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RESIDENTIAL PROPERTY TRIBUNAL (WALES)

LEASEHOLD VALUATION TRIBUNAL (WALES)

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Sections 11 and 12 of the Housing Act 2004

Reference: RPT/0015/09/15 - Hightown

Property: 43 Hightown Road, Wrexham, LL13 8ED

Applicant: Mrs Lynette Dean

Respondent: Wrexham Borough Council

COMMITTEE: Chairman Jack Rostron
Surveyor Neil Martindale
Lay Member Eifion Jones

APPEARANCES FOR APPLICANT: The applicant in person

APPEARANCES FOR RESPONDENT: Jason Francis – Housing Improvement Manager
Angharad Thomas – Environmental Health Officer

DECISION OF RESIDENTIAL PROPERTY TRIBUNAL

1. The Tribunal refuses permission to appeal to the Upper Tribunal

BACKGROUND

2. This is an appeal by the Respondent Wrexham County Borough Council against a decision dated 14th December 2015 ("the decision") made by the above Tribunal following an inspection of the property and hearing on 23 November 2015. At both the inspection and hearing the Applicant Mrs Lynette Dean and the Respondent's representatives Jason Francis and Angharad Thomas were present.

3. The Respondent's Application to ask the Leasehold Valuation Tribunal ("the Tribunal") for permission to appeal to the Upper Tribunal (Lands Chamber) dated 23rd December 2015 was received on 4 January 2016.

RESPONDENTS REASONS FOR APPLICATION FOR PERMISSION TO APPEAL

"Excess cold"

Paragraphs 20 to 21

The Tribunal in making its decision, failed to take account of the Housing Health and Safety Rating System (HHSRS) Operating guidance paragraphs 2.05, 2.20 and 2.24.

2.05 – A healthy indoor temperature is around 21° C, although cold is not generally perceived until the temperature drops below 18 C. A small risk of adverse health effects begins once the temperature falls below 19° C. Serious health risks occur below 16° C with a substantially increased risk of respiratory and cardiovascular conditions. Below 10° C see the risk of hypothermia becomes appreciable, especially for the elderly.

2.20 - Heating should be controllable by the occupants, safely and properly installed, and maintained. It should be appropriate to the design, layout and construction, such that the whole of the dwelling can be adequately and efficiently heated.

2.24 - Matters relevant to the likelihood of an occurrence and the severity of the outcomes include;

d) Type of heating provision – inappropriate or inefficient systems and appliances.

g) Controls to heating system – inadequate or inappropriate controls to the system or appliance.

The decision regarding excess cold (paragraph 20) refers to a "boiler" in the rear bedroom. The "boiler" is in fact a hot water cylinder, and in this case was fitted with an insulating jacket. A hot water cylinder is not considered to be a heating appliance. Modern hot water cylinders, and boilers for that matter, are designed to be energy efficient, and in that respect give of as little heat as possible.

Fire and electrical

Paragraphs 22 to 26

In the absence of a Design, Installation and Commissioning Certificate, the Council categorically rely upon the verdict/findings of an EICR to confirm the safety and operability of a smoke detection system. There was a visible defect to the smoke detection system, no heating in a bedroom (likely to introduce fan heaters, convector heaters or other portable heating appliances) and an unsuitable number of electric sockets – this has led to the HHSRS assessment requiring the production of an EICR. ***The Lower Tribunal's response to the***

electrical and fire hazards were a defect has been clearly observed by the EHO and all members of the Lower Tribunal is highly concerning.

Also, the BS7671 recommends a full EICR every five years for all properties (owner occupied included). WCBC conducts EICR on every change of tenancy in excess of 12 months and a visual check if less than 12 months. This includes the mains powered smoke detection system indeed.

Indeed. the Electrical Safety First, "Landlords guide to electrical safety" (March 2014) states "For rented accommodation, the maximum period recommended between the initial inspection (when the installation was first put into service) and the first periodic inspection and test is five years.

Periods between subsequent inspections depend on the condition of the installation at the time of the preceding inspection, that it is recommended that periodic inspection and testing is carried out at least every five years or at the end of the tenancy, whichever comes first".

The Tribunal has also failed to take account/give sufficient consideration to the HHSRS and in particular the following paragraphs

23.18 - Matters relating to the likelihood of an occurrence and the severity of the outcomes include;

b) number of siting of outlets – inadequate number of and all badly sited electrical socket outlets.

e) disrepair of installation including to supply, meter, fuses, wiring, sockets, lighting fittings or switches.

