

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Reference: RPT/0010/12/14 Cowell Road

Property: 29 Cowell Road, Garnant, Ammanford, Carmarthenshire SA18 1NW

Applicant: Kerrin Vijayasurej

Respondent: Carmarthenshire County Council

Committee: Mr S Povey & Mr A Tillman

THE DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL

The Improvement Notice dated 21st November 2014 is revoked with effect from 16th March 2015.

REASONS FOR THE DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL

Background

1. The Applicant, Mr Kerrin Vijayasurej acts for his father, Vijayasundaram Vijayasurej, the freehold owner of 29 Cowell Road, Garnant, Ammanford SA18 1NW ('the property') under a power of attorney. The property was occupied under an assured shorthold tenancy from at least 12th January 2014 until January 2015. It was empty by the time of the Tribunal's inspection.
2. The Respondent is the local housing authority for the purposes of the Housing Health and Safety Rating System ('HHSRS') under Part I of the Housing Act 2004 ('HA 2004').
3. On 21st November 2014, following an inspection by Gareth Williams of the Respondent on the 10th of November 2014, the Respondent served an Improvement Notice on the Applicant. The Respondent identified both Category 1 and 2 hazards, set out remedial works required to address the hazards and gave the Applicant a timescale within which to complete the works.
4. On 12th December 2014, the Applicant applied to the Tribunal regarding the Improvement Notice. He stated that:
 - 4.1. The property was to be sold once the current tenancy ended in January 2015;
 - 4.2. The current tenant had asked the Applicant to withhold any works until she had vacated;
 - 4.3. The works required to the roof were unnecessary and the internal damage had been caused by the tenant.

5. In the circumstances, the Applicant sought the revocation of the Improvement Notice.
6. On 9th February 2015, the property was re-inspected by Mr Williams on behalf of the Respondent.
7. The Tribunal inspected the property on 16th March 2015 and held a hearing thereafter. The Respondent had failed to provide the Applicant with a copy of its bundle. The Tribunal provided the Applicant with a spare copy for the purposes of the hearing. The Applicant stated that he was happy to proceed and the Respondent agreed to send a copy to him after the hearing.
8. The parties provided the Tribunal with helpful documentation. We heard from Mr Williams and from Sarah Young from the Respondent's legal department. We also heard from the Applicant.

Relevant Law

9. Part 1 of the HA 2004 sets out the Respondent's powers and obligations in assessing and addressing housing conditions in its county. Where Category 1 hazards are considered to exist, the Respondent must take appropriate enforcement action (s.5 of the HA 2004). The existence of Category 2 hazards gives rise to a power to take such action (s.7 of the HA 2004). The Respondent must set out its reasons for taking any such action (s.8 HA 2004).
10. Sections 11 to 19 of HA 2004 contains details on the making, operation, varying and revocation of the Improvement Notices. In addition, Schedule 1 to the HA 2004 includes provisions for the service of Improvement Notices and the appeals procedure. Any appeal is by way of a re-hearing and can take account of matters of which the Respondent was unaware. Where a person objects to a refusal by the Respondent to revoke an Improvement Notice, the Tribunal may confirm, reverse or vary the Respondent's decision. If the Tribunal decide to revoke the Improvement Notice, they may do so from a specified date.

Property Description

11. The property is a mid-terraced two storey house situated in a quiet side street in the village of Garnant, Ammanford. It has a raised open forecourt fronting on to the pavement and is accessed by three steps. To the rear there is a good sized garden.
12. The property was built circa 1920 of mainly stone construction with a slate roof. The front elevation is of dressed stone with brick reveals to the windows. The rear elevation has a painted cement rendering. A single storey lean-to extension to the rear is of concrete block or brick construction with a painted cement rendering and with a corrugated asbestos/ Perspex roof. It has full uPVC double glazing and has a gas fired central heating system.

13. The property comprises on the ground floor of an entrance hallway, sitting room, living room, kitchen, bathroom, rear passage, and on the first floor three bedrooms.

The Inspection

Front Entrance

14. Flagstones forming the entrance steps to the property showed evidence of having recently been re-laid and were not loose. The Applicant stated at the hearing that they had been re-laid about a month ago.

15. The flagstones forming the raised forecourt to the property were uneven but not loose. Again, the Applicant's evidence was that they have recently been re-laid.

16. The quality of work in relaying the flagstones is not of a high standard but does not present a hazard over average expectancy of falling on level surfaces and on stairs.

