



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

Case Reference : **LON/00AH/HIN/2013/0010**

Property : **660 Davidson Road, Croydon, CR0
6DJ**

Applicant : **Mr Akin Adepoju**

Respondent : **London Borough of Croydon**

Representative : **Ms S Anandarajah**

Type of Application : **Housing Act 2004 – Appeal against
the service of an improvement
notice.**

Tribunal Members : **Siobhan McGrath
Mr M Cairns MCIEH
Ms L Hart**

**Date and venue of
Hearing** : **9th August 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **21st August 2013**

DECISION

Decision

The appeal is dismissed. The improvement notice dated 18th April 2013 is confirmed save for one variation. In Schedule 2 to the notice under the category “Damp and Mould” a new paragraph 9A is to be inserted in the following terms:

“9A. Ease and adjust the internal kitchen door to fit well into the frame and in a condition to open and close fully and freely. Leave thoroughly sound on completion.”

Reasons

1. This is an appeal by Mr Akin Adepoju against an improvement notice dated 18th April 2013, served by the respondents, the London Borough of Croydon. The application was dated 7 May 2013 and directions were issued on 3 June 2013. The appeal was considered at a hearing on 9th August 2013, at 10 Alfred place London WC 1E 7 LR. At the hearing Mr Adepoju appeared and represented himself. The London Borough of Croydon was represented by Ms Sarah Anandarajah who is an Environmental Health Officer with the council. Before the hearing, the Tribunal together with Mr Adepoju and Ms Anandarajah inspected the property and were shown round by the tenant Mrs Flavia James who also attended the hearing and gave evidence.

Background

2. The property at 660 Davidson Road is a three bedroomed house. Mrs James has been the tenant there since 2010. There have been issues relating to disrepair at the property for some time, and I deal with these below. However, in January this year, Mrs James contacted the Citizens Advice Bureaux for advice relating to a broken central heating boiler and damp at the premises. Those problems are set out in an email from Mrs James to Mr Adepoju dated 14th January 2013.
3. The CAB advised Mrs James to contact the Environmental Health Department at the London Borough of Croydon. On 4th February 2013, Mrs James made contact with Ms Anandarajah who visited and made a preliminary Housing Health and Safety Rating System (HHSRS) inspection on 12th February 2013.
4. Following the inspection Ms Anandarajah scored the hazards that she had observed at that initial inspection and an informal Housing Act 2004 section 11 and 12 notice was sent to Mr Adepoju. The informal notice was dated 7th March, 2013 with an expiry date of 11th April 2013.
5. At the hearing Mr Adepoju gave evidence that he had not received the informal notice and that if he had done so, he would have contacted the council to discuss the problems at the property which could then have been addressed without the need for formal action.

6. As there was no contact from Mr Adepoju, Ms Anandarajah served a notice of entry under section 239 of the Housing Act 2004 as a precursor to carrying out a full HHSRS inspection in contemplation of formal action. The section 239 notice was served on 27th March 2013 for an inspection on 5th April 2013. Mr Adepoju received the section 239 notice and decided not to attend the inspection but instead to wait and see what action, if any, Croydon would take. In the event Croydon decided to serve the notice now under appeal.
7. Having received the notice, Mr Adepoju took the view that his only remedy was to lodge an appeal. By that stage, he thought that it was too late to contact Croydon to discuss the notice or the works.

The Notice

8. The improvement notice is dated 18th April 2013 and is intended to address both category 1 and category 2 hazards within 660 Davidson Road. The notice states that under sections 11 and 12 of the 2004 Act, the council required the works to remove or reduce the hazards to commence not later than 16th May, 2013 and to be completed within seven days at that date.
9. Schedule 1 to the notice identifies one category 1 hazard, namely excess cold and three category 2 hazards, namely damp and mould, structural collapse and falling elements and falls on stairs. Schedule 2 to the notice sets out the works to be carried out to reduce or remove the hazards.

The Inspection

10. The Tribunal carried out a site visit on the morning of the hearing. We were met on site by the landlord Mr Adepoju and the EHO, Ms Anandajarah. The tenant, Ms James was also present throughout. 660 Davidson Road is a two storey, end terrace property probably constructed in the 1930s. There is a pitched and hipped tiled roof over. External walls are brick construction with a painted render finish. Windows are double glazed units. The house has three bedrooms and bathroom at first floor and two reception rooms and a kitchen at ground floor. There are garden plots to front and rear. There is a free standing brick built outbuilding at the back of the rear garden plot. The inspection included all rooms, elevations and external areas.

