

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

FIRST FLOOR, WEST WING, SOUTHGATE HOUSE,  
WOOD STREET, CARDIFF, CF10 1EO

TELEPHONE: 0300 025 2777. FAX: 0300 025 6146

EMAIL: rpt@gov.wales

Reference: RPT/0018/12/17

Property: Ground Floor Flat, 57 Marine Drive, Rhos on Sea, Colwyn Bay, LL28 4HT

Between: Mrs J S Hughes (Applicant)

And Conwy County Borough Council (Respondent)

Committee: T Lloyd, Chairman  
David Jones, Surveyor  
Bill Brereton, Lay Member

Appearances for the Applicant: Mr B N Hughes

Appearances for the Respondent: Miss Annalisa Thomas (Housing & Pollution Officer)  
Ms Julia Longworth (Solicitor)

**Reasons for the Decision of the Residential Property Tribunal**

1. This is an appeal by Mrs J S Hughes (the Applicant) against an Improvement Notice ("the Notice") dated the 15<sup>th</sup> December 2017 which was served by the Local Housing Authority, Conwy County Borough Council ("the Respondent") in respect of the property known as: The Ground Floor Flat, 57 Marine Drive, Rhos on Sea, Colwyn Bay, LL28 4HT ("the Property").
2. The Property is an individual detached residence that was designed and built c. 1939 in an 'Art Deco Style' by a well known local Architect. The property has white rendered elevations under a flat roof, uPVC framed double glazing and is connected to mains services with a gas fired central heating system. The accommodation is over 2 floors and has been variously used as a single private dwelling and apartments. The accommodation provided briefly includes:- GROUND FLOOR Porch, Vestibule, Living Room, Shared Kitchen, Shower Room, Conservatory and 3 Bedrooms (one with En Suite). FIRST FLOOR: Landing, 2 Reception Rooms, Kitchen, Bathroom, Separate Toilet, Wash Room, Utility Room and 2 Bedrooms (One with En Suite). Access to Second Floor Room. to the exterior is a garden and Garage. The property is located on the seafront with open coastal views and is convenient for local facilities and the A55 Expressway.
3. On the 19<sup>th</sup> September 2017 the Respondent inspected the Property. As a result of the inspection a Notice was served on the Applicant identifying a Category 2 hazard.

The Applicant was required to commence the work specified in the Notice by the 15<sup>th</sup> December 2017 and complete by the 22<sup>nd</sup> December 2017.

4. The Applicant appealed to this Tribunal.
5. The Tribunal inspected the Property on the 22<sup>nd</sup> March 2018 accompanied by the Applicant and the Respondent's representatives.
6. The "Nature of the hazard" identified in the Notice was: "Electrical hazards" and the "deficiencies giving rise to the hazard" cited as:
  - (1) The light switch in the front hallway is located in a damp affected wall. The switch is not working;
  - (2) Use of front porch light switch apparently caused electrical circuit to trip at the fuse board;
  - (3) Unknown condition of the installation.
7. The "Nature of the remedial action required to be taken" was:-
  - (1) Employ the services of a qualified electrician to inspect and test the electrical installations and a (sic) produce an Installation Condition Report to verify the correct and safe working condition of all electric circuits within the Property. The inspection report must be in the format of a proforma document (based on the Model Inspection Report set down in DS7671: 2001 (as amended) and not a business letter head.
  - (2) Carry out all works to rectify any items coded 1 and 2 under the observations and recommendation for action to be taken section of the report.
  - (3) Provide all appropriate documentation to verify that all Code 1 and 2 items have been attended to.
  - (4) All electrical work must be carried out by a suitably qualified electrician.
8. Following numerous directions the matter was heard on the 22<sup>nd</sup> March 2018. The Tribunal had before it:
  - (1) The Appeal Notice dated the 1<sup>st</sup> December 2017 together with a Schedule of Additional Information dated the 1<sup>st</sup> December 2017, witness statement dated 1<sup>st</sup> of March 2018 from the Applicant. Post the hearing the Tribunal has been forwarded a letter dated 12<sup>th</sup> of May 2018 and a further statement under cover of a letter dated the 6<sup>th</sup> of July 2018.
  - (2) A Witness Statement from Miss Annalisa Thomas together with enclosures on behalf of the Respondent.

### **The Applicant's Case**

9. The Applicant sought by way of her Schedule of Additional Information to challenge the legality of the Notice taking issue with the Respondent's classification of the Property as a House of Multiple Occupation, an allegation of negligence in relation to a failure to ascertain factual information, that the Respondents acted in an officious, malicious and biased manner and refused to provide information supporting its allegations. In addition the Applicant asserted that the Respondent had no legal basis to inspect the Property and challenges the validity of the Notice on the basis of the same and also an assertion that the hall light switch (referred to in the Improvement Notice) had been replaced five days before the issue of the Notice.

