

Y TRIBIWNLYS EIDDO PRESWL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: RPT/0030/12/19 and RPT/0031/12/19

In the matter of Ground Floor Flat, 19 Sapphire Street, Cardiff CF24 1PY
and First Floor Flat, 19 Sapphire Street, Cardiff CF24 1PY

And in the matter of an Application under the Housing Act 2004 (“The Act”)

Applicant: Mr Said Mouseff
Representative: In person

Respondent: Cardiff County Council
Representative: Mr R Grigg

Tribunal: Tribunal Judge AR Phillips
Surveyor member Mr R Baynham
Lay member Mrs C Calvin-Thomas

Date and Venue of Hearing:
21st October 2020 via CVP Remote Hearing

ORDER

1. The Improvement Notices in relation to Ground Floor Flat, 19 Sapphire Street, Cardiff CF24 1PY and First Floor Flat, 19 Sapphire Street, Cardiff CF24 1PY are varied as set out below.
2. Pursuant to Section 49(7) of the Act the Tribunal orders the Applicant to pay to the respondent the sum of £304 in respect of certain administration and other expenses incurred by the Respondent in

connection with the preparation and service of the Improvement Notice.

The Application

3. The Applicant has appealed to the Tribunal, pursuant to paragraph 10(1) of Part 3 of Schedule 1 to the Housing Act 2004 (“the Act”) against two improvement notices issued by the Respondent under sections 11 and 12 of the 2004 Act and both dated 14th November 2019.
4. Directions dated 20th January 2020 were issued which both parties have complied with.

The Background

5. The property comprises a 2 storey, middle of terrace house which was built approximately 110 years ago. It is constructed of a solid stone and brick exterior wall to the front elevation while the walls to the rear are of single skin and vary between 6 and 9 inches in thickness. There is a rear single storey ground floor extension. The external walls to the rear have been cement rendered. The main structure has a composite slate roof while the rear addition has a tiled roof. A number of the windows have been replaced by uPVC double glazed units while the remainder are single glazed in wooden frames. The front door has been replaced by a uPVC composite unit.
6. There is a small paved forecourt to the front and the rear garden comprises a grassed area and a garden shed. In, circa, 1995 The property was converted to provide 2 No. one bedroomed self-contained flats. There is a communal entrance hall with doors leading to the ground and first floor flats.
7. The ground floor flat, which was empty at the date of the inspection, comprises an entrance hall, a front room, (previously utilised as a bedroom), living room, an inner hallway leading to a kitchen, and a bathroom with bath, wash hand basin, w/c and a separate shower.
8. The first floor flat is accessed by the stairs leading from the communal hallway and consists of a living room, bedroom, kitchen and a

bathroom with a bath having a shower over, wash hand basin and a w/c.

9. Both properties have the benefit of having individual gas boilers which provide hot water and central heating. There are battery powered smoke alarms in both flats.
10. The property is located within walking distance of the secondary shopping area at Clifton Street where most facilities are available and is approximately 1 mile from the centre of Cardiff where all other amenities are attainable.
11. The Respondent's case was, having made appropriate enquiries, that there was no record of the conversion held by the Building Control department and in the absence of any evidence of compliance with 1991 Building Regulations the property is deemed to be a House in Multiple Occupation ("HMO") by virtue of s257 of the Housing Act 2004 and is subject to the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007 (the "Regulations"). This was not disputed by the Applicant.
12. Due to Covid-19 restrictions the two flats were inspected by Mr Baynham alone on behalf of the Tribunal. Photographs of the property were also provided in the hearing bundle.

