HM Courts & Tribunals Service

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
HOUSING ACT 2004 – SCHEDULE 1 PARAGRAPH 10(1)

Decision of the Residential Property Tribunal

Property: **49 Rodney Street, St Helens. WA10 4HB**

Appellant: **Thelma Doreen Davies**

Respondent: **St Helens Metropolitan Borough Council**

Case Number: **MAN/OOBZ/HIN/2012/0003**

Chairman: Mr G C Freeman
Mr J. Faulkner FRICS

Dates of Hearings: 8th May 2012
9th January 2013

DECISION

The Tribunal confirms the Improvement Notices served by St Helens Borough Council in respect of the Property on 4th January 2012.

Application

1. By her application dated 23rd January 2012 the Appellant appeals against ten Improvement Notices issued by St Helens Metropolitan Borough Council ("the Council") on 4th January 2012 in respect of the Property, under sections 11 and 12 of the Housing Act 2004 ("the Act").

Background

2. The Appellant owns the Property which comprises a two bedroom terrace house in a residential area of St Helens. She inherited it from a member of her family some years ago. It was not disputed that the Property has remained unoccupied for a considerable time. The Appellant claimed in her application that it is in the process of refurbishment. She has been unable to complete this

due to her medical condition as a result of an accident in 2009. She stated that she will retain the Property for her own use pending repairs to another property owned by her, to be completed as soon as she has recovered full health.

3. The Appellant's appeal may be summarised on the following grounds:

3.1 The operative date of 21 days after the Notices have been made is too short in the light of the Applicant's medical condition.

3.2 The start date of 4th July 2012 stated in the Notices for commencement of the remedial work is not realistic in the light of the Applicant's medical condition.

3.3 The Appellant is unable to afford the cost of a survey to query all the listed works. The commencement date for the Notices should be postponed until such survey can be carried out following the Appellant's complete rehabilitation.

3.4 The Appellant appeals the date for completion of all the remedial work. She states she wishes to occupy the Property whilst repairs are carried out to her no.2 property. She alleges that not all repairs listed are necessary to enable such occupation; that some of the hazards exist in owner occupied properties and that it will take approximately twelve months to complete the work.

3.5 The Appellant queries the relevance of the processes used by the Council, with regard to a house owner who is unable to complete the partial refurbishment due to her medical condition.

Inspections and Hearings

4. The Tribunal inspected the Property on the morning of the first hearing. The Tribunal was unable to gain access internally, but from a visual external inspection it was clear that the Property was boarded up, was in a poor state of repair and little, if any, of the refurbishment work as alleged by the Applicant had taken place.

5. The Tribunal also carried out a visual external inspection on the morning of the second hearing. They found the Property to be in the same state of disrepair. There was evidence of vandalism to the boarding up, such that trespassers could gain access to the interior of the Property.

6. A hearing was held on 8th May 2012 at the Employment Tribunal Service, Cunard Building, Pier Head, Liverpool L3 1TS. The Council were represented by Mr M. Fisher, solicitor, Mr L. Norman, Principal Environmental Officer and Mr I Fraser, Housing Officer. The Appellant did not attend and was not represented, having previously applied in writing for a stay of the hearing due to her medical condition.

7. The Tribunal refused to stay the Appeal. They made further directions regarding the conduct of the case and the Appellant's medical evidence, and adjourned the hearing to a date to be fixed after 19th June 2012.

8. The adjourned hearing was fixed for 9th January 2013 at the Park Inn Hotel, Linksway, St Helens. The hearing was attended by the same representatives from the Council as noted in paragraph 6. The Appellant did not attend and was not represented. The Appellant made further written applications for a delay in hearing the case on medical grounds.

The Appellant's Medical Condition

9. The Tribunal considered the Appellant's claim for adjournment. They noted that the further directions made by the Tribunal following the hearing on the 8th May 2012 required that:-

"the Appellant must provide to the Tribunal, before the above date, [19th June 2012] *a written medical report from a qualified medical practitioner, setting out the following:-*

4.1. The qualifications of the medical practitioner and his or her name and address.
4.2. The current medical condition of the Appellant.
4.3. A prognosis of the Appellant's medical condition and an estimated date when the Appellant will be able to attend a Tribunal hearing in Liverpool"

10. In support of her application for further adjournment the Appellant produced a note from her GP stating that she was unfit for work. The note did not comply with paragraphs *4.2* and *4.3* of the further Directions.

