

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Oak House, Cleppa Park, Celtic Springs, Newport, NP10
8BD Telephone: 0300 025 2777. Email: rpt@gov.wales

Reference: RPT/0057/01/24
Property: Bryn Gynog, Hendre Road, Conwy, LL32 8NL
Appellant: Mr Dewi Glyn Jones
Respondent: Conwy County Borough Council
Committee: Tribunal Judge Siân Westby
Surveyor Member Neil Martindale
Lay Member Bill Brereton

REASONS AND DECISION OF RESIDENTIAL PROPERTY TRIBUNAL

BACKGROUND

1. This is an appeal by the landlord, Mr Dewi Jones (“the Applicant”) against an Improvement Notice dated 20 December 2023 (“the Improvement Notice”) made under sections 11 and 12 of the Housing Act 2004 (“the Act”) which required works to commence to the property known as Bryn Gynog, Hendre Road, Conwy, LL32 8NL (“the Property”) by 20 January 2024 and be completed by 16 March 2024.
2. At the date of the Improvement Notice, 20 December 2023, the Property was occupied. However, the tenants vacated the Property on 29 February 2024 and, since that date, the Property has been unoccupied.

RESPONDENT’S STATEMENT OF CASE

3. The Respondent’s Statement of Case is set out in a statement dated 8 March 2024 by the Respondent’s barrister, Ms Andrea Fitzgerald.
4. On 18 August 2023 the Respondent issued an informal request letter (“the Informal Letter”) to the Appellant advising him that the Property had been assessed under the Housing Health and Safety Rating System (“HHSRS”) and numerous unsatisfactory conditions at the Property had been identified. The letter asked the Appellant to deal with the unsatisfactory conditions within 8 weeks of the date of the letter and warned that a failure to comply with the request would result in the Respondent serving a statutory notice on the Appellant.
5. Following a further physical inspection of the Property on 16 November 2023, the Respondent served the Improvement Notice on the Appellant as, it says, no steps were taken to alleviate any of the hazards set out in the Informal Letter.

6. The Improvement Notice identified 6 Category 1 hazards and 4 Category 2 hazards and required the Appellant to commence works to remedy the hazards by no later than 20 January 2024 and complete the remedial works by no later than 16 March 2024. The hazards identified in the Improvement Notice encompassed the hazards that were noted in the Informal Letter.
7. Pursuant to an order of the Tribunal dated 19 June 2024, the Tribunal accepted the witness statement of Ms Lianne Martin dated 14 June 2024 as late evidence. The witness statement was 2 paragraphs long and detailed Ms Martin's role within the Respondent Council. The exhibit to the witness statement consisted of the HHSRS scoring sheets which had already been provided to the Tribunal and to the Appellant by email on 14 February 2024.
8. The Respondent alleges that the Appellant's appeal is motivated by a vexatious intent to put the Respondent to significant cost and asks the Tribunal to order the Appellant to pay the Respondent's costs of responding to the proceedings.

APPELLANT'S STATEMENT OF CASE

9. The Appellant's statement of case is contained in the undated witness statement of the Appellant. The Appellant also relies upon a detailed report by Dilwyn Jones BSc FRICS of Hampson Lewis Limited, dated 8 January 2024 ("the Report").
10. The Appellant confirms that, save for two items in the report, he is in 'complete agreement' with the Report. The two items in the Report with which the Appellant does not agree are: i) the date when the Property was built; and ii) the Appellant states that a new extractor fan had been fitted to the bathroom ceiling of the Property shortly before the Respondent's inspection took place.
11. The Appellant states that works were '*instigated very soon*' following receipt of the Informal Letter but, due to lead times and weather conditions, completion of the stated works would have been impossible to complete in the time period stipulated by the Respondent.
12. The Appellant also refers to the Improvement Notice and states that the two-month time frame stipulated in this notice to carry out the required works was too short, noting that this constituted '*an immense task*' in light of the Property's age and construction.
13. The Appellant denies that many of the hazards noted in the Improvement Notice exist but does state that during the November/December 2023 period some works were carried out, '*namely internal and external decoration, fixing of door locks, replacing 4 broken slates*'.
14. The Appellant also comments upon the HHSRS scoring sheets provided by the Respondent and asserts that they are invalid due to the fact that the documents are not signed when supplied to the Appellant on 14 February 2024.

THE LAW

15. With regard to improvement notices, the relevant sections of the Act are sections 11 and 12, which state:

Section 11

(1) If-

- (a) *the local housing authority are satisfied that a category 1 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,*

servicing an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(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 subsections (3) to (5) and section 13.*

(3)

Section 12

(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)

INSPECTION

16. The Tribunal's Judge, Surveyor and Lay Member met at 11.00am on Wednesday, 19 June 2024 to undertake an inspection of the Property. They were accompanied by Ms Lianne Martin and Ms Gwawr Cooper of the Respondent Council and Mr Dilwyn Jones, the author of the Report, and Mr Dewi Jones, the Appellant.
17. The Property consists of a detached cottage bungalow located just outside Gyffin in Conwy. The Property is a traditional stone-built structure with an external render coating and was extensively renovated in 1986.