The Improvement Notices

13. The Ground Floor Flat, 19 Sapphire Street, Cardiff CF24 1PY ("the GFF"). The Improvement Notice states that the Respondent is satisfied that a category 1 hazard and three category 2 hazards exist at the property. The category 1 hazard is Excess Cold and the Category 2 hazards are Fire, Flames and Hot Surfaces and Damp & Mould Growth. The specific issues giving rise to each alleged hazard are described in the notice, which also lists the works that the Respondent requires the Applicant to carry out.
14. The First Floor Flat, 19 Sapphire Street, Cardiff CF24 1PY ("the FFF"). The Improvement Notice states that the Respondent is satisfied that a category 1 hazard and 3 category 2 hazards exist at the property. The category 1 hazard is Excess Cold and the Category

2 hazards are Fire, Flames and Hot Surfaces and Damp and Mould. The specific issues giving rise to each alleged hazard are described in the notice, which also lists the works that the Respondent requires the Applicant to carry out.

15. It was agreed between the parties that some of the required works had been carried out since the date of the Improvement Notices.

Ground Floor Flat, 19 Sapphire Street, Cardiff CF24 1PY

The Applicant's Case

16. It is unnecessary for the purposes of this decision to repeat the evidence contained in the documentation in the Applicant's Bundle for the hearing.
17. The Applicant's position from his evidence to the tribunal can be summarised as follows:

Excess Cold

18. He did not consider that the insulation of the front elevation wall was necessary. He did not believe that the front room suffered from damp, but if necessary would install a damp-proof course.
19. He did not consider that relocation of the radiators to the external walls in the lounge and bedroom was necessary and it would make little difference. There was a new boiler installed two years ago at the property.
20. He agreed that the kitchen and bathroom should be insulated internally and remove and properly reinstall the bathroom fittings and reinstate the services.
21. As far as the bathroom structure was concerned he agreed that the roof required major repair by a roofer including checking the battens and reinstating insulation.

22. He did not agree that there was any evidence of structural movement but would repair the cracks in the external render.
23. The bathroom would be left in good decorative order.
24. As far as the kitchen is concerned in addition to the insulation it was agreed that, junctions between insulating materials and existing elements needed to be sealed, all electrical fixtures would be reinstated appropriately and safely, drainage pipe work and flue were to be reinstated safely, gas boiler and any gas appliances to be refitted and certified by a Gas Safe Registered gas engineer.
25. The kitchen would be left in good decorative order.
26. The Applicant did not agree that the lounge window required replacement it was in good condition and did not require replacement. He was not aware that it was a legal requirement to replace with a uPVC window but would do so if required by the Tribunal.
27. The Applicant had already replaced the bathroom window with a uPVC window and agreed to replace the window in the kitchen with a uPVC unit.
28. The Applicant agreed to the installation of a Damp Proof Course in the front bedroom and kitchen.

Fire

29. A thumb turn operated lock had been installed already.
30. If ordered by the Tribunal the Applicant would install mains operated fire and smoke alarms.
31. The Applicant agreed that he would line the soffit under the stairs in the manner required.
32. The Applicant agreed that he would carry out any remedial electrical works identified in an Electrical Installation Condition Report, to the required standard.

33. The Applicant agreed that he would provide a fire blanket as required.

Flames and Hot Surfaces

34. The Applicant would relocate the electrical power point away from the cooker hob as required. He was not sure about the provision of a fused switch for the washing machine.

35. The Applicant will move the cooker position to improve the work top space as best as he is able.

Damp and Mould Growth

36. Bedroom (ground floor front)- the Applicant agreed to re-plaster the wall but left it for the Tribunal to decide whether a damp-proof course was required.

37. Kitchen- the Applicant did not initially agree an extractor fan was necessary but did agree to install one to the appropriate standard.

38. Bathroom – the Applicant had already agreed to carry out the identified works to the roof and provide the insulation as set out in the Excess Cold paragraph above.

The Respondent's Case

39. The Tribunal heard evidence from Ms L Marley who is employed by the Vale of Glamorgan Council as a Neighbourhood Services Officer and Environmental Health Officer.

40. Ms Marley confirmed that she had drawn up the Notices for the GFF and FFF and the Schedules, copies of which were before the tribunal. It is unnecessary for the purposes of this decision to repeat the evidence contained in her statement.