Sitting Room

17. The sitting room is double glazed to the front elevation, with a double panel radiator and old cast iron fireplace. It is carpeted.

18. There was evidence of work having been carried out to remedy an area of dampness to the lower right hand corner of the front wall between the window and fire place. There was a small area of a minor dampness stain visible. The Applicant drew to our attention that the wall had only been re-plastered in late January 2015 and had not dried out properly. It had been painted too soon before the plaster underneath had dried.

19. As a result, there was not a significant area of dampness such that it would affect the health of occupants.

Living Room

20. The living room has two double panel radiators, two double glazed windows (one internal providing borrowed light from kitchen) and is carpeted. There were no defects noted.

Kitchen

21. The kitchen has a double glazed window, single panel radiator and is fitted with a range of wall and base units. There is also a gas hob with extractor fan and a single bowl sink unit.

22. The kitchen walls have been painted. There were some minor indications of previous water penetration on the wall above the window at ceiling level but not significant. Water penetration had been remedied by repairs to the outside rain water guttering.

23. There was also some minor condensation on the wall to the rear of the fridge freezer unit but not significant.
24. Pictures taken by Mr Williams on 10th November 2014 showed areas of pronounced dampness at ceiling level above the window. There was now a big improvement. As such, there was no significant dampness present and it did not amount to a hazard which would affect the health and safety of occupiers.
25. The defective waste trap which previously leaked has been sealed. Ideally to prevent any future leaks a new waste trap should be installed.
26. The base unit carcass holding the sink unit has previously been damaged by the leaking waste trap. This leak has now been sealed and damage to the unit is not such that it would be likely to affect the health of an occupier.
27. The defective hot water tap has been repaired.
28. It was not possible to test whether the extractor fan above the kitchen fan was working as the electricity at the property had been cut off. The Applicant stated that it worked properly.

Bathroom

29. The bathroom has a double glazed window and a single panel radiator. The bathroom suite comprises panel bath, WC and pedestal wash hand basin. There is partial tiling to walls.
30. There was evidence of water staining from previous water penetration at ceiling level. As with the kitchen, this had been remedied by repairing defective rain water guttering outside. The bathroom had also been repainted.

Rear Bedroom

31. The rear bedroom has a double glazed window to the rear, a double panel radiator and fitted carpet. A wall mounted gas boiler provides domestic hot water and central heating.
32. Some historic water staining to the rear right wall and ceiling was evident, previously caused by missing roof slates. However, this was now dry. The ceiling plaster board and wall plaster were in an acceptable condition and there was no evidence of dampness.
33. There was also no evidence of dampness on the wall facing exterior.

Small Bedroom / Box room

34. The small bedroom has a double glazed window to the rear, with a double panel radiator and fitted carpet.
35. No defects were noted.

Front Bedroom

36. The front bedroom has a double glazed window, double panel radiator and an old feature fire mantelpiece with the fire opening boarded over. It also has fitted carpet.
37. There was no evidence of damage from the previous water penetration to the ceiling.

Rear Exterior

38. The main slate roof was in acceptable condition. Missing slates had been re-laid, slipping slates secured and the roof appeared to be weatherproof. The property may need to be re-roofed in about 18 -24 months but its present condition was normal for a roof of this age. However, repairs will be required when necessary to maintain its water tightness. Several properties in the street have the original roofs. As at inspection, the deficiency is not a category 1 hazard.
39. The roof to the lean-to extension comprises corrugated asbestos and perspex sheets and although there are some inherent defects in its construction it is weather tight. The rainwater goods are old but have been repaired and appeared to be functional. The rain water which previously soaked through the walls into the kitchen and bathroom should no longer occur.
40. The rendering to the rear elevation of the main building showed evidence of cracking and blown render, and will need attention in the future. However at the date of inspection there was no evidence of penetrating damp to the walls of the two rear bedrooms. The likelihood is that the rendering will fail in the future but this deficiency was not causing a dampness hazard at present.
41. Cracks in cills and lintels were noted and although not presently causing dampness these could be sealed to prevent moisture penetration.
42. The soil pipe was old but still functioned. It did not create a risk to health and safety.
43. The rear path area comprises broken up material which was uneven and had the potential to cause a fall, but with a low likelihood. This problem can be easily remedied and, at most, could be the subject of a Hazard Awareness Notice.