18. The Property consists of a front and rear porch, a main lounge, a dining room, 3 bedrooms, a bathroom and a separate w.c. There is a paved patio area to the rear of the Property which then leads to a garden area which is mostly laid to grass with shrubs surrounding.
19. It was apparent at the inspection that the Appellant had undertaken considerable works to the Property since the Council's inspection of the Property in November 2023 and, indeed, since the inspection by his own surveyor, as identified by the Report.
20. The kitchen and the bathroom at the Property have been removed completely, pending refurbishment, and all external timber windows to the Property have been replaced with double glazed uPVC windows. Works to the Property were still underway; many of the walls had just been plastered and workmen were present on the site during the Tribunal's inspection.

DECISION

21. Both parties agreed that the matter should be determined on the papers and, therefore, following the inspection, the Tribunal convened to determine the issues.
22. On the question of the validity of the Respondent's HHSRS scoring, the Tribunal considers that the scoring sheets are valid. There is nothing in the Welsh Government's Housing Conditions: Enforcement Guidance or HHSRS Operational Guidance that requires the scoring sheets to be signed. The scoring sheets were provided by the deadline set out in the Tribunal's directions order, being 14 February 2024.
23. In respect of the Category 1 hazards identified in the Improvement Notice, the Tribunal sets out its findings as follows:

Category 1 hazards identified in the Improvement Notice	Tribunal findings
<p>Item 1: Damp and Mould</p> <p>Damp and mould is present throughout the Property</p>	<p>The Tribunal noted that mould was present in one corner of a bedroom, but it was not noted elsewhere within the Property.</p> <p>The Tribunal considered that the mould identified would be remedied by the new vented uPVC window that had been installed in that bedroom.</p>
<p>Item 2: Excess Cold</p> <p>(a) The Property is only partially double glazed</p>	<p>(a) The Tribunal noted that all external windows were now double glazed</p>

<p>(b) The timber framed windows swell during heavy rain and cannot be easily operated.</p> <p>(c) The back door swells during heavy rain and cannot be easily operated.</p> <p>(d) There are gaps between the back door frame, door and wall.</p>	<p>(b) The timber framed windows have now been replaced by modern windows which can be easily operated.</p> <p>(c) The Tribunal noted that the back door had been replaced with a new door.</p> <p>(d) The Tribunal noted that this had been remedied by the new door that had been installed.</p>
<p>Item 3: Entry by Intruder</p> <p>(a) The timber framed windows swell during heavy rain and cannot be easily operated and latched or locked.</p> <p>(b) The back door swells during heavy rain and cannot be easily operated or locked.</p>	<p>(a) The windows to the Property have now been replaced by modern uPVC windows.</p> <p>(b) The back door has now been replaced.</p>
<p>Item 4: Structural Collapse and Falling Elements</p> <p>(a) The wood from which the porch is constructed is rotting in places.</p> <p>(b) The fabric of the roof serving the Property appears defective in that there are a number of slipped and cracked slates and missing or rotten fascias and soffits</p>	<p>(a) The Tribunal noted that the wood to the front porch had been replaced in part and no rot could be identified.</p> <p>(b) The Tribunal did not identify any slipped or cracked tiles. The fascias to the Property, whilst some were in need of a paint, were not found to be rotten.</p>
<p>Item 5: Personal Hygiene, Sanitation and Drainage</p> <p>The above ground drainage goods in part are defective in that many are unconnected to any functioning drainage system</p>	<p>The Tribunal noted that one downpipe to the rear of the property had now been connected to the drainage system. Indeed, the Tribunal noted the staining to the wall where the downpipe had not previously been connected.</p> <p>No defective drainage goods were noted at the Property.</p>
<p>Item 6: Collision and Entrapment</p> <p>(a) There are several low level windows (below 800mm) in the porch that have glazing which does not appear to be safety or toughened.</p>	<p>(a) The Tribunal noted that this has been remedied and that new windows to the front porch had recently been installed</p>

<p>(b) The entry doors and side windows to the lounge from the porch and conservatory appear to have glazing which is not safety or toughened</p>	<p>and these appeared to be made from toughened glass.</p> <p>(b) The Tribunal noted that these glass panels did not appear to have glazing which was toughened or made from safety glass. The Appellant stated that a protective film had been placed over the glass that had the same effect as using toughened glass. However, the Tribunal could see no film and were unsure of the effectiveness of such a method.</p>
---	---

24 In respect of the Category 2 hazards identified in the Improvement Notice, the Tribunal sets out its findings as follows:

