

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Reference: RPT/0056/12/23**

**In the matter of Number 112 Treharris Street, Roath, Cardiff CF24 3HP  
(the Property)**

**And in the Matter of an Application under Sections 11 and 12  
Improvement Notice of the Housing Act 2004 (the Act)**

**APPLICANT:** Mr Paul Terry – represented by Mr Evans

**RESPONDENTS:** Shared Regulatory Services

Cardiff and Vale of Glamorgan Councils – represented by Ms  
Broomfield

**TRIBUNAL:** Mr AR Phillips - Tribunal Judge

Mr A Lewis– Surveyor

Mrs C Thomas – Lay Member

**Date and Venue of Hearing:** 18<sup>th</sup> June 2024 at Oak House, Cleppa Park, Celtic Springs, Newport NP10 8BD.

**DECISION**

The Tribunal confirms the Improvement Notice subject to the following variations as set out below:

- (1) The Category 1 Hazard – Excess Cold at paragraph 2 of the Notice is to be amended to a Category 2 Hazard.
- (2) Paragraphs 3, 4 and 5 of the Schedule 1 of the Notice are deleted.
- (3) The words “sections of fascia board” in Schedule 2 of the Notice – Necessary Works are to be deleted.
- (4) Paragraphs 4, 5, 11 and 18 in Schedule 2 of the Notice – Necessary Works are to be deleted.

- (5) The requirement in Schedule 2 of the Notice – Necessary Works at paragraph 3 is amended to be limited to the area immediately above pavement level on the front elevation to an approximate height of 300mm.
- (6) The requirement in Schedule 2 of the Notice – Necessary Works at paragraph 6 to, "Hack off as necessary all defective, cracked and hollow render. Re-render the wall", on the rear wall is amended to "Fill and repair the cement render, where defective."
- (7) The requirement in Schedule 2 of the Notice – Necessary Works paragraph 10 is deleted.
- (8) The requirement in Schedule of the Notice 2 – Necessary Works paragraph 16 is deleted.
- (9) The requirement in Schedule 2 of the Notice – Necessary Works paragraph 17 is deleted.
- (10) The requirement in Schedule 2 of the Notice – Necessary Works paragraph 19 is amended to add the words "once the necessary works at paragraph 1 have been carried out" after the words "as necessary".
- (11) The requirement in Schedule 2 of the Notice – Necessary Works paragraph 22 is deleted.
- (12) The word "certificate" in Schedule 2 of the Notice paragraph 27 is replaced by the word "Guarantee".

## **BACKGROUND**

1. This is an appeal against an Improvement Notice dated the 21<sup>st</sup> November 2023 ("the Notice") served on the Applicants by the Respondent pursuant to Section 11 and Section 12 of the Act in respect of the Property which is owned by the Applicant.
2. The Property had been the subject of an inspection on 23<sup>rd</sup> May 2023 following which an informal Improvement Notice dated 2<sup>nd</sup> June 2023 had been served on the Applicant. There was a further inspection of the Property on 14<sup>th</sup> November 2023, followed by the serving of the Notice dated 21<sup>st</sup> November 2023.
3. The matter was listed for hearing on 18<sup>th</sup> June and after the hearing Further Directions were made on 12<sup>th</sup> August 2024 requiring submissions from both parties addressing the reasoning behind the calculations for the Category 1 hazard identified at the Property.
4. It was requested that, "The summary should address, in particular, the figures entered into the Calculation Summary Sheet at page 620 of the Hearing Bundle for the National Average Score and the Actual Score and the

justification for the choice of those specific figures in the circumstances of this particular case”.

5. A delay occurred as the Respondent requested an extension of time, with further submissions received from the Respondent and from the Applicant which were circulated on 18th November 2024.
6. The Tribunal was subsequently informed on 17<sup>th</sup> December 2024 that the Applicant had sent the Tribunal a copy of an Order by Consent indicating, inter alia, that the current occupiers would vacate the Property by 16.00 on the 30th December 2024 which we understand has happened.
7. It is the understanding of the Tribunal that the Applicant wishes to sell the Property and that it will not be further let by him.

## **THE LAW**

8. The Act introduced a new housing, health and safety system for Councils to deal with the condition of Housing in their area. A Council has to consider the effect on the health and safety of occupiers and then decide which of the conditions constitute a hazard and if this is the case, whether these hazards constitute a Category 1 or 2 hazard and decide what action is required. This may be an improvement notice, a prohibition notice, or a clearance or demolition notice. Pursuant to Part 3 of the Act, a person on whom a notice is served may appeal to the Residential Property Tribunal (“the Tribunal”).
9. Following the hearing the Tribunal may confirm, quash or vary the improvement notice.

## **INSPECTION**

10. The Property was inspected on the day of the hearing by the members of the Tribunal also believed present were Mr Evans instructed on behalf of the Applicant, Mr Jones from Moginie James and Ms Broomfield from the Council Legal Department and Ms Davies the Environmental Health officer from the Council.
11. The Property is a mid-terraced two storey house flush with the pavement in the Roath District of Cardiff, off City Road. The Property is constructed of solid brick and stone walls under a pitched slate covered roof. There is gas central heating throughout with double glazed uPVC window frames. On the ground floor there is a lounge, living room, kitchen, bathroom/wc, with three bedrooms on the first floor. To the rear is a small garden.