23.19 – A visual inspection of the electrical installation and fixed appliances to the whole dwelling may identify obvious deficiencies which contribute to the hazard. ***Where there is an indication that there may be an above-average risk, and a full inspection and test report by a qualified electrician or electrical engineer should be commissioned.***

The minimum number of electrical sockets is taken as good practice from the Welsh Housing Quality Standard for social housing and supported under the HHSRS matters relevant to the likelihood of an occurrence and severity of the outcome including the number and siting of outlets – inadequate number of and all badly sited electrical socket outlets.

Irrespective as to whether or not the tenant has complained, a requirement in a notice should not be quashed on such a basis. In addition it is also concerning that a tribunal can decide to quash a requirement for the landlord to provide an EICR where electrical installations and appliances appeared to be of a modern type. The safety of the tenants is paramount and without production of such a document, the Council is unable to monitor whether or not the tenant safety is being compromised

Carbon monoxide

Paragraphs 31 to 33 it is a legal requirement for a landlord to produce and retain a record of inspection to verify the safety of the gas supply, appliances and flue at a property (The Gas Safety (Installation and Use) Regulations 1998) Regulation 36.

The regulations are clear and that a landlord must ensure at occupied property that an appliance is checked within 12 months of installation and thereafter every 12 months. The record of inspection must be retained for a minimum of two years. Landlords must ensure that a copy of such a record is made available upon request and in any event provide tenants with a valid copy within 28 days of the date of the check.

Production of such a record (electronic or paper documents) is the only acceptable method of satisfying the regulations. Environmental Health Officers, using the HHSRS and powers under the Housing Act 2004 must ensure that rented homes are safe and relatively free of hazard.

*The hazard at number 6.3 of the HHSRS concerns Carbon Monoxide (CO), a highly toxic gas. It is included as part of an EHO's assessment because of the seriousness of the hazard. The EHO requested in the improvement notice that the landlord produce and provide a copy of the landlords inspection check. The RPT Lower Tribunal quashed the requirement stating that '**whilst disappointed that the appellant (landlord) had not provided such a certificate accepted the Applicant's evidence'.***

Wrexham County Borough Council are highly concerned that the Tribunal's response to the landlord not producing the record as required by law and via the hazard assessment conducted by the EHO. It is extraordinary to say the least that a Tribunal, being aware of the legal requirement would simply rely on Applicant testimony in accepting that an inspection check had been carried out. The Tribunal has therefore failed to take account of the relevant consideration

The safety of the tenants of the property is paramount and without production of the inspection records, the Council is unable to monitor whether the tenant safety is being compromised".

REASONS OF THE TRIBUNAL FOR REFUSING PERMISSION TO APPEAL

4. The Tribunal in considering an appeal against an improvement notice has to consider the competing position of Applicant and Respondent in the context of the prevailing law and guidelines. It also has to develop an opinion based on the inspection, the documentary and oral evidence before it, along with its own expert knowledge and experience. An appeal can be made to the Upper Tribunal on four grounds. Firstly, the decision shows that the Tribunal wrongly interpreted or wrongly applied the relevant law. Secondly, the decision shows that the Tribunal misinterpreted, disregarded or wrongly applied a relevant principle of valuation or other professional practice. Thirdly, the Tribunal took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial

procedural defect. Fourthly, the point or points at issue is, or are, of potentially wide implications.

5. The application for permission to appeal is considered to fall under ground three. Each of the issues raised in the Respondent's application to appeal is dealt with as follows,

Excess Cold

6. The Respondent suggests that the Tribunal failed to take the Housing Health and Safety Rating System (HHSRS) into account is not accepted. The performance guidelines regarding HHSRS are clearly recorded at paragraph 6 a) of the Tribunal's decision ("the decision"). Similarly the remedial action proposed by the Respondent's is recorded.

7. As stated in paragraph 9, 10, and 11 of the decision, the house had been refurbished and appropriate insulation and UPVC windows and doors installed. This contributes to keeping the house warm.

8. The fixed heating was observed to be controllable, correctly maintained and suitable for the design, layout, size and construction of the house.

9. The broken window catch in the small rear bedroom identified in the improvement notice would cause cold air to enter and reduce the ambient temperature. However as stated in paragraph 20 of the decision this defect had been corrected and therefore no longer contributed to the hazard.

10. The very small size of the rear bedroom which contained the boiler or preferred term hot water cylinder was considered as a significant ancillary source of heat.