Category 2 hazards identified in the Improvement Notice	Tribunal findings
<p>Item 1: Personal Hygiene, Sanitation and Drainage</p> <p>(a) The pipework serving the toilet is leaking.</p> <p>(b) The hot tap serving the sink in the bathroom appears defective in that it moves and is extremely noisy.</p> <p>(c) The seals around the bath and shower screen have failed or are missing and are therefore defective.</p> <p>(d) The bathroom ceiling and bath panel have paint flaking.</p>	<p>(a) The Tribunal did not identify any leak to the separate w.c. and there was no toilet in the bathroom, the sanitary fixtures having been taken out for refurbishment of the room.</p> <p>(b) There was no basin, or taps, in the bathroom.</p> <p>(c) There were no sanitary fixtures in the bathroom</p> <p>(d) The bathroom ceiling had been freshly painted. The Tribunal did not note any flaking and there were no bath panels.</p>
<p>Item 2: Food Safety</p> <p>(a) The kitchen walls and ceiling have paint and plaster flaking.</p>	<p>(a) The Tribunal did not identify any flaking of the paint or plaster in the kitchen. The kitchen was undergoing significant refurbishment works.</p>

<p>(b) The seal around the kitchen sink and worktop is defective and mouldy.</p> <p>(c) The extractor hood within the kitchen is defective in that it is not venting to the outside.</p>	<p>(b) There was no sink or worktop on the kitchen at the time of the Tribunal's inspection. No mould was identified in the kitchen.</p> <p>(c) There was no extractor hood, or indeed over or hob, in the kitchen at the time of the Tribunal's inspection.</p>
<p>Item 3: Structural Collapse and Falling Elements</p> <p>There is vegetation growing out of the render and foundations of the Property.</p>	<p>The Tribunal noted that vegetation had been removed from the Property and that weedkiller had been sprayed. There was limited vegetation on the exterior of the Property.</p>
<p>Item 4: Falls on a Level</p> <p>The floor in the bathroom appears pliable in places.</p>	<p>The floor in the bathroom had been stripped back to solid floor at the time of the Tribunal's inspection. It was not pliable.</p>

25 Accordingly, the Tribunal determines that Schedule 1 of the Improvement Notice, relating to the Category 1 hazards shall be varied as follows:

25.1 Item 1 (Damp and Mould), Item 2 (Excess Cold), Item 3 (Entry by Intruder), Item 4 (Structural Collapse and Falling Elements) and Item 5 (Personal Hygiene, Sanitation and Drainage) are to be removed as these hazards no longer exist at the Property.

25.2 Item 6 (Collision and Entrapment) will stand in respect of the entry doors and side glazed panels to the lounge not having glazing that is toughened or made of safety glass. The Tribunal accept that a Category 1 hazard exists.

26 With regard to Schedule 2 of the Improvement Notice, relating to the Category 2 hazards, the Tribunal decided that it should be varied so that all Category 2 hazards should be removed as such hazards no longer exist.

27 On balance the Tribunal determined that the service of the Improvement Notice was reasonable and in accordance with sections 11 and 12 of the Act. The Tribunal has regard to the length of time that the Appellant had following service of the Informal Letter to commence works to the Property. Although almost all hazards have now been removed, there remains one Category 1 hazard (see paragraph 25.2 above).

- 28 The state of disrepair identified in the Improvement Notice and the disrepair noted in the Report are considered to be at a level of seriousness to make a Hazard Awareness Notice inappropriate and an Improvement Notice appropriate.
- 29 The Tribunal considers that the Respondent's charge of £250 for taking enforcement action, pursuant to s.49(1)(a) of the Act, is reasonable in the circumstances.

COSTS

- 30 In the Respondent's statement of case, the Respondent claims that the Appellant's appeal is '*motivated by a vexatious intent*' to put the respondent to significant cost, knowing that the Respondent is under financial pressure. The Respondent has asked the Tribunal to exercise its discretion '*under Rule 13*' to order the Appellant to pay the Respondent's costs in responding to the Appellant's appeal. The Respondent has provided a schedule of costs in this regard, dated 8 March 2024.
- 31 The Tribunal believes that Counsel for the Respondent is referring here to Rule 13 of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. If that is the case, these rules are applicable to the First-Tier Tribunal in England and do not apply to the Residential Property Tribunal in Wales, which this appeal is before. The applicable Tribunal rules in Wales are The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016.
- 32 In any event, the Tribunal does not believe that the Appellant has acted vexatiously in bringing this appeal. It is clear from the Appellant's evidence that he disagreed with the Improvement Notice and appealed it for that reason and for the reasons set out in his statement.

ORDER

- 33 The Tribunal varies the Improvement Notice as outlined in paragraphs 25 and 26 above with the work to be completed by 31 July 2024.
- 34 The Tribunal is satisfied that the Respondent acted reasonably in issuing the Improvement Notice and, pursuant to s. 49(7) of the Act, the Tribunal orders that the Applicant is to pay the Respondent's charge of £250 for administrative and other expenses incurred in serving the Improvement Notice.
- 35 There is no order as to the costs of this appeal.

Either party may appeal this decision to the Upper Tribunal. An application for permission to appeal should, in the first instance, be made to this Tribunal within 21 days of the date upon which this decision was made.

DATED this 26th day of June 2024.

S. Westby
Tribunal Judge