

A. Application.

1. The Appellant appeals under Section 18 and Schedule 1, Paragraph 10 of the Housing Act 2004 against an Improvement Notice dated 4th March 2013 relating to 21, Spring Hill Road Accrington requiring certain works to be carried out to that property to remedy the hazard of domestic hygiene, pests and refuse in that Notice. A copy of the Notice is annexed hereto for ease of reference. The Appeal is dated 7th March 2013.
2. The provisions of Paragraph 10 of Schedule 1 provide for the person on whom an improvement notice is served to have the right to appeal to a Residential Property Tribunal and although setting out certain specific grounds of appeal does not restrict the overall generality of the paragraph. Thereafter a combination of Paragraphs 12 and 15 envisage an appeal by way of re-hearing, admitting matters not previously considered to allow the Tribunal to confirm, vary, or quash the Notice.
3. Directions as to the future conduct of the matter were given by a procedural chairman of the Tribunal on 26th March 2013 and the matter then listed for hearing on 11th June 2013. The hearing was originally to be held at the office of the Tribunal in Manchester but it appeared to the Tribunal during its inspection that the matter might usefully be heard in Accrington for the convenience of all parties and the Respondent was able to provide a suitable room at short notice at its Willow Way Depot.

B Background

4. The Appellant is the freehold owner of 21, Spring Hill Road and Miss Gregson has been his tenant since the summer of 2011.
5. In the Spring of 2012 the local authority became involved in an inspection of the property as a result of matters raised by Miss Gregson and a number of hazards were apparently identified and became the subject of extensive negotiation between the local authority and the Appellant and all except one appear to have been resolved with some speed by the Appellant following the issue of a Hazard Awareness Notice by the Respondent on 15th August 2012. Although other hazards have been remedied the issue of mouse infestation was not resolved to the satisfaction of the local authority and so became the subject of an Improvement Notice.
6. A brief history of what happened from the summer of 2012 was provided by the parties at the hearing to explain how the position had been reached where the Appellant had received, and appealed against the Improvement Notice :

- Work to deal with all the issues in the was started by the Appellant very quickly
- With the exception of work to the damp-proof course this was completed by late September
- Unfortunately the damp-proof work could not be started until later after some delay, not of any concern to the Tribunal, and to accommodate a proper request by Miss Gregson, the Christmas period was avoided and the work done in January 2013
- Although certain works had been required to deal with the infestation according to the Hazard Awareness Notice it became apparent that this had not resolved the problem
- Some communication then took place between the Appellant, his agent Mr Thompson and Mrs Goldstone to further attempt to resolve the issue. It is clear that the parties have different recollections of what was said and what the import of the discussions was. The Tribunal, for the reasons set out later, has not felt obliged to decide upon the veracity of the parties. The Tribunal is satisfied that there are occasions when 2 or more parties have a clear recollection of events but they may not be the same recollection
- Thereafter further pest control measures were put in place by the Respondent's pest control officers to poison the vermin but this could not be done whilst work was being done or awaited, nor could it be continuous over a lengthy time given the property was occupied by Miss Gregson's young children.
- By this Spring Mrs Goldstone was sufficiently concerned by the continuing problem of the infestation that she felt compelled to proceed to the issue of an Improvement Notice
- It is common ground that the work now required was different from that originally contemplated by the Hazard Awareness Notice because that work had not resolved the problem.

C. Inspection

- 7 On the morning of 11th June 2013 the Tribunal inspected 21, Spring Hill Road. The property is a two-bedroomed terraced house constructed of stone under a slate roof situated in a terraced row of similar properties. It is in a predominately residential area although near to the Oswaldtwistle Mills retail outlet. It is in a reasonable condition for its age and no significant matters of disrepair or neglect were apparent. The Tribunal was accompanied on its inspection by the pest control officer and as all parties were present it was considered appropriate to hear from the officer his views as to the nature of the infestation problem, its likely cause and suggested remedy. It was the Tribunal's view that it would be a waste of his expertise not to hear from him at that time.

D. The evidence

- 8 The Tribunal had the benefit of statements of case provided by the Appellant in the Application and then Respondent and each had provided a bundle of documents in support of its case. The Tribunal is grateful to both parties for the effort made in this regard which greatly assisted the Tribunal in finding its way to information to which it was being referred.
- 9 The hearing was quite lengthy given that the Tribunal was dealing with an Improvement Notice dealing with one hazard the salient matters to note and which influenced the Tribunal in its subsequent deliberations were:
 - Mrs Goldstone is an experienced Environmental Health Officer working in the sphere of residential property.
 - She was sufficiently concerned by the continuing infestation to make a decision that the Service of the Notice was the appropriate way to proceed.
 - Her decision was informed by the failure of the earlier proposals to remedy the matter and the house continued to be occupied by young children.
 - Such was her concern that she considered that the likelihood of the risk of harm to vulnerable persons in the dwelling had risen from 1:6 to 1:2 (although under the rating system this still left the problem in the same category of risk). Mrs Goldstone accepted that there was a considerable subjective element to the calculations under the hazard assessment scheme.
 - It was her view that the discussions and subsequent communications between herself and the Appellant and/or his agent since November 2012 had not succeeded in bringing a solution nearer. The Tribunal sensed a genuine concern on her part for the welfare of the children in the house and relied upon Miss Gregson for first-hand information of what was faced on a regular basis.
 - Although the Council accepted that infestation was occurring or likely to occur in other nearby properties this was the one where the matter had been brought to the Council's attention and in respect of which it was therefore required to consider appropriate action.
- 10 For his part Mr Lodge could be fairly described as incensed that he had been treated in the way he had. He saw the notice as a stain on his character and a suggestion that he was a bad landlord. He was concerned to point out that:
 - He had carried out the works suggested under the Hazard Awareness Notice with appropriate expedition and with sensitivity to the tenant's wishes in relation to the one matter to complete
 - These works included that which was originally suggested as appropriate to deal with the infestation

