was being carried out, some of the doors had been removed. The Tribunal therefore finds the work specified for No 90 in respect of the doors is still required, to the extent it has not already been carried out.
48. The Applicant relied upon Mr Quickfall's report regarding the requirement for the consumer units at No 90 and the electrical supply and consumer unit at No 88 to have 30 minutes fire protection. It was said this was not necessary due to the automatic detection provided within the lobby. The Tribunal considered this requirement to be reasonable, given that in both properties they are sited in the hallway, this being the main fire escape. It is not an onerous requirement to encase the units in fire resistant material to provide the necessary 30 minute resistance.
49. The Applicant argued the properties are not governed by the 2007 Regulations and therefore do not require the signage specified in the notices. The Tribunal does not accept this for the reasons given by the Respondent. Both No 88 and No 90 are HMO's falling within the definition of section 257 of the Act; they are both terraced properties that have been converted into self-contained flats. Consequently the 2007 Regulations apply to both properties, as quoted at paragraph 40 above. Paragraph 5(3) of the 2007 Regulations state:

“The manager must ensure that all notices indicating the location of a means of escape from fire are displayed in positions within the common parts of the HMO that enable them to be clearly visible to all the occupiers”.

The Tribunal therefore confirms this work is required.

50. Mr Quickfall said the emergency lighting specified in the notices was not required, given the size of the properties, the familiarity of the tenants with the properties and the outside lighting being adequate. The Tribunal noted reference had been made to LACORS Housing Fire-Safety Guidance 23. This recommends that in a two storey house converted to self-contained flats “conventional lighting and emergency escape lighting if risk requires”). Here, the Applicant lets the properties to Humbercare who provides accommodation to “vulnerable adults”. The Tribunal has no information regarding the tenants at No 88, other than only one has been accommodated by Humbercare . No 90 is being refurbished. The Tribunal therefore has to consider whether future tenants may be vulnerable. It also considered the Respondent's arguments upon this issue and found them to be persuasive. The Tribunal therefore finds

it is reasonable for the Applicant to provide emergency lighting as required by the Improvement Notices.

51. The Tribunal determines the work still required in the Improvement Notices is to commence within 28 days of the service of this determination upon the parties and for it to be completed within 28 days thereafter.
52. The Tribunal considered the demand for the payment of the Respondent's costs in the sum of £300. It noted the Applicant and Respondent had exchanged a significant number of e-mails prior to the issue of the Improvement Notices and those had failed to resolve matters. The Respondent has been put to a significant level of work in dealing with the properties and resulting in the issue of the Improvement Notices. No evidence has been put before the Tribunal to suggest the amount claimed is unreasonable. The Tribunal determines the amount claimed of £300 to be reasonable and payable by the Applicant.

Tribunal Judge JE Oliver
17th September 2019