The Appeal

11. In his application form and at the hearing, Mr Adepoju identified a number of areas of dispute. Apart from the application form, Mr Adepoju had not submitted any documentation. He explained that he had not received a copy of the council's response to his appeal until he received the appeal bundle on about 22nd July, 2013. This was why he had not submitted a response. At the hearing Mr Adepogu produced copies of invoices from October 2010 and January 2012 for work

carried out to the central heating boiler at the property. The Tribunal decided to proceed on the information before it and invited Mr Adepoju to make his submissions as the case went along.

12. The first ground of Mr Adepoju's appeal was that the council failed to follow the enforcement concordat in that it failed to contact him informally before the service of a formal notice. As set out above, there was an informal notice and the Tribunal was satisfied that it was sent by post to the correct address. It is unfortunate that Mr Adepoju did not receive this as it may have served to avoid formal action. In the event, the Tribunal took the view that this did not undermine the final notice itself which remained valid.
13. The remaining grounds of Mr Adepoju's appeal address the individual hazards and the action required to remove or reduce them.
14. *Excess cold* – the deficiencies identified in the notice were lack of loft insulation, heaters not being the correct size for the rooms and appropriate temperatures not being reached by radiators. In the second schedule to the notice three items of work were required to deal with these matters which in summary are as follows:
 - (a) The provision of insulation to the loft, loft hatch, water pipes and tanks. Mr Adepoju accepted that there was limited insulation in the loft and did not challenge this aspect of the required works;
 - (b) To service and overhaul the gas boiler to the kitchen and the heating system throughout the property and to repair or renew any defective fittings or pipework as necessary to ensure an adequate supply of hot water heating.
 - a. Mr Adepoju had a number of objections to these requirements. He considered that the schedule of works required was disproportionate to the gravity of the hazard and that it went beyond addressing the deficiencies identified, for example in requiring the boiler and the heating system to be overhauled even though they were not identified as being deficient
 - b. From both the correspondence and from the evidence given by Mrs James at the hearing, it was clear that there had been a long history relating to the original boiler at the property and its replacement. Most recently the new boiler installed by Mr Adepoju had broken down over the Christmas period leaving Mrs James without heating and hot water. It was this that led ultimately to the referral of the matter to Croydon council.
 - c. It was against this background that Mr Adepoju also submitted that the notice was not sufficiently specific, in that it did not identify which radiators were failing to provide adequate heat. He submitted that he was a landlord who did not simply ignore his obligations as demonstrated by his efforts with the central heating boiler. In response Ms Anandarajah submitted that the notice was specific enough to ensure that the recipient knew what he needed to do and

what needed to be achieved. She contended that over-specification could be counterproductive, in particular when dealing with a heating system. Work to part of a system could affect another part, hence the reference to overhauling the boiler. A competent heating engineer would ensure that the system was in balance.

- d. The Tribunal considered that the notice was sufficiently specific and that the works required to the heating and hot water system were reasonable and proportionate.
 - (c) To overhaul all windows and where necessary frames. Again Mr Adepoju contended that the windows were not identified as a deficiency and that the notice lacked specificity. He did concede however, that he now accepted that some of the windows require overhauling. The Tribunal decided that in order to deal with the excess cold hazard the windows ought to be overhauled. In a different property it might have been necessary to specify which windows required attention. But having regard to the size of the house and the number of windows the Tribunal considered that the notice was adequate for the purpose.
15. *Damp and Mould* – the deficiencies identified in the notice were damp and mould throughout, leak to kitchen sink pipework, blocked airbricks, rotten kitchen units due to leaking pipework, mould to wall, extractor not working to bathroom. Nine items of work were identified to deal with this hazard. In summary they were as follows:
- (a) Overhaul the electrically operated extractor fan to the bathroom – Mr Adepoju did not challenge this item;
 - (b) Investigate the leak to the pipework under the sink in the kitchen – this item had been completed by the date of the hearing;
 - (c) Wipe down all mould affected surface and treat with a suitable fungicide.
 - (i) Mr Adepoju suggested that there was no evidence to demonstrate that there is damp and mould throughout the property.
 - (ii) In addition to the photographs produced by the council, at the inspection the Tribunal saw the mould at the property for itself. In evidence Mrs James confirmed that the level of mould we saw was usual and that in the winter it was worse. Mr Adepoju also said there was no evidence of rising or penetrating damp. This was accepted by the council who had not relied on this type of damp in support of the notice;
 - (iii) Mr Adepoju also suggested that cleaning the surfaces and carrying out the other works both to remedy excess cold and damp and mould, would not result in an improvement in the property as the condition was mainly as a result of the way the premises were used. He had been advised this by workmen who had attended the property on his behalf
 - (iv) In response Ms Anandarajah explained that she had given Ms James advice on how to reduce condensation. Ms James confirmed that she had followed that advice. In Ms Anandarajah's opinion user of this property in this condition was not the cause of damp and mould. She considered that there