## **THE APPLICANT’S CASE**

12. The Applicant’s solicitors provided an Expanded Statement of Reasons for Appeal dated 30/01/2024, together with a statement from Ms J Pritchard who is employed by Moginie James who manage the Property on behalf of the Applicant dated 31/01/2024.

13. Oral evidence was given to the Tribunal on behalf of the Applicant by Ms Pritchard.
14. Ms Pritchard confirmed the contents of her statement in her evidence and it is unnecessary for the purposes of this decision to repeat this.
15. She confirmed that problems remained securing access to the Property and that her manager had stepped in in an effort to facilitate communication, but no progress had been made as the tenant refused to communicate.
16. A complaint had been made by the tenant against Ms Pritchard, but this had not been followed through formally by the tenant. A complaint had also been made by the tenant against a former colleague Chantelle.
17. Ms Pritchard accepted that since possession proceedings had been issued efforts to gain access to the Property to enable the works to be carried out had taken something of a back seat.
18. There had been works undertaken at the Property to carry out the repairs prior to October 2023, but since then there had also been issues finding a contractor because one contractor had refused to go back to the Property.

### **THE RESPONDENT'S CASE**

19. At the inspection and prior to the hearing of evidence, Ms Broomfield on behalf of the Respondent confirmed that the required works had either been carried out, or that the Respondent did not wish to pursue the matters in paragraphs 3, 4 and 5 of Schedule 1 of the Notice and that the works identified in Schedule 2 of the Notice – Necessary Works 4,5,11 and 18 were not being pursued.
20. Ms Davies gave evidence to the Tribunal in accordance with her statement and it is unnecessary for the purposes of this decision to repeat this.
21. Ms Davies confirmed that Excess Cold was always a Category 1 Hazard. The deficiencies noted in paragraph 2 of Schedule 1 of the Notice should be considered overall as a whole. It was accepted that the scoring of the Hazard was subjective, but the figure was her professional judgement.
22. In her opinion, if the tape was taken away from the window in the first floor middle room, it would not be possible to heat the room adequately because the window could not be closed.
23. Ms Davies was unaware as to whether or not the tenants were using the radiator in the room and accepted that the positioning of the bed and the large items on the bed covering the radiator would have affected the performance of the heating.
24. Ms Davies considered the response from the Council was reasonable and proportionate. She accepted that the Council could have served a Hazard Awareness Notice, but considered the children at the Property were a vulnerable group and such a course of action was appropriate.
25. An informal Improvement Notice had previously been served in June 2023, but this had not resolved the situation by the time of the inspection in November 2023.
26. It was accepted that the damp proofing works would require the Property to be vacated, but this was a matter for the landlord to resolve by decanting the tenants to another property. The landlord had the option of applying for an injunction to remove the tenants temporarily to allow the necessary work to be undertaken.

27. It was the Council's overriding duty to make sure that the Property was safe.
28. Ms Davies was aware that there had been issues gaining access to the Property although this had not been a problem for her, except on one occasion.
29. Ms Davies accepted that completing the damp proofing works within the required time scale would be made more difficult by the intervention of the Christmas period but could have possibly been done.
30. The landlord had had since June 2023 to carry out the works and in her opinion had chosen not to do so by the time the Notice was served in November 2023. Although the landlord was hoping to get possession, he still had a duty to the occupiers.
31. In relation to the consideration of suspension of the Notice it was the Council's policy only to suspend a notice where the hazards were only minor and there was no vulnerable group within a property.

## **DECISION**

32. The Tribunal considered each of the identified hazards in Schedule 1 of the Notice and the necessary works specified in Schedule 2 of the Notice.
33. The Tribunal exercising its expertise found during the inspection that some of the items complained of by the Council were very minor issues, or, incorrectly described.
34. The requirement to repoint the stonework/quoins specified as item 3, should be limited to the area immediately above pavement level on the front elevation to an approximate height of 300mm.
35. The requirement to hack off as necessary all defective, cracked and hollow render, and re-render, on the rear elevation as item 6, was too extensive, as only minor cracking was observed to the cement render, which required filling.
36. The installation of a fan in the kitchen as item 10 was unnecessary as there was an opening window.
37. The requirement to fill the damaged area of plasterwork below the staircase in the living room was very minor and only amounted to approximately 300mm.
38. The overhaul of the window to the ground floor middle room as described as item 16 was incorrect, as the Tribunal tested the operation of the window and it was found to function adequately.
39. The complaint relating to the flooring in the living room could not be established by the Tribunal as the floor was covered with safety flooring installed by the tenant.
40. The requirement to clean the mould growth in the front bedroom incorrectly described the issue at item 19. There was evidence of damp penetration, which may have arisen from item 1 of the Schedule.
41. The requirement to replace one window frame to allow for a fire escape as per item 22 was unnecessary as there was a window which would allow exit in the case of a fire in bedroom 2 (middle).
42. As noted within the DPC survey referred to within item 27 of Schedule 2, the works relating to the dampness can only be better identified after the condensation arising from the incorrect living habits of the tenant relating to the ventilation of the property were addressed for a few months. Accordingly,

whilst noting dampness in a few ground floor rooms, the full extent of the rising dampness could not be established. As the Property is now vacant, then the works required to remedy the defect can take this into account and amended if necessary.