11. The Respondent did not provide any detailed evidence in terms of thermal calculations.

12. The Tribunal had to evolve an opinion based on the evidence provided at the hearing and from its findings at the inspection. This led the Tribunal to determine that the hazard as described did not exist and appropriate and effective remedial action had been taken by the Applicant. It therefore quashed this aspect of the notice as stated in paragraph 21 of the decision. Permission to appeal is refused.

Fire and Electrical

13. The Tribunal did observe as stated in paragraph 22 of the decision a missing cover and lack of battery in the downstairs smoke detector and has advised the battery and cover be replaced. The inspection by the Tribunal confirmed that the fire alarm system appeared hardwired and interlinked. This in the Tribunal's view met the requirements of a safe fire detection system. The Applicant could not comply with the Respondent's requirements as regards a basement/cellar as the property does

not have a basement or cellar. As stated in paragraph 22 of the decision the Respondent did not find it necessary to test the smoke alarm at the inspection and it was considered adequate.

14. The comment that the Council "categorically rely upon the verdict/findings of an Electrical Installation Condition Report EICR to confirm the safety and operability of a smoke detection system is laudable. However as they had been given the opportunity at the inspection to test the system it appeared unreasonable to request the Applicant to go to the expense of commissioning such a report. If the Council feel an EICR is necessary they were at liberty to commission or undertake such an investigation themselves.

15. With regard to the other electrical installations the Respondent quotes paragraphs 23.19 (HHSRS) which to paraphrase states; that if a visual inspection indicates obvious deficiencies that suggest an above obvious risk then a report by a qualified electrician or electrical engineer should be commissioned.

16. The Tribunal as indicated in paragraph 25 of the decision did inspect visually the whole property. It did not find any obvious defects which justify putting the Applicant to the expense of commissioning an electrician or electrical engineer to undertake appropriate review.

17. The Respondents views concerning the number and location of electrical sockets was considered in paragraph 24 of the decision. The current reference to the source of the Council's 'standards' such as Welsh Housing Quality Standards was not given in evidence. Notwithstanding such new evidence it was felt the existing provision of sockets was adequate in terms of the design, size and layout of the property.

18. The Respondent's apparent strict adherence to its guidelines in terms of the number of sockets. The Tribunal considers the Respondent needs to refine its interpretation and application to the requirements of the particular house.

19. For the above reasons the Tribunal considered that these aspects of the improvement notice should be quashed as stated in paragraphs 23 and 26 of the decision. Permission to appeal is refused.

Carbon monoxide

20. The Tribunal was aware as stated in paragraphs 6 f) and 31 of the decision, that the Respondents requested sight of a Gas Safety Certificate obtained within the last 12 months.

21. The appeal against the improvement notice was by way of an oral hearing and inspection as opposed to a paper determination. If the rehearing had been by the latter it would have been appropriate for the Tribunal to request sight of the certificate. However as the appeal was by way of an oral hearing with the landlord

present it was appropriate to deal with this matter by way of oral evidence as opposed to documentary evidence.

22. In paragraph 31 of the decision it is recorded that the Applicant said she had had gas safety inspections carried out and certificates provided for each year that the property had been rented out. Following questioning as to; when and by whom the certification had been carried out and why she had not brought a copy of the certificate, the detailed answers given by the Applicant were accepted by the Tribunal unanimously.

23. Notwithstanding it is perhaps worth mentioning that the timely provision of the Gas Safety Certificate to the Respondent would have been helpful even though she had no intention of renting the house.

24. Visual inspection of the property by the Tribunal could not identify any obvious defects in the gas installation or appliances.

25. For these reasons the Tribunal quashed this aspect of the improvement notice and refuses permission to appeal.

General

26. It is considered important to note are stated in paragraph 7 of the decision that the Applicant had not prepared any statement of case. Similarly the Respondent had not provided a statement of case, which would have assisted the Tribunal. Whilst it is understandable for an unrepresented party not to provide a statement of case it is helpful and expected that statutory bodies such as the Respondent should assist the Tribunal by providing documentation in a suitable format and sufficient detail.

THE LAW & APPEAL TO THE UPPER TRIBUNAL

27. Section 231 of the Housing Act 2004 allows a party following a refusal to appeal from the Residential Property Tribunal to seek permission from the Upper Tribunal.

28. Regulation 38 of the Residential Property Tribunal Procedures and Fees (Wales) Regs, 2012 explains the appeals procedure.

29. Part 3 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.1. 2010 No. 2600 (L.15) as amended explains the process for making an application to appeal.

30. You must apply for permission to appeal in writing to be received by the Tribunal no later than 14 days after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal to the Applicant.

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Dated this 22nd day of January 2016

CHAIRMAN