41. There had been attempts to agree the matters and revised Schedules of Works had been prepared but were not ultimately agreed.

42. Ms Marley confirmed that the property was a s257 HMO and considered it to be, in her opinion, a poorly converted property. She

accepted that certain requirements were based on guidance rather than legislation.

43. For example, in answer to questions from Mr Baynham, Ms Marley accepted that the requirement for a hard-wired fire alarm was desirable, rather than mandatory. It represented best practice and in her opinion the Applicant should give good reason why best practice was not followed.
44. Given the sub-standard fire separation there was a higher fire risk and accordingly hard-wired alarms should be provided.

First Floor Flat, 19 Sapphire Street, Cardiff CF24 1PY

The Applicant's Case

45. It is unnecessary for the purposes of this decision to repeat the evidence contained in the documentation in the Applicant's Bundle for the hearing.
46. The Applicant's position from his evidence to the Tribunal can be summarised as follows:

Excess Cold

47. In relation to the kitchen and bathroom he considered that the existing walls were more than adequate to retain the heat. There was no need for insulation. It was a matter for the Tribunal to decide if this was necessary. In the event the Tribunal decided that the insulation was necessary then he agreed he would carry out the other works required regarding the reinstating of the electrical points and boiler to the appropriate certificated standard and would leave the rooms in good decorative order.
48. Similarly, if the Tribunal required the kitchen window to be replaced with a uPVC window then he would comply. That said he considered that the window was currently doing its job.
49. He did not agree that the cill of the window should be raised.

Fire

50. The thumb turn lock had been fitted
51. The Applicant's position regarding the fire alarm was the same as for the GFF, i.e. if ordered, he would install mains powered fire and smoke alarms.
52. The Applicant would install a hydraulic self-closing device to the flat entrance door and provide a fire blanket.

Flames and Hot Surfaces

53. The Applicant agreed that he would move the cooker to one side and hang the entrance door on the other side.
54. He had already installed the electrical power points.
55. He had already installed a cupboard.
56. He was initially unsure as to whether 1.3m of workspace was able to be provided but later stated to the Tribunal that it could be done.

Damp and Mould

57. The Applicant agreed that he would carry out the specified works to the bath.
58. He had already replaced the shower hose and the extractor fan.

The Respondent's Case

59. The Tribunal heard evidence again from Ms Marley. Once again, it is unnecessary for the purposes of this decision to repeat the evidence contained in her statement.
60. The walls of the annexe were exceptionally thin and were barely 6 inches thick. With the uninsulated roof and the 3 external walls, insulation was required, with the exception of the rear wall which was

9 inches thick and she accepted that insulation was not required to the rear wall.

61. In the bathroom there was chipboard behind the taps and along the side panel which had been water damaged. The Applicant had replaced the side panel and the sink.
62. In the kitchen the Applicant did not wish to reconfigure the kitchen. In Ms Marley's opinion the window cill height should be raised to enable a work surface, or kitchen unit, to abut the window cill.
63. The fridge provided was not adequate, unless it was only occupied by a single person, although she accepted that this was not a legal requirement.
64. Ms Marley was unable to confirm the position regarding insulation but in her opinion, based on the nature of the property and the thin walls it was reasonable to assume that the roof void was not insulated.
65. The requirement for 1.3m of workspace arose from agreed standards within HMO's to provide a reasonable space to prepare foods.
66. There was no legal requirement for the installation of uPVC windows.
67. The Excess Cold was a Category 1 hazard and arose because of the combination of thermally inefficient walls, uninsulated roof, single glazed window. It needed to be addressed.

Reasons

68. The Tribunal has considered the oral evidence and the documentary evidence before it. It has also considered the Regulations.
69. The Tribunal is satisfied that the Respondent acted correctly in issuing the Improvement Notices and carried out a risk calculation in the proper manner.
70. Since the issuing of the notices works have been carried out and the Applicant has agreed to the carrying out of the works as set out in the summary of his case above.

