

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

Reference: RPT/0001/04/17

In the matter of 3 Bank Road, Connah's Quay, Deeside CH5 4AZ

And in the matter of an Application under The Housing Act 2004

Between Mr Ben Hardaker (Applicant)

And Flintshire County Council (Respondent)

Tribunal: Mr A Grant – Chairman  
Mr T Daulby  
Mr W Brereton

Appearances for the Applicant: Mr Ben Hardaker

Appearances for the Respondent: Mr Byrne – Counsel, Mr R Stiggelbout –  
Environmental Health Officer, Ms J Prendergast – Environmental Health officer.

Decision

The Improvement Notice is varied as set out in the reasons given below. The charge of £300 is confirmed.

Reasons

1. This is an appeal made by the Freeholder, Mr Ben Hardaker against the Respondent's refusal to revoke or vary the terms of an Improvement Notice ("The Notice") served upon him by Flintshire County Council ("The Council") and which was dated the 22<sup>nd</sup> March 2017 in respect of a property situated at number 3 Bank Road, Connah's Quay, Deeside, CH5 4AZ ("the Property"). There is also an Appeal by Mr Hardaker against a demand by the Council to recover expenses arising in connection with the preparation and service of the Notice.
2. The Notice identified 8 category 2 Hazards that the Council stated were present at the Property at the date of its inspection and also specified the remedial works which were required to be carried out within various times which were again set out in the Notice. Attached to the Notice was a demand for payment of £300 being said to be in respect of the charge imposed by The Council in consequence of the service of the Improvement Notice.
3. Following service of the Improvement Notice upon him, Mr Hardaker issued two Appeals which were dated the 6<sup>th</sup> April 2017 and the 7<sup>th</sup> April 2017 respectively both of which were received at The Tribunal office on the 10<sup>th</sup> April 2017.

4. Directions were issued on the 18<sup>th</sup> April 2017 and the matter was listed for hearing on the 27<sup>th</sup> June 2017.
5. Prior to the hearing The Tribunal had arranged to inspect the property. Present at the inspection were the Tribunal members and Mr Byrne and Mr Stiggelbout for the Council. Mr Hardaker was not in attendance.
6. The Tribunal were informed by Mr Stiggelbout that he had spoken with the Tenant the day before the hearing and been informed that the Tenant was not going to be home and in consequence it was unlikely that the inspection would proceed.
7. Several attempts were made to contact the Occupier but no one answered the front door of the property. It appeared that no one was at home.
8. The Tribunal decided that as access to the property could not be gained an inspection of the property could not take place.

#### The Hearing

#### The Improvement Notice

9. In advance of the hearing The Tribunal had received the following documents – a copy of The Notice dated the 22<sup>nd</sup> March 2017, two Application's dated the 6<sup>th</sup> and 7<sup>th</sup> April 2017 respectively, an e mail from Mr Hardaker dated the 31<sup>st</sup> March 2017, a witness statement from Mr Hardaker dated the 23<sup>rd</sup> May 2017 and a witness statement from Mr Stiggelbout (on behalf of the Council) dated the 5<sup>th</sup> May 2017.
10. The Tribunal heard evidence from Mr Hardaker and Mr Byrne made submissions on behalf of the Council.
11. It became clear during the course of evidence that Mr Hardaker accepted in large part that the works specified in the Notice were largely necessary. However, he complained that his attempts to carry out the works contained in the Notice had been obstructed by the Tenants who would not allow access to the property.
12. He also stated that he did not accept that it was necessary to have mains wired fire alarms fitted to the property (as stated at section 5.1 of The Notice) and that he did not accept that the Council had paid enough regard to the difficulties that he had with his neighbour as regards the wall separating the two properties and which was the subject of item 6.1 in the schedule to The Notice.
13. During the course of evidence, it became clear that Mr Hardaker had served a s21 Notice on the Tenants terminating their tenancy on the 17<sup>th</sup> July 2017. He said that it would be easier to carry out the works in the Notice if the property was vacant.
14. The Council stated that it was prepared to extend the period for compliance with several aspects of the Notice to enable work to be carried out after the Tenants

had vacated the Property. However, they said that certain items in the Notice presented such a significant risk to health that a lengthy period of extension to carry out the works on those particular items could not be given.