11. The Tribunal considered the application in the light of the decision of Alan Steinfield QC in the matter of *Reynolds DIY Stores Limited sub nom (1) Atkinson (2) Mummery v Calvin Reynolds* [Chancery Division – 12 June 2012] In that case the applicant applied for an adjournment of the trial. He did not appear and relied on a witness statement stating that he had recently been discharged from hospital, had been advised by doctors to avoid work and anything stressful, and did not feel that he could attend court. Exhibits to the witness statement included a letter from a doctor advising that he was not fit to work for one month and that he was not well enough to attend court. Judge Steinfeld held that the difficulty with the doctor's letter was that it did not state when the applicant would be fit to attend for the trial. He refused the application to adjourn as there was nothing to be gained from postponing the trial.

12. In the light of the above decision, the Tribunal refused the Appellant's application to adjourn the hearing.

13. The Tribunal noted that under paragraph 15 (2) (a) of Part 3 of Schedule 1 of the Act that the Appeal was to be by way of a rehearing.

The Law

14. The Act introduced the Housing Health and Safety Rating System ("HHSRS"). This is a system for assessing housing conditions, enabling local authorities to assess the condition of a property based on risk to occupants, with power to serve Notices and Orders on owners requiring action to be taken to reduce risk or restrict the use of a property.

15. The most serious risk of harm creates a category 1 hazard in respect of which it is mandatory under section 5(1) for the local authority to take appropriate enforcement action. All other risks enable the local authority, in its discretion, to take particular kinds of enforcement action. Section 5(2) sets out seven types of action which are "appropriate" for a category 1 hazard. If two or more of these courses of action are available, the authority must take the course which they consider to be the most appropriate. If the authority chooses to serve an Improvement Notice for a category 1 hazard, the remedial action must be such as to ensure that the hazard ceases to be a category 1 hazard, but may extend beyond that – section 11 (5).

16. A person served with an Improvement Notice can appeal to a Residential Property Tribunal which "may by order confirm, quash or vary the Improvement Notice" (Schedule 1 paragraph 15 (3)).

17. In exercising its functions under the HHSRS provisions a local authority must have regard to any guidance for the time being given by the appropriate national authority – section 9 (2). There are two sets of such guidance in relation to the HHSRS, issued by the (now) Department of Communities and Local Government; the **Operating Guidance** and the **Enforcement Guidance.**

18. The Housing Health and Safety Rating System (England) Regulations 2005 prescribe the method for calculating the seriousness of hazards. Paragraph 5 deals with inspections and provides that an Inspector must inspect any residential premises with a view to preparing an accurate record of their state and condition. Paragraph 6 states:-

"6(1) where, following an inspection of residential premises under section 4 of the Act, the inspector –

(a) determines that a hazard of a prescribed description exists: and
(b) considers, having regard to any guidance for the time being given under section 9 of the Act in relation to the assessment of hazards that it is appropriate to calculate the seriousness of the hazard and the seriousness of that hazard shall be calculated in accordance with paragraphs (2) to (4) of this regulation"

19. Paragraphs (2 to 4) then set out the assessment process which the inspector must follow including assessing the likelihood of a member of the relevant vulnerable group suffering harm as a result of the hazard, assessing the class of harm most likely to be suffered and then using data from the relevant tables

to produce a numerical score. Category 1 hazards are those with a score of 1000 or above.

20. The numerical score for a hazard is reached in a number of steps prescribed by regulation 6. First the inspector is required to assess the likelihood, during the period of 12 months beginning with the date of assessment, of a relevant occupier suffering any harm as the result of that hazard as falling within one of a range of 16 ratios of likelihood that are set out. For each range there is also set out a representative scale point of range (L, as it is called in a formula that later falls to be applied). Thus, for example, in the range of ratios of likelihood between 1 in 4200 and 1 in 2400 the representative scale point of range is stated to be 3200.

21. Who is a "relevant occupier" is defined in regulation 6(7) by reference to particular matters contained in Schedule 1. For paragraph 2 (Excess cold) the relevant occupier is an occupier aged 65 years or over.

22. The second step requires the inspector to assess which of the four classes of harm a relevant occupier is most likely to suffer. Thirdly he must assess the possibility of each of the three other classes of harm occurring as a result of that hazard, as falling within a range of percentages of possibility. For each range there is also set out a representative scale point of the percentage range (RSPPR). Thus, for instance, for the range 0.15% to 0.3% the RSPPR is 0.2%.

23. Step four requires the inspector to bring the total of RSPPRs for the four classes up to 100%. To do this he adds the percentages of the three RSPPRs he has reached at step three, takes the total away from 100% and attributes what is left to the class of harm that he assessed to be most likely to occur.