71. The majority of works in the Improvement Notices have either been carried out, or the Applicant has agreed to carry them out. It is not necessary to comment further upon those and those aspects of the Improvement Notices are upheld.
72. There remain a number of areas of disagreement between the Applicant and the Respondent. We propose to consider each area of disagreement in turn as set out in Schedule 2 of the relevant Improvement Notice.

Ground Floor Flat

Excess Cold

73. The front bedroom and lounge are both small rooms. Given the size of the room, the Tribunal, using its own experience and judgment is satisfied that the moving of the radiator will make little difference to the temperature in the rooms and as such it is not necessary for them to be moved. Similarly, given the size of the room the addition of insulation to the external wall of the front bedroom will be of little benefit.
74. Bathroom. The Applicant did not consider there was evidence of structural movement, but has agreed to carry out repair works to the external render. The Tribunal is satisfied from its own inspection that there is no sign of movement, or that it is minimal. The works the Applicant has agreed to carry out are appropriate.
75. Windows. The lounge window is in an acceptable condition and whilst a uPVC window is more thermally efficient there is no legal requirement for it to be a uPVC window. There is no evidence of damp or mould in the lounge. Given the size of the room, in its own experience and judgment the Tribunal is satisfied that the benefits of a replacement window are likely to be small.

Fire

76. It was accepted by Ms Marley in her evidence that the requirement for a mains operated mixed fire alarm system and smoke detectors

was based on guidance and represented best practice. The Tribunal is satisfied that a mains operated system is desirable, but does not order the installation of such a system.

77. In reaching that decision the Tribunal takes into account the works that are to be carried out, (or have been), to reduce fire risk which are the provision of a thumb turn operated lock to the front property entrance door, the lining of the soffit under the stairs, the electrical works and the provision of a fire blanket.

Flames and Hot Surfaces

78. The provision of a fused switch for the washing machine was stated in the Improvement Notice to be fitted “ideally” and as such whilst the Tribunal would encourage the Applicant to do this as part of the agreed works to the kitchen it is not ordered .
79. Relocation of the cooker and the requirement to make provision for at least 300mm of work top space either side of the cooker top. The Applicant has agreed to move the cooker to improve the work top space as best he can.
80. The Regulations at paragraph 5(4) state

“The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to:

- (a)the design of the HMO;**
- (b)the structural conditions in the HMO; and**
- (c)the number of flats or occupiers in the HMO.**

81. Taking this into account and in particular the limitations of space at the property, the Tribunal requires the Applicant to use his best endeavours to comply with the requirements regarding the provision of workspace and the position of the cooker

Damp and Mould Growth

82. The Applicant is to obtain a report from a reputable damp proof course company. This is to be served upon the Respondent and the Tribunal no later than 8 weeks from the date of this decision. The report will specify the contractor to be engaged and include a schedule of works to be undertaken.

First Floor Flat

Excess Cold

83. Kitchen and bathroom insulation. The walls to the kitchen and bathroom are 6” thick. In the own experience and judgment of the Tribunal this is not sufficient for external walls and the Tribunal is satisfied that it is a reasonable requirement for the external walls to be insulated and the ancillary works identified in the Improvement Notice to be carried out.

84. The raising of the window cill was a recommendation in the Improvement Notice and the Tribunal does not order that this is carried out.

85. The kitchen window is in an acceptable condition and whilst a uPVC window is more thermally efficient and is desirable, there is no legal requirement for it to be a uPVC window. Given the size of the room, in its own experience and judgment the Tribunal is satisfied that the benefit of a replacement uPVC window is likely to be small and the Tribunal does not order that the window is replaced.

Fire Hazards

86. It was accepted by Ms Marley in her evidence that the requirement for a mains operated mixed fire alarm system and smoke detectors was based on guidance and represented best practice. The Tribunal is satisfied that a mains operated system is desirable, but does not order the installation of such a system.