Deliberations and Findings

Excess Cold

44. At the date the Improvement Notice was served, the deficiency giving rise to the hazard had generally been correctly identified. There were missing roof slates which allowed the ingress of rain water into the property. The thermal insulation in the roof space would have absorbed a lot of moisture and accordingly its thermal efficiency would have been reduced. The Respondent also contends that the lean to roof had poor thermal qualities. Together this would give rise to a Category 1 Hazard of Excess Cold.
45. We note that the Energy Performance Certificate submitted in the Respondent's bundle is based on an assessment made on the 26th Jan 2010. This shows a poor energy performance with a SAP reading of 22 and a band F rating. However this certificate does not support the Respondent's rating score for the hazard of excess cold as the assessment was made prior to the installation of central heating, double glazing and roof insulation. The updated Energy Performance Certificate dated 27th February 2015 shows a SAP value rating of 71 and a band C rating. This is above the average Energy Efficiency Rating for England and Wales band D – SAP rating 60.
46. The conditions at the property on a wet day are well recorded by photographs taken by the EHO on the date of inspection

Damp and Mould.

47. The missing roof slates allowed rain water to penetrate through the ceilings of two bedrooms.
48. The damaged rainwater guttering on the lean-to extension caused significant water to penetrate through the walls and ceilings of the kitchen and bathroom causing dampness.
49. A wall area between the window and fire place in the sitting room had significant penetrating damp.
50. The photographs in the Respondent's bundle clearly show the extent of the dampness.
51. Taking the accumulative effect of the dampness the Respondent judged that this gave rise to a Category 1 Hazard.

The Respondent's Action

52. Having regard to the cumulative effect of the two Category 1 Hazards and the five other identified Category 2 Hazards, together with the occupation at the time of the tenant, his partner and two young children, coupled with the lack of response from the

Applicant to carry out essential and immediate repairs at the property, the Respondent felt the most appropriate action was to serve an Improvement Notice.

53. Having the benefit of evidence of photographs taken on the 10th November 2014, and having regard to the potential for the deficiencies present to worsen the Respondent rightly acted to safeguard and provide a healthy and secure environment for the occupiers. The tenant subsequently left and the property is now vacant and for sale.

Scoring of Hazards – Category 1

54. However we take issue with the Respondent's judgement on the scoring of some of the hazards.

Excess Cold

55. The Respondent considered that the likelihood of an incident occurring under the category Excess Cold hazard at 1 in 100 (up from the national average of 1 in 340) and this generated a hazard score of 3275. This score put the hazard in band B (2000 – 4999) making it a Category 1 Hazard. All but 115 of this score were attributable to Class 1 harm – death or other extreme harm. We find this unreasonable. To be fair to the Respondent, he did not have the benefit of seeing the property's updated Energy Performance Certificate which showed a SAP value of 71 band rating C. (Average energy efficiency rating for England and Wales is SAP value 60 band D). Furthermore, we appreciate that the conditions seen at the property on the 10th November 2014, together with the potential for the situation to deteriorate, would have weighed heavy on the Respondent's decision.
56. Using the national average figures for likelihood and spread of health outcomes would have given a hazard score of 1035 which would have placed the hazard in band C and still a category 1 hazard. This would have been more realistic.
57. Taking into account the repairs now carried out to the roof, the installation of new thermal insulation of 300mm in the roof space, the presence of full central heating and double glazing and the above average energy performance rating we would in our judgement reduce the scoring hazard to below 1000 and therefore a band D which would be a category 2 hazard.
58. The national average score of a property of this age and type would be 1035 (which is near the boundary between band C and D) using a likelihood of 1 in 340.
59. We judge that the property is slightly better than the average for this type of dwelling and produce a numerical score of 628, arrived at using a likelihood of 1 in 450 (which gives a representative scale point of range of 1 in 560) and using the national average for spread of health outcomes.

60. A score of 628 falls within band D and is a category 2 hazard. We have taken account of the fact that although the kitchen and bathroom are not as thermally efficient as the rooms in the main building, when considering the hazard of excess cold, there needs to be a period of exposure, before there is an apparent effect on health. Both these rooms would have low periods of exposure.
61. The above findings are based on the condition of the property as at our inspection on 16th March 2015 and taking into account that the repairs carried out have reduced the hazard to an acceptable level for the forthcoming 12 months.