was an overlap between the excess cold at the property and the damp and mould and believed that the measures required in the notice would serve to address this problem.

- (v) The Tribunal agreed with Ms Anandarajah. In reaching this conclusion the Tribunal took into account Ms Anandarajah's qualifications and experience and its own expertise in this area. In fact the Tribunal were concerned that the measures set out in the notice may be insufficient. It was suggested to Ms Anandarajah that mechanical ventilation in the kitchen would be beneficial. Although she agreed with this view, Ms Anandarajah contended that the matter should be approached in stages and that if the window in the kitchen was overhauled and made easy to open, that would suffice. The matter could then be reviewed in the future. She did however agree with the Tribunal's suggestion that the order should include a requirement to ensure that the internal kitchen door shuts properly. On the evidence, the Tribunal decided that the notice should be amended to include this item.
 - (d) Ensure air bricks or room vents are unblocked and properly installed or renew or overhaul as necessary. Alternatively install trickle vents to all windows, especially bedrooms. Mr Adepoju's objection to this item was again that it lacked specificity. The Tribunal considered that having regard to the size of the property, the requirement was reasonable and sufficiently specified.
 - (e) Renew the kitchen unit housing. Mr Adepoju made no objection to this requirement and as noted above, the leak under the kitchen sink has already been repaired.
 - (f) A further requirement was made to ensure all airbricks were clear and in particular to the kitchen where external subfloor airbricks may be compromised. Ms Anandarajah acknowledged that there was some duplication here but submitted that both requirements should be retained as the first requirement also dealt with trickle vents as an alternative and this requirement was specifically to deal with moss growth over the external subfloor airbricks. At the inspection and in comparison to photographs provided, it was clear that work to deal with this item had already commenced.
16. *Structural Collapse and falling elements* – the deficiencies identified here were loose radiators, loose guttering and down pipes to garden shed, garden fence in poor state of repair and collapse. Three items of work were identified to deal with this hazard:
- (a) Renew/overhaul the fencing – by the date of the hearing, the fence had been repaired by the neighbouring nursery by the inclusion of several new fencing panels. Although there remained some instability, Ms Anandarajah considered that the fencing was now secure enough not to require further work;
 - (b) Ensure all radiators are securely attached – Mr Adepoju's objection here was again lack of specificity. For the same reasons as stated above, the Tribunal considered that the notice was sufficiently specific and reasonable.

- (c) Remove or re-secure all loose, defective or ill-fitting guttering and down-pipes from the garden shed and ensure all cracked or defective glazing is removed – at the time of the inspection the shed was in a dilapidated state. Ms Anandarajah thought that some work had been carried out but the Tribunal were concerned that even if work had been started it should be completed so that the shed was left sound and secure on completion as required by the notice.
17. *Falls on stairs* – this final hazard relates to steep garden steps leading from the back door of the property to the garden where there is no handrail. Mr Adepoju suggested that the steps were not slippery and that the problem could be dealt with in alternative ways such as recasting the steps to a less steep incline which would also address the problem of the uneven height of the risers. The Tribunal considered that the provision of a hand-rail would be more effective as well as less expensive and declined to vary the notice in this respect.

Conclusion

18. Accordingly and save for one variation by addition to schedule 2, namely to require works to be carried out to ensure the internal kitchen door shuts properly, the Tribunal confirmed the improvement notice and the appeal is hereby dismissed.

Chairman: Siobhan McGrath
President – First-tier Tribunal (Property Chamber)

Date: 21st August 2013