87. In reaching that decision the Tribunal takes into account the works that are to be carried out, (or have been), to reduce fire risk which include the provision of a thumb turn operated lock to the front

property entrance door, the lining of the soffit under the stairs, the electrical works and the provision of a fire blanket.

Flames and Hot Surfaces

88. The only area of dispute relates to the provision of space for a fridge /freezer appliance.
89. Ms Marley was of the opinion that the current provision was not ideal. There was no evidence before the Tribunal that the current provision was dangerous, faulty or in breach of a legal requirement. Accordingly, the Tribunal does not order the provision of additional space for a new fridge/freezer appliance.

The Tribunal is satisfied that the Improvement Notices were required but that they should be varied as follows.

Ground Floor Flat

Schedule 1

Excess Cold

- a) The requirements to internally insulate the front elevation wall and relocate the radiators are deleted.
- b) The requirement to install a uPVC window in the lounge is deleted.

Fire

- c) The requirement to provide a mains operated fire alarm and smoke detection system is deleted. The Applicant should ensure that the battery operated smoke detectors are regularly checked and the battery replaced as necessary.

Flames and Hot Surfaces

- d) The requirement to relocate the cooker is amended as follows:

To use best endeavours, taking into account the limitations of space, to relocate the cooker position to make provision for at least 300mm of work top space either side of the cooker top.

Damp and Mould Growth

- e) The Applicant is to obtain a report from a reputable damp proof course company. This is to be served upon the Respondent and the Tribunal no later than 8 weeks from the date of this decision. The report will specify the contractor to be engaged and include a schedule of works to be undertaken.

First Floor Flat

Schedule 1

Excess Cold

- f) The requirement to install a uPVC window in the kitchen and raise the window cill in the kitchen is deleted.

Fire Hazards

- g) The requirement to provide a mains operated fire alarm and smoke detection system is deleted. The Applicant should ensure that the battery operated smoke detectors are regularly checked and the battery replaced as necessary.

Flames and Hot Surfaces

- h) The requirement for additional space provision for fridge freezer appliances is deleted.

90. The Tribunal has considered the timescale for the carrying out of the works given the current situation and the effects of the Covid 19 pandemic. The Applicant has stated that the tradespersons he has spoken to are very busy some until February 2021.

91. The Ground Floor Flat is currently vacant and it is sensible for those works to be undertaken first and then the tenant of the First Floor Flat can be accommodated in the Ground Floor Flat whilst the required works are undertaken to the First Floor Flat.
92. The Tribunal orders that the required works shall commence and be completed as soon as possible and in relation to the Ground Floor Flat be completed within 3 months of the date of this decision and the First Floor Flat to be completed no later than 5 months from the date of this decision.
93. In the event that the Applicant is unable, because of the Covid 19 pandemic, to complete these works within the timescale above the Tribunal is prepared to consider an application to extend the timescale to complete these works. Any such application must be made no later than 4 months from the date of this decision.
94. Any such application made by the Applicant **must** be accompanied by documentary evidence of the efforts to secure the services of appropriate tradespersons. This could take the form of emails, letters, notes of telephone calls etc. The Tribunal is very unlikely to allow any such application without this evidence. Mere assertion by the Applicant that he has been unable to carry out the works in the required time is very unlikely to be successful.
95. The Tribunal notes that it is a legal requirement before and when a property is let that it must have a valid Energy Performance Certificate and it may be beneficial to the Applicant to obtain such a survey in respect of the 2 flats as it is possible that other works in addition to those addressed in this decision might be necessary which could be undertaken at the same time.
96. The Tribunal is satisfied that the Respondent acted appropriately in issuing the Improvement Notices and accordingly the Tribunal considers it appropriate to make an order under section 49(7) of the Housing Act 2004 requiring the Applicant to make payment of the Respondent's reasonable charges in relation to the preparation and service of the Improvement Notices. The Respondent has indicated these costs are £152 for each Improvement Notice i.e. a total of £304. The Tribunal confirms this is a reasonable charge

Dated this 16th day of December 2020

AR Phillips
Tribunal Judge