

**HM COURTS & TRIBUNALS SERVICE  
RESIDENTIAL PROPERTY TRIBUNAL**

**Property** : **EAST BIRKRIGG, BIRK RIGG FARM ROAD, HAWES**

**Applicant** : **MYLES METCALFE**

**Respondent** : **RICHMONDSHIRE DISTRICT COUNCIL**

**Case number** : **MAN/36UE/HIN/2012/0013**

**Date of Application** : **23 August 2012**

**Type of Application** : **APPEAL AGAINST IMPROVEMENT NOTICE**

**The Tribunal** : **A M DAVIES, LLB  
R HARRIS, FRICS  
A DUNPHY, MRICS**

**Date of decision** : **29 November 2012**

**ORDER**

The Improvement Notice dated 3 August 2012 served on the Applicant by the Respondent in respect of East Birkrigg, Birk Rigg Farm Road, Hawes is confirmed.

**REASONS**

1. East Birkrigg is an ancient farmhouse situated a few miles west of Hawes just off the A684. Since Mr L V Prince took a lease of the property dated 1 November 1976 the house, together with some 203 acres of land, has been in the possession of the Prince family, who are sheepfarmers. It is currently occupied by Mr N T Prince, his wife and baby son. Mr Prince receives rent demands twice a year from the Applicant, and the rent is paid to date. The house and outbuildings have considerable potential as a modernised house and/or holiday cottages.
2. On 23 August 2012 the Applicant through his solicitor Mr Luckhurst-Matthews lodged an appeal against an Improvement notice served by the Respondent dated 3 August 2012 pursuant to section 11 of the Housing Act 2004 ("the Act"). The Improvement Notice was prepared by the Respondent's Environmental Health Officer Mr Saxon, and required the Applicant to address the following hazards at

East Birkrigg: Category 1 Electrical, Category 2 Structural Collapse and Falling Elements, and Category 2 Damp and Mould Growth.

3. The Applicant's appeal was originally presented on the following grounds:
  - (1) that the Applicant manages the property as agent for one N J T Metcalfe and that Mr N J T Metcalfe and/or Mr Prince "as lessee of the entire farm" ought to carry out or pay for the actions specified in the Improvement Notice;
  - (2) that the steps required to be taken by the Improvement Notice are excessive, because
    - (i) the electrical hazards are not life-threatening and the Respondent failed to obtain an inspection report to justify the remedial action specified in the Notice;
    - (ii) the collapse/falling elements hazards are not life threatening, the work required is excessive in view of the age and nature of the building, and the Respondent failed to obtain advice from a structural engineer to justify the finding of a hazard and the remedial action specified in the Notice
    - (iii) the damp/mould hazard are not life threatening, the Notice requires work to be done which is excessive in view of the age and type of the building, the hazard indicates lack of proper maintenance by the occupier, and the Respondent failed to obtain advice from a competent source (as to roof repairs) in advance of serving the Notice.
  - (3) that a prohibition order, hazard awareness notice or demolition order or other action would have been more appropriate than service of the Improvement Notice.
4. In correspondence prior to the hearing the Applicant further claimed that he was entitled in these proceedings to disclosure of correspondence between the Respondent, Mr Prince, and Mr Prince's surveyor Mr Adam Winthrop.
5. The Tribunal inspected East Birkrigg farmhouse on the morning of the hearing in the presence of Mr Prince. The Applicant and his solicitor met the Tribunal members at the property but indicated that the Applicant was no longer intending to contest the existence of the defects in the property or the Respondent's statement of the work which needed to be carried out to make the property safe, and that they did not need to be present at the inspection. The Respondent's representatives were present during part of the inspection.
6. The Tribunal found the property to be a stone built farmhouse of considerable age, under a pitched stone slab tiled roof. Adjoining the west end of the house is an unused cottage annex. Adjoining the east end is a barn or store. To the south elevation is a small extension, built many years ago and containing part of the kitchen on the ground floor and a bedroom on the first floor. At first floor level the external side wall of this extension has developed a crack some inches wide, from the interior to the exterior. The Applicant has had the crack patched, but it has not yet been replastered and there has been no investigation into the cause.