43. The Tribunal was not satisfied that the Council had established that a Category 1 Hazard – Excess Cold exists at the Property.
44. The Property benefits from a central heating system and UPVC double glazing.
45. Although some of the windows were in need of repair, there was no suggestion that the central heating system was defective and there was no real evidence as to the extent to which it was being used, in particular, whether all the rooms at the Property were being heated.
46. The primary concern in relation to the Excess Cold related to the condition of the window in the first floor middle room which had been taped shut.
47. As per paragraph 23 above the bed in this room was placed directly against the radiator and there were large items placed at the end of the bed and over the radiator which would have compromised the functioning of the heating system, even if it had been turned on.
48. Following the conclusion of the hearing on 18<sup>th</sup> June 2024 the Tribunal during the course of its deliberations was of the opinion that it required further submissions in relation to the scoring of the Category 1 - Excess Cold.
49. Further Directions were made on 12<sup>th</sup> August 2024 requiring further submissions from both parties addressing the reasoning behind the calculations for the Category 1 hazard identified at the Property.
50. It was requested that, "The summary should address, in particular, the figures entered into the Calculation Summary Sheet at page 620 of the Hearing Bundle for the National Average Score and the Actual Score and the justification for the choice of those specific figures in the circumstances of this particular case".
51. Further submissions were received from the Respondent on and subsequently from the Applicant in November 2024.
52. Whilst accepting the difficulties for Ms Davies in documenting a subjective assessment, having considered those further submissions, the Tribunal remains unsatisfied as to the reasoning behind the scoring of the Property as per the Housing Health and Safety Rating System – Calculation Summary Sheet produced following the inspection on 14<sup>th</sup> November 2023 at page 620 of the Bundle.
53. In reaching this conclusion the Tribunal is satisfied that the positioning of the bed and the items covering the radiator will have made the effective heating of the room more difficult.
54. Further, the defect in the window in the ground floor middle room stated in Schedule 1 – Deficiencies at Property paragraph 2, was not established as per paragraph 38 of this decision.
55. The Council did not submit any factual evidence to support the opinion of Ms Davies concerning the Excess Cold temperature at the property, e.g. a schedule of temperature readings over a 24 hour period.
56. The Applicant contends that the Council had an alternative to issuing an Improvement Notice and that a Hazard Awareness Notice could have been issued.

57. The Tribunal is satisfied that there were significant difficulties for the landlord and the managing agent to gain access to the property and the tenant's actions were the primary cause of this.
58. The Tribunal accepts the evidence of Ms Pritchard and found her to be an honest witness, including the acceptance, to the Applicant's disadvantage, that since possession proceedings had been issued efforts to gain access to the Property to enable the works to be carried out had taken something of a back seat.
59. Whilst the actions of the uncooperative tenant do not assist the landlord, he must make proper efforts to require the tenant to cooperate with the required works, or take the appropriate legal action to ensure that the safety of the tenants is not compromised.
60. These efforts had taken the "back seat" as described by Ms Pritchard in her evidence and there does not appear to have been any consideration of other options such as potentially changing managing agents, obtaining an injunction, offers of temporary alternative accommodation etc.
61. The Council had endeavoured to resolve the matter by the issuing of an informal Improvement Notice and by the time the actual Notice was issued a period of approximately 6 months had elapsed since the initial inspection with limited progress.
62. Overall, the Property is not in a good state of repair and works are required to it as identified in the Notice, subject to the amendments we have outlined.
63. In the circumstances the Tribunal is satisfied that given the lack of progress that has been made to date together with the extent of the required works and the condition of the Property that the issuing of an improvement notice was appropriate.
64. The Applicant contends that even if it were appropriate to issue an improvement notice that the operation of the improvement notice should be suspended.
65. This matter has been ongoing for some time and the Tribunal understands that the Property is now vacant, the tenant having moved out in accordance with the terms of the consent order and that the Property is to be sold by the landlord.
66. The Tribunal is satisfied that in the circumstances of this case that it is no longer appropriate to suspend the operation of the Notice.
67. Given the condition of the Property, if it is purchased by a buyer with the intention of living in it then it is almost certain to be renovated.
68. If it is to be tenanted, then it is almost certain to be renovated prior to occupation, because no prospective tenant would take the Property on in its current condition.

## **COSTS**

69. The tenant has not paid rent for some time and there are considerable arrears which have accrued. Ms Davies in her evidence confirmed that the non-payment of rent was not in accordance with any advice the tenant may have received from the Council.
70. Given the considerable arrears and the circumstances of this case the Tribunal makes no order for costs.

**Dated this 31<sup>st</sup> January 2025**

**AR Phillips**

**Tribunal Judge**