15. Accordingly, The Tribunal adjourned the hearing for a period of time for the Council to consider its position on the Notice and the dates for Compliance.
16. The hearing resumed and Mr Byrne outlined the Council's proposals to vary the Notice.
17. Mr Byrne stated that the council was satisfied that the work required under item 1.1 of the schedule to the Notice was no longer necessary. Accordingly, The Tribunal quashes item 1.1 of the schedule to the Notice.
18. Mr Byrne stated that the time limit for carrying out the works under items 1.2, 1.3, 2.1 and 6.1 could be extended until the 31<sup>st</sup> October 2017 or sooner in the event that possession of the property was obtained sooner.
19. Mr Hardaker agreed that those suggested variations to the Notice were acceptable to him and were agreed. He did not challenge the extent of the works under the Notice for those items.
20. Accordingly, and to reflect the agreement reached between the parties, The Tribunal varies items 1.2, 1.3, 2.1 and 6.1 of the schedule to the Notice to the extent that the works must be carried out by no later than the 31<sup>st</sup> October 2017.
21. As regards item 3.1, Mr Byrne submitted that the Council would be prepared to agree to vary the time for compliance with this section on the following terms: namely that Mr Hardaker arranges an inspection as per the terms set out in item 3.1 by no later than the 12<sup>th</sup> July 2017 and provides a copy of the report outlining the findings to the Council. If the report recommends remedial works then those works are to be carried out by no later than the 9<sup>th</sup> August 2017. Mr Hardaker is then to inform the Council when the works are completed so that the Council may inspect the works.
22. Mr Hardaker accepted that proposal.
23. Accordingly, and to reflect the agreement reached between the parties, The Tribunal varies the time for compliance with item 3.1 in the schedule to The Notice in the terms set out in paragraph 21 above.
24. As regards item 4.1 in the schedule to The Notice, Mr Byrne submitted that the Council would afford Mr Hardaker until the 23<sup>rd</sup> August 2017 in which to carry out the works required under the schedule to the Notice.
25. Mr Hardaker indicated that he was in agreement with that suggestion.
26. Accordingly, and to reflect the agreement reached between the parties, The Tribunal varies the time for compliance with item 4.1 such that the works

specified in the schedule are to be completed by no later than the 23<sup>rd</sup> August 2017.

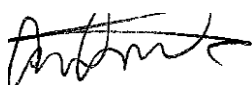
27. As regards item 5.1 in the schedule to the Notice, the Council was prepared to allow Mr Hardaker until the 12<sup>th</sup> July 2017 in which to carry out the works specified in the schedule to the Notice.
28. Mr Hardaker was in agreement with that proposal.
29. Accordingly, and to reflect the agreement reached between the parties, The Tribunal varies item 5.1 of the schedule to the Notice such that the time for completing the work is extended until the 12<sup>th</sup> July 2017.
30. It is noted that that the parties agreed that if Mr Hardaker encounters any difficulty in obtaining access to the property to carry out the works required under the Notice then he will liaise with The Council which will mediate the issue of access with the Tenant.

#### Expenses

31. The Tribunal were also asked to consider Mr Hardaker's Appeal against the charge levied by the Council in the sum of £300.
32. In submissions, Mr Hardaker stated that in his view the invoice was (1) too high and (2) he was unable to afford to pay the invoice as he had limited income.
33. He said that the charge was far too high for what was, in effect, a 30-minute inspection.
34. He said that there was no legal basis for the charge.
35. In response Mr Byrne, for the Council, stated that the charge represented far more work than a 30-minute inspection. In that regard, he drew The Tribunal's attention to the witness statement of Mr Stiggelbout dated the 5<sup>th</sup> May 2017 and in particular exhibit "RS/S/01" wherein he proceeded to go through the paperwork attached to the statement which identified 70 separate activities undertaken by the Council on this matter.
36. He handed to The Tribunal a breakdown of the costs charged and submitted that there was no profit element involved. In fact, he submitted, the invoice was actually charged at less than the full rate based upon the time actually spent on the matter.
37. Mr Hardaker further submitted that there was no sufficient breakdown of the invoice and that the charge was unfair. He said it was just an example of the Council pursuing another revenue stream.

38. In response Mr Byrne stated that the charge was a standard charge raised by the Council in matters where Improvement Notices had been served and in any event, he had outlined the basis of how the charge had been calculated.
39. As regards the legal basis for the charge, Mr Byrne drew the Tribunal's attention to section 49 of the Housing Act 2004 which gives Local Authorities the power to recover reasonable expenses incurred in taking enforcement action under part 1 of the Act.
40. In response to a question from the Tribunal, Mr Hardaker confirmed that he was not in receipt of any state benefits.
41. Having considered the evidence and the submissions, the Tribunal is satisfied that the charge is justified in principal and is reasonable in amount.
42. Although the Applicant could be said to have succeeded in his application in the sense that the Notice has been varied, the Tribunal considered that this was due to the Council adopting a constructive approach to the issues raised by Mr Hardaker at Tribunal. The Tribunal formed the view that this could have been achieved earlier had the Applicant engaged with the Council to a greater degree and actually requested a variation when problems were encountered.
43. The Tribunal takes note that Mr Hardaker lays the blame for failure to resolve some of the problems with his former managing agents but ultimately it is his duty to ensure that necessary works are carried out and the responsibility for achieving that outcome cannot be delegated.
44. Accordingly, The Tribunal confirms the charge of £300.00.
45. Either party may Appeal this decision to the Upper Tribunal (Lands Chamber). Any application for permission to Appeal should in the First instance be made to this Tribunal and must be made within 21 days of the date upon which this decision was made.

Dated this 6<sup>th</sup> day of July 2017



A Grant  
Chairman

