



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

Case Reference : **MAN/00UN/HIN/2019/0044**

Property : **4A, Meadow Street, Leyland PR25 2LA**

Applicants : **Mr. Christopher G. Lee & Mrs. Amanda J. Lee**
Representative : **Lee & Co**

Respondent : **South Ribble Borough Council**

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

Tribunal Members : **Tribunal Judge C Wood**
Tribunal Member J Faulkner

Date of Decision : **2 September 2021**

DECISION

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Order

1. In accordance with paragraph 15(3) of Schedule 1 of the Housing Act 2004, the Tribunal confirms the improvement notice dated 11 September 2019, as varied by the consent order dated 12 November 2020, (“the Improvement Notice”).

Background

2. This matter first came before the Tribunal for determination following a remote hearing held on 9 November 2020, at which all parties attended and/or were represented.
3. Since that hearing, the matter has been the subject of a series of further directions, the most recent of which were issued on 19 May 2021, and pursuant to which written representations were made by both parties on 16 June 2021, (“the Respondent”), and 17 June 2021 attaching an email sent to the Respondent on 2 June 2021, (“the Applicants”).
4. Rule 31 of the Tribunal’s procedural rules permits a case to be dealt with by way of paper determination 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.
5. Moreover, in view of an initial hearing having been held, that both parties were legally represented and having reviewed the parties’ subsequent written submissions, the Tribunal is satisfied that it is suitable for the final determination of this matter to be on the papers.
6. The Tribunal determined the matter on 5 July 2021.

The Law

7. The Housing Act 2004, (“the Act”), introduced a new system, the Housing Health and Safety Rating System (HHSRS), for assessing the condition of residential premises, which can be used in the enforcement of housing standards. The system entails identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.
8. Hazards are categorised as Category 1 and Category 2 hazards.
9. Section 7(2) of the Act sets out five types of enforcement action which a local authority may take in respect of a category 2 hazard. If two or more courses of action are available, the authority must take the course which they consider to be the most appropriate. One of these is an improvement notice.
10. An improvement notice 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: section 12(2).
11. The person on whom an improvement notice is served may appeal to the Tribunal against an improvement notice (Schedule 1, para.10(1) of the Act).

12. Paragraph 15(2) of Schedule 1 provides that the appeal is by way of a re-hearing, (para. 15(2)(a)), but may be determined having regard to matters of which the authority were unaware, (para. 15(2)(b)).
13. The Tribunal may confirm, quash or vary the improvement notice (para. 15(3)).

Evidence

14. The Respondent in the email dated 16 June 2021 confirmed that, “[F]ollowing a recent inspection and the provision of supporting documents, the applicants have now demonstrated that adequate work has been undertaken to comply with the Improvement Notice”, and set out brief details of the results of their inspection.
15. In response to the question of revocation of the Improvement Notice, the Respondent made the following points:
 - (1) they “would be minded to revoke the improvement notice”;
 - (2) they questioned the effect of an appeal/suspension of an improvement notice on the local housing authority’s obligation under section 16(1) of the Act to revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with;
 - (3) they do not want the Tribunal to quash the Improvement Notice as “...when the notice was issued the Council could demonstrate a cat 1 hazard existed and the serving of the notice was the right course of action at that time”.

Reasons

16. Having regard to the written submissions of the parties, the Tribunal was satisfied that the remedial works required under the Improvement Notice have been completed to the Respondent’s satisfaction.
17. In making its determination on the Applicants’ appeal, the Tribunal is entitled under paragraph 15(2)(b) of the Act to have regard to matters of which the Respondent was unaware at the time it made its decision to issue the Improvement Notice.
18. In appropriate circumstances, the Tribunal may take into account in making its determination that the person on whom an improvement notice has been served has undertaken the required remedial works to the satisfactory standard after the issue of the notice and/or after the period prescribed in the notice for their completion, and quash the improvement notice accordingly.
19. Although the remedial works as required by the Improvement Notice have now been completed to the Respondent’s satisfaction, the Tribunal does not consider that it would be appropriate to quash the Improvement Notice for the following reasons:
 - (1) none of the works undertaken by the Applicants were undertaken until after the issue of their appeal, and, in the case of the cavity wall insulation, it appears that this was not completed until February 2021. The Improvement Notice was dated 11 September 2019;

- (2) by their agreement to the terms of the consent order dated 12 November 2020, (“the Consent Order”), varying the Improvement Notice to allow further time for installation of gas central heating at the Property, the Tribunal is satisfied that the Applicants ceded the right to raise any challenge to:
- (i) the Respondent’s finding of “excess cold” in accordance with the Housing Health and Safety Rating System assessment, (“HHSRS”) of the Property in this respect; or
 - (ii) the appropriateness or otherwise of the requirement under the Improvement Notice to its installation.

Notwithstanding, following the Consent Order, the Applicants’ representative, Mr.G.H.Lee, continued to make written submissions questioning the need for installation of gas central heating at the Property.

- (3) With regard to the cavity wall insulation, the Tribunal is satisfied that the Applicants, acting on the advice and/or direction of their representative, Mr.G.H.Lee:
- (i) unnecessarily and unreasonably delayed the obtaining of an expert’s report on the appropriateness of the provision of cavity wall insulation at the Property notwithstanding their agreement to this under the terms of the Consent Order;
 - (ii) failed to make application to the Tribunal for orders amending the terms of the Consent Order;
 - (iii) in proceeding to effect cavity wall insulation without the benefit of such a report, improperly sought to impose liability on the Respondent for any damage caused to the Property by reason of its installation.

20. The Tribunal therefore determines to confirm the Improvement Notice.

21. The Tribunal was minded to make a costs order against the Applicants’ representative, Mr.G.H.Lee, pursuant to its power to do so under Rule 13(1)(b) of the Tribunal procedure (First-tier Tribunal)(Property Chamber) Rules 2013 on the basis that he had acted unreasonably in the conduct of the proceedings. However, as the Respondent failed to provide a schedule of costs in accordance with the directions dated 19 May 2021, the Tribunal makes no order.

C Wood
Tribunal Judge
2 September 2021