- The Council's own pest control officers were dealing with the problem by baiting and some of the problems were down to their delay in dealing with the issue
- He thought that he and his agent had co-operated fully with the Council and had responded appropriately to what they saw as the Council's level of concern
- He did not accept the calculation carried out by Miss Goldstone that increased the likelihood of harm from 1:6 in August to 1:2 in March
- He was of the opinion that the Respondent was being overzealous in its pursuit of him.

E The Law

- 11 The law relating to the service and content of Improvement Notices as they relate to category 2 hazards is set out in Sections 12-13 Housing Act 2004 and appear below:

Improvement notices relating to category 2 hazards: power of authority to serve notice

(1) If—

(a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section 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 in accordance with subsection (3) and section 13.

(3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

(4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

13 Contents of improvement notices

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,

- (c) the deficiency giving rise to the hazard,
 - (d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,
 - (e) the date when the remedial action is to be started (see subsection (3)), and
 - (f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.
- (3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.
- (4) The notice must contain information about—
- (a) the right of appeal against the decision under Part 3 of Schedule 1, and
 - (b) the period within which an appeal may be made.
- (5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

F Tribunal’s Conclusions and Reasons

- 12 The Tribunal agrees with the Respondent that the mouse infestation at 21, Spring Hill Road is a cause of serious concern, given the presence of young children in the house and the period over which the problem has persisted.
- 13 The Tribunal accepts that Mrs Goldstone’s perception in March was that an Improvement Notice was appropriate. The Tribunal was aware from the evidence that she was relying on the recounting of recent events by Miss Gregson. The Tribunal found her to be reliable in what she told it and finds it was reasonable for Mrs Goldstone to rely on her account.
- 14 The Tribunal is however concerned about three particular situations which arose:
- Without needing to apportion blame the Tribunal believes both parties misunderstood each other’s position in the crucial period between November 2012 and February 2013 which, with hindsight, could have been avoided if both parties had been clearer in their communications
 - The Improvement Notice did introduce new remedial actions compared with the Hazard Awareness Notice and there is also one particular e-mail from Mrs Goldstone referring to other new issues arising between the parties
 - The unfortunate link between the Council providing the pest control as well as being responsible for the enforcement of housing standards may well have led Mr Lodge the Appellant into an over-reliance on pest control as being a solution to the difficulty.

- 15 Additionally the Tribunal is inclined to accept the Appellant's own view of himself as having shown himself to be immediately and determinedly responsive to the earlier Hazard Awareness Notice.
- 16 **The Tribunal is therefore of the opinion that the Improvement Notice should be quashed and replaced with a new Hazard Awareness Notice. The Tribunal believes it can adopt this course of action as the tenor of the appeal notice is that this was what the Appellant considered appropriate. It is therefore a necessary consequence of the decision that the demand for payment of the £250 charge fails as well.**
17. **The Authority should therefore serve a Hazard Awareness Notice under sections 28 and 29 of the Act from an appropriate operative date and detail the remedial action which the Authority consider that it would be practicable and appropriate to take in relation to the Category 2 hazard together with such remedial action as are contained in an attached Schedule, those being the requirements in the Schedule to the improvement Notice.**
- 18 The Tribunal would add to two riders to its decision:
- It would anticipate that because of the continuing risk to young children the work should be completed within a 13 week period from the appropriate date otherwise an Improvement Notice might well be appropriate
 - Vermin infestation is difficult to eradicate. It requires the constant vigilance of all persons concerned to ensure appropriate storage of foodstuffs and refuse both inside the house and in the immediate neighbourhood.



Improvement notice

Reference No. 001476

To Mr C Lodge and Ms M Wilson

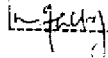
Of 123 Hampton Road Southport Merseyside PR8 5DY

The Hyndburn Borough Council ("the Authority") **GIVE NOTICE** that ~~[[a] category 1 hazard[s]]~~ ~~[[and] [[a] category 2 hazard[s]]~~ exists on residential premises namely: - **21 Spring Hill Road, Accrington, Lancashire, BB5 0EX** and that no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4 of the Housing Act 2004.

The Authority therefore serve this Improvement Notice under Section[s] ~~[[11] [and] [12]~~ the operative date being **25th March 2013** and require you to take the remedial action specified. ~~[[Details of the Category 1 hazard[s] together with the remedial action required are contained in the Schedule 1 attachment[s] [and] [details of the Category 2 hazard[s] together with the remedial action required are contained in the Schedule 2 attachment] to this notice.~~

The person on whom an improvement notice is served may appeal to a residential property tribunal against the notice within the period of 21 days beginning with the date on which the improvement notice was served.

Dated 4 March 2013

Signed 

Mark Hoyle
Head of Regeneration & Housing
[The officer appointed for this purpose]

Number of Schedule 1 attachments

Number of Schedule 2 attachments

A person, on whom an improvement notice is served, commits an offence if [she] [he] fails to comply with it and is liable on summary conviction to a fine not exceeding level 5 on the standard scale

(delete any words in brackets that do not apply)