



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

Case Reference : **CHI/00HH/HIN/2021/0004**

Property : **94 Queen Elizabeth Drive, Devon
TQ3 3YP**

Applicant : **David McCabe**

Respondent : **Torbay Council**

Type of Application : **Appeal against an Improvement
Notice**

Tribunal : **Judge Dovar**

Date of Decision : **3rd August 2021**

DECISION

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Introduction

1. This is an appeal against an Improvement Notice served on the Applicant by the Respondent on 9th March 2021 in relation to the Property pursuant to paragraph 10(1) of Schedule 1 of the Housing Act 2004. The application is dated 26th March 2021.
2. As an appeal under Schedule 1 of the 2004 Act, by paragraph 15, this is an appeal by way of re-hearing and the Tribunal may confirm, quash or vary the Improvement Notice.

Background

3. The Property is a three- bedroom house the freehold of which is owned by the Applicant and which he lets out.
4. Following a complaint as to the condition of the Property by the current tenant, an inspection was carried out by the Respondent on 25th February 2021 under Part 1 of the Housing Act 2004. That identified a number of items which were considered by the Respondent to be hazards under the 2004 Act as assessed under the Housing Health and Safety Rating System.
5. Accordingly, an Improvement Notice was served on the Applicant under ss11 and 12 of the Housing Act 2004, dated 4th March 2021, requiring the works specified in an attached schedule to be commenced by 6th April 2021 and completed within 2 months.

Items appealed

6. The Improvement Notice and schedule identified various items that need attention, the relevant ones for the purposes of this appeal are:
 - a. The single glazed windows need replacing with double glazed windows both to improve insulation, prevent mould growth and because they are in disrepair (they did not open and close easily);
 - b. To check the loft insulation, make good and ensure that it was to a depth of 270mm;
 - c. Change the locks to more readily facilitate evacuation in the case of fire; in particular change the front door lock.

7. The basis of the appeal by the Applicant is that:
 - a. There is no need to replace the windows, and no requirement to instal double glazed windows as the Property has an EPC rating of D;
 - b. The loft insulation is to a depth of 250mm, and therefore does not need replacing;
 - c. The existing mortice lock can be retained on front door;
 - d. Further time should be given to complete the works; i.e. 4 months due to Covid and difficulty working around the tenant, who is vulnerable.

8. On 3rd June 2021, the Respondent provided their reasons for opposing the appeal. In relation to the points above, they stated:

a. The windows were estimated to be around 40 years old and in poor repair. The inability to close them properly, means they are draughty and some are cracked. They have aluminium frames which provides poor thermal resistance as does the single glaze. They are also prone to condensation and ensuing mould growth which was evident on the frames. Photographs were provided demonstrating these issues. Although the EPC rating was D, given the points highlighted above, there are a number of contributing reasons as to why the windows should be replaced.

b. As for the loft insulation an EPC inspection said it was 200mm and the current requirement is 270mm in any event. There have also been leaks and loss of external soffits, which mean that the current condition of the insulation is questionable.

c. The front door lock needs changing. This is the primary means of escape from the house and exit by this means should not be hindered by being unable to unlock the door from the inside without a key. It is also not secure to keep the key in the lock on the inside as it is close to the letter box and therefore could facilitate thieves breaking in.

9. In response, on 18th June, the Applicant stated the following:

a. He would replace those windows that could not be repaired;

- b. The loft insulation, which is 250mm, is sufficient. In that regard he relies on the installation certificate which has been stapled to the insulation in the loft, dated 2006;
- c. no further comment was made in respect of the locks;
- d. the same points regarding timing for the works were reiterated.

Decision

- 10. The Tribunal has considered the parties' submissions, the EPC rating for the Property (February 2021), as well as the Housing Health and Safety Rating System Guidance, (February 2006), the Housing Standards Enforcement Policy (Torbay Council, August 2019), the CIEH excess cold enforcement guidance (December 2019), A guide to energy performance certificates (December 2017), and the Housing - Fire Safety (LACORS, August 2008).

Windows

- 11. Repairing the few windows identified by the Applicant will not remedy the other problems highlighted by the Respondent; in particular the poor thermal insulation provided due to their aluminium frames and their single glaze, nor the issues with mould growth that have been identified.
- 12. Whilst the EPC rating is an important aspect of the assessment of the condition of a property, it alone is not determinative of whether or not improvements need to be made. In any event, the current insulation rating in the EPC for the windows is very poor. Further, when

replacing windows, they should at the very least comply with current Building Regulations.

13. The Tribunal is satisfied that the works required to be carried out in respect of the windows in the improvement notice are justified in that to simply replace those that are cracked or otherwise broken will fail to address the other significant issues identified, being poor insulation and mould growth which currently are correctly identified as being Category 1 hazards.

Insulation

14. The Appellant has not stated that he has remeasured the insulation which was fitted in 2006. He has simply relied on a certificate that was provided 15 years ago and has taken no account of either any settling of the insulation, the impact of leaks into the roof or other factors that may have caused it to deteriorate.
15. On an inspection in February 2021, it was noted to be 200 mm. However, the EPC rating for the Property considered that even with 200 mm loft insulation, the rating was good and made no recommendations regarding this aspect of the Property. Further although asserting that 270 mm is required, the Respondent has provided no support for that.
16. In that regard, it does not appear that the depth of the insulation is an issue, rather that a proper inspection needs to be carried out to ensure that it is in good condition given the leaks that have occurred

historically. In that regard, the requirement to insulate to a depth of 270mm is not made out and to that extent the appeal is successful, however, the requirement to check the condition and make good any defects in the insulation remain.

Locks

17. The LACORS Fire Safety Guidance states that ‘ideally, final exit doors from all premises should be fitted with locks/catches which are openable by the occupiers from the inside without the use of a removable key.’
18. Whilst this is said to be an ideal standard, in this matter, the Tribunal has taken into account the vulnerability of the current occupants, the other means of escape and the safety risk posed by the current arrangement whereby the key must be kept in the lock (i.e. that it would facilitate burglary) in determining that the requirements in the notice are justified.

Timing of works

19. The Tribunal is not persuaded that more than 2 months is needed to comply with the Improvement Notice. The occupiers are keen to have the works carried out. There is no evidence that there is difficulty in securing any contractor and any restrictions caused by Covid have now been lessened if not removed entirely.

Conclusion

20. Save for the requirement to insulate to 270mm, the appeal is dismissed. The Tribunal therefore determines that save for that requirement the improvement notice should be complied with within 2 months and varies it so that paragraph 4 of Schedule 2 to the Excess Cold part, shall read '*Check the condition of the loft insulation, particularly in the areas where there have been leaks. Replace as necessary.*'.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.