7. The older part of the property at ground floor level consists of a kitchen, sitting room, hall with stairs, and a pantry in which is situated the fuse box. On the first floor, apart from the damaged extension, there is a landing, passage used partly as an office, a second passage room, a bathroom and two further bedrooms, one of which is built over an outside room containing cloaks, washing machine, central heating boiler and disused toilet.
8. The Tribunal noted that the visible wiring, some of which was cloth covered, and some sockets and switches appeared to be very old. Mr Prince has removed light bulbs and taped up switches and outlets where they have proved or appeared to be dangerous. Throughout the house the number of electrical power sockets was sparse.
9. On inspection of the middle of the three roof-spaces, the Tribunal noted that the ridge board was unsupported at one end and could give rise to a collapse. From the outside, this part of the roof is bowed and raised at ridge level. Internally, there is daylight showing along the ridge and at the valley between main roof and the damaged wall of the extension. There is evidence of wet rot and windblown rain penetration to the first floor rooms, and water penetration from defective metal guttering and downpipes.
10. Most windows in the house are single glazed and timber framed. Some do not open and are in poor condition; the glazing in two of them is cracked or broken.
11. At the hearing following inspection, Mr Luckhurst-Matthews conceded that the property is in disrepair as noted by the Tribunal, that the hazards found by the Respondent are present, that the Improvement Notice is an appropriate response to those hazards, and that the remedial works set out in the Improvement Notice need to be carried out to make the property safe. He confirmed that the Applicant did not intend to pursue an argument that as an agent for the Landlord he was not the correct person to receive service of an Improvement Notice for this property. He further conceded that the Council had carried out all appropriate investigations and taken all necessary specialist advice prior to service of the Improvement Notice.
12. Mr Luckhurst-Matthews asked the Tribunal to take one of the following courses of action:
  - (1) to quash the Improvement Notice;
  - (2) to order that the Improvement Notice be served on Mr Prince as the person responsible for the state of repair of the property;
  - (3) to adjourn the hearing to enable the Applicant to make an application to the Chancery Division for a declaration as to the respective interests in the property of the Applicant (or his principal) and Mr Prince;
  - (4) to adjourn the hearing for review of the application at a further hearing; or
  - (5) to order disclosure of correspondence between Mr Prince, his surveyor and the Respondent, and to adjourn the hearing pending such disclosure.

13. In support of these requests, Mr Luckhurst-Matthews' argument before the Tribunal was a new one: namely that the Prince family were not tenants, had no right to occupy the property, and therefore had no right to the protection of the Act or the Housing Health and Safety Rating System. He said that an application is about to be made to the Chancery Division for a declaration that Mr Prince is a trespasser, on the ground that the late Mr L V Prince's estate had not yet been administered, and that as his father's executor Mr N T Prince had not acquired any personal right to occupy the farm. Alternatively, in 2009 when he became an executor of his late father's will, Mr Prince had become a statutory tenant by creation of a Farm Business Lease to which the provisions of the 1976 lease did not apply.
14. Mr Luckhurst-Matthews referred the Tribunal to paragraph 16(3) of Schedule 1 to the Act and claimed that the Tribunal was obliged, before reaching any decision, to take account of the relative interests and relative responsibilities for repairs of (a) the Applicant (b) Mr Prince and (c) Mr N J T Metcalfe, the latter two being "owners" mentioned in the notice of appeal.
15. The Tribunal dealt with these arguments as a preliminary issue. After retiring to consider the matter, the Tribunal handed down the following determination:
- (1) that Mr Prince was not a trespasser, an owner as defined by section 262(7) of the Act, or a "person having control" as defined by section 263(1) of the Act, but was a tenant in lawful occupation of the property, for (inter alia) the following reasons:-
    - (i) the Applicant had been demanding and receiving rent from Mr Prince half-yearly, the last occasion being October 2012 (demand) and November 2012 (payment);
    - (ii) in correspondence to and letters seen by the Tribunal the Applicant has repeatedly referred to Mr Prince as a tenant and to reliance on the 1976 lease provisions;
    - (iii) the Applicant has already carried out repairs to the property at the behest of the Respondent, namely patch repair to the cracked wall, and patch repairs to the stone slates. He has also had the property inspected by an electrician to establish what work needs to be done to make the electrics safe.
  - (2) Section 11(1) of the Housing Act 2004 requires the Respondent to be "satisfied that a category 1 hazard exists on any residential premises....." before serving an Improvement Notice. Mr Luckhurst-Matthews accepted that the farmhouse is "residential premises" and conceded that the Applicant is a "person having control" of the premises and therefore liable to be served with the Improvement Notice.
  - (3) Section 9(2) of the same Act requires the Respondent to have regard to any guidance given under that section. The Housing Health and Safety Rating System Operating Guidance issued under that section provides the following overriding principle: *"Any residential premises should provide a safe and healthy environment for any potential occupier or visitor."*
  - (4) It follows that East Birkrigg being residential premises and being hazardous to actual or potential occupiers or visitors, whatever their status, and the Applicant

being a person having control of those premises, the Improvement Notice was properly served on him as a person liable to comply with it.

16. The Tribunal further determined that it had sufficient evidence in the hearing bundles, supported by the Applicant's concessions and its own observations on inspection, to deal with the Application. No additional documents were required or would be made the subject of a direction for disclosure.
17. The Tribunal notes that Mr N J T Metcalfe is said to be the owner of the freehold of East Birkrigg although no documents have been produced in support of the assertion. However the Tribunal is satisfied that the Applicant as a person having control of the property is liable to carry out the work specified in the Improvement Notice and does not intend to make any order under paragraph 16(2) of Schedule 1 to the Act. In the circumstances, the Tribunal is not obliged to take into consideration the matters set out at paragraph 16(3).
18. The Improvement Notice is confirmed.

A M Davies, Chairman