Damp and Mould

62. The Respondent considered the likelihood of an incident occurring under the category Damp and Mould Growth hazard at 1 in 3 (up from the national average of 1 in 400) and this generated a numerical hazard score of 1630. This put the hazard in band C (1000 – 1999) and therefore a category 1 hazard. The national average score would be 12 with a hazard band I (10 – 19).
63. The 1 in 3 likelihood estimated by the Respondent represents a worst case scenario and 1000 of this hazard score would be attributable to Class 3 Harm –such serious harm as is reasonably foreseeable. Two children occupied the property at the time the Improvement Notice was served. The national average for Class 3 Harm is 7.5.
64. The Respondent inspected the property on a wet day with rain water penetrating through the roof and with defective water guttering allowing water to seep through the walls of the lean-to. Evidence from photographs submitted clearly showed the extent of the dampness at the time. Without immediate repair work to the property, conditions could only get worse over the forthcoming 12 months.
65. However, by the time of our inspection, work had been carried out to replace missing slates and to stabilise slipping slates. The rain water guttering to the lean-to had been repaired and the penetrating damp in the sitting room had been remedied to an acceptable standard. Accordingly, in our judgement it is appropriate to adopt the national average likelihood of 1 in 400 and average spread of harm outcomes giving an average hazard score of 12 and placing the hazard in band I and a category 2 hazard.
66. We are satisfied that the repairs carried out have reduced the hazard to an acceptable level for the forthcoming 12 months. However, in the foreseeable future more substantial improvements will be required to the main roof, lean-to roof, and rendering to the rear of the property as these building elements deteriorate (as indicated in Schedule 2 Works items 1,2 and 4 of the Respondent's submission).
67. The Respondent may decide to monitor these conditions at the property.

Scoring of Hazards – Category 2

68. The Respondent also listed a further five category 2 hazards at the property.

Falling on Stairs etc.

69. Following the repair work carried out to the three steps approaching the front of the property, we find that the hazard arising from the loose paving slabs has now been reduced to an acceptable level. We consider that the likelihood of a fall occurring is no greater than average. One paving slab is not properly bedded but the Applicant stated at the hearing that he would remedy this.

Falling on level surfaces.

70. The raised open forecourt to the front, previously having loose slabs and uneven paving surfaces have now been re-laid. The work is not to a high standard but the likelihood of a fall occurring is no greater than average.

71. To the rear of the property we noted an area of uneven pathway made up of broken paving which could cause a fall. The Applicant agreed at the hearing to remedy this situation. The Respondent stated that on its own this would only attract a Hazard Awareness Notice.

Structural Collapse and Falling Elements

72. The slipped and loose slates to the front and rear of the main roof have now been secured and we do not consider that there is evidence of any falling elements.

73. The problem with the previously damp and heavy ceiling plaster in the rear bedroom has been addressed.

Personal Hygiene, Sanitation and Drainage

74. The defective waste trap to the kitchen sink has now been sealed. The Applicant confirmed at the hearing that the leak had been fixed. However we consider that the waste trap should be renewed to avoid any future leakage on to the cupboard base unit.

75. The soil pipe to the rear was found to be old, and pipe joints could be sealed but it is not considered that it would have an adverse effect on the health of occupants. At the hearing, the Respondent accepted this.

Food Safety

76. The defective sink hot water tap has been repaired and is no longer a health hazard.
77. The carcass of one of the kitchen units has been damaged by leaking water from the sink unit waste trap but is unlikely to cause a health hazard to any occupants.

Conclusions

78. No deficiencies were noted on the date of inspection which would give rise to a Category 1 Hazard. There is a future probability that the ageing building elements at the property will deteriorate further, with the potential effects of the defects giving rise to hazards which would affect the health and safety of the occupiers.
79. However we consider that with responsive maintenance this is unlikely to occur within the next 12 months. In due course more substantial improvements will be required including re-roofing the main house structure, lean-to roof and re-rendering the rear elevation of the main building.
80. We accept that at the date of the Respondent's inspection, the cumulative effects on the tenant of the deficiencies found and the Applicant's failure to remedy the defects meant that the most appropriate course of action was to serve an Improvement Notice. The notice has been successful to the extent that repairs have now been made to reduce the hazards to an acceptable level.
81. Taking into account the present circumstances at the property it may be more appropriate to serve a Hazard Awareness Notice. However, that is a matter for the Respondent.
82. For the reasons set out above, we find that it is no longer necessary for the Improvement Notice to remain in force and revoke the same from the date of our inspection, namely 16th March 2015.

DATED this 2nd day of June 2015



S A Povey
CHAIRMAN