24. Step five is the production of a numerical score for the seriousness of the hazard for each of the four classes of harm. For each of these, L (see paragraph 20 above) is multiplied by the RSPPR and then by a further factor, which weights the seriousness of the classes of harm. This factor is 10000 for Class I, 1000 for Class II, 300 for Class III and 10 for Class IV. The final step is to add the four individual numerical scores to produce the numerical score that can be related to the prescribed bands.

Housing Health and Safety Rating System Operating Guidance

25. This document provides guidance on the HHSRS and the method of making assessments. The following provisions are relevant. "Hazard" is defined (at paragraph 2.12) as any risk of harm to the health or safety of an actual or potential occupier that arises from a deficiency; "deficiency" is defined (at paragraph 2.02) as the failure of any element to meet the Ideal; and the "Ideal" is defined (at paragraph 2.18) as the perceived optimum standard, at the time

of the assessment, intended to prevent, avoid or minimise the hazard. Thus, for example, any heating system that falls short of the ideal and by reason of this failure gives rise to any risk of harm to health, however small or remote, constitutes a category 2 hazard at least. An authority is not obliged to take enforcement action in relation to a category 2 hazard, and it may be inappropriate to do so where the risk is very small.

26. At paragraph 2.33 it is stated that the assessment "is of the dwelling disregarding the current occupiers (if any), and based on the potential effects of any hazards on a member of the relevant vulnerable age group." A footnote says that the current occupiers are taken into account after this initial assessment of the dwelling, as one factor in determining the best course of action. "Vulnerable Group" is defined (following a reference to the Regulations) as follows:

"2.30 A range of people for whom the risk arising from a hazard is greater than for any other age group in the population. Where there is no vulnerable group for a specific hazard, the population is taken as a whole.

2.31 Vulnerability to particular hazards is restricted to age groups. It does not extend to vulnerability for other reasons."

For the purposes of assessing the hazard of excess cold the vulnerable group, as I have noted above, consists of those aged over 65.

The Tribunal's Findings

27. The Tribunal examined closely the Council's calculations, assessments and the reasoning behind them. As a result the Tribunal makes the following findings.

28. The Council's policy is to engage with owners of property which has remained empty for a long time in order to bring it back into use, i.e. occupation. The Appellant has evinced no intention of letting it and no evidence was produced to suggest this. The Appellant lives in another house in St Helens. The Act cannot force the Appellant to let the Property and in this respect the Council's policy can be frustrated by the Appellant by simply effecting repairs and leaving it empty. In the Tribunal's opinion the most effective way of achieving its wish is to make an Empty Dwelling Management Order under section 132 of the Act. The Council indicated that they were unwilling to do this for cost reasons. The Tribunal has no jurisdiction to make such an order within this part of the Act in this application. It can only confirm or quash the Improvement Notice, vary it or substitute a Prohibition Notice or Hazard Awareness Notice.

29. The Council's officers inspected the Property on 5th September 2011 after gaining access to the interior, but it was not formally assessed under the HHSRS until 29th December 2011. Instead the Council served "minded to take action" Notices on the Appellant under the Act. When it became apparent that the Appellant was taking no action, the Council's officers resolved to score the

Property and issue the Improvement Notices. The Tribunal noted that paragraph B.10 of the HHSRS Operating Guidance states that *"the assessment of all hazards is made once the inspection has been completed"* This did not happen in this case. It is arguable that the condition of the Property could have changed in the intervening period, for example, by the Appellant commencing repairs. However, the Tribunal find as a fact that this did not occur in this case.

30. Paragraph 4.20 of the HHSRS Enforcement Guidance states that it can be used to assess empty property. However the paragraph goes on to state:

". . . authorities will need to take care that, aside from the intention to bring back housing into use, they deal with hazards in an empty property in an appropriate way. For example, should an improvement notice be issued when a house has been unoccupied for some time and the owner had no intention of letting it? If there is no occupant there will be less risk of an accident or ill health. Should the authority intend to carry out works itself it may do so with the cooperation of the owner. Where such cooperation is not forthcoming, Part 7 of the Act contains provisions that enable authorities to gain access to gain access."

Unfortunately no further guidance on the assessment of empty property is offered by the HHSRS.

31. The Tribunal find that, in assessing risk of harm, the Council have not taken into account, as suggested by the Guidance, the fact that the property was empty. If the property was likely to remain empty for 12 months following its inspection in September 2011 then the risk of harm would have been significantly reduced. In response to this the Council prayed in aid the fact that the Appellant had stated that she intended to occupy it.

32. The Tribunal did not re-score the Property taking into account its findings at paragraph 31 above. They considered that the intention of the Appellant to occupy it is sufficient reason for there to remain significant category 1 and 2 hazards, taking into account the fact that it was empty on inspection.

Dated 25th January 2013

Geoffrey C. Freeman
Chairman