### **The Hearing**

10. At the hearing Mr B N Hughes on behalf of the Applicant sought to repeat the matters set out in the document referred to as a Schedule of Additional Information (as referred to above) and the witness statement dated 1<sup>st</sup> March 2018.
11. The Tribunal also heard from Miss Annalisa Thomas whose evidence echoed that contained within her Witness Statement.
12. In the course of closing submissions the Applicant's representative indicated that the Applicant would give an undertaking that an Electrical Installation Condition Report would be obtained and all remedial works identified by the Report would be undertaken.
13. Upon this basis the Tribunal agreed to withhold judgment to allow the Applicant and Respondent to discuss matters, and if appropriate the Respondent to withdraw the Improvement Notice.
14. As a result further directions were made on the 6<sup>th</sup> December 2017. ]
15. The Applicant by way of a letter dated 17<sup>th</sup> April 2018 wrote to the Respondent averring that none of the so called "deficiencies" referred to in the Notice merited a Code 1 or 2 classification. The same letter confirmed that arrangements would be made for the replacement to the bathroom ceiling light and the installation of an earthing connection, and in the premises the Applicant sought that the Notice be withdrawn.
16. The Respondent in turn wrote to the tribunal by way of a letter dated 18<sup>th</sup> April and forwarded an Electrical Installation Condition Report dated 3<sup>rd</sup> April 2018 undertaken by Abbey Electrical.
17. By way of a further letter dated the 4<sup>th</sup> May 2018 the Respondent wrote to the tribunal detailing its position as regards the works required as a result of the Electrical Report and seeking the handing down of the Tribunal's decision.
18. In response by way of a letter dated the 12<sup>th</sup> May 2018 the Applicant inter alia raised the point that the Electrical Report did not specifically mention items referred to in the Improvement Notice.
19. As a consequence the Tribunal handed down further directions requiring:

- (1) The Respondents to confirm whether or not it considers the Electrical Report dated 3<sup>rd</sup> April 2018 prepared by Abbey Electrical is a report which complies with the requirements as set out in the Improvement Notice and if not why not?
  - (2) The Respondents by 29<sup>th</sup> June 2018 to file and serve a Statement limited to the detailing and nature of the defects it maintains require rectification and the basis upon which the same are included within the Improvement Notice as originally served. If so required the Applicant do allow the Respondent access to the Property for the purposes of complying with the provisions of this part of the Order.
  - (3) The Applicant do by no later than 13<sup>th</sup> July 2018 file and serve a Statement in response. Such Statement to be limited to replying to the Respondent's contentions set out in paragraph 2 of the aforementioned Order.
20. As a consequence of those directions the Respondent has filed a further Witness Statement from Annalisa Thomas (Pollution Housing Officer). That Statement indicates that:
- (1) The Respondent Authority accepts the Electrical Report dated 3<sup>rd</sup> April 2018 prepared by Abbey Electrical complies with the requirements contained in the Improvement Notice to employ the services of a qualified electrician to inspect and test the electrical installations and produce an Installation Condition Report to verify the correct safe working condition of all electrical circuits within the Property.
  - (2) The Statement goes on to state that having seen the Electrical Report and the fact that it does not refer to the light switch in the front hallway not working and also the use of the front porch light switch causing electrical circuit to trip are not noted as defects the Respondent is content that they are no longer defects requiring rectification.
  - (3) However, in relation to the third deficiency cited in the Improvement Notice being "unknown condition of the installation", the Respondent's case is that a deficiency still arises as the Report obtained by the Applicant refers to four Code 2 items.
21. The Applicant in turn filed and served a Statement under cover of a letter dated the 6<sup>th</sup> July 2018. In that Statement the Applicant repeated a number of points previously made, and avers that it is clear from the Abbey Electrical Report that there is no deficiency with the light switch in the front hallway, or the use of the front porch light and accordingly the Notice is invalid.

### **DECISION**

22. The Tribunal having considered all the evidence before it during both the hearing and received subsequently in written format unanimously come to the following decision.
23. At the time of the inspection Miss Annalisa Thomas formed a view that the light switch in the front hallway was dangerous due to the damp nature of the wall, and also upon being informed of the same by the tenant Mr Bracken, formed the view that use of the front porch light caused the electrical circuit to trip.

24. At the time of the inspection she was entitled to form that view. As a consequence those items at that time were properly included within the Improvement Notice.
25. However, it is clear with the benefit of the Electrical Report from Abbey Electrical that by the time of that Report the hall light switch had been repaired. This is echoed by the Applicant (paragraph 3.1.3 of the Witness Statement dated the 6<sup>th</sup> July 2018) with the date for repair given as the 10<sup>th</sup> November 2017. In addition by the time of the Report, tripping as a consequence of the use of the front porch light was not an issue.
26. The fact that the above deficiencies were either attended to, or resolved between the time of Miss Thomas's visit and the Report from Abbey Electrical does not in the Tribunal's view invalidate the Improvement Notice.
27. In any event it is academic as Miss Thomas has confirmed at paragraph 8 of the her Statement dated the 28<sup>th</sup> June 2018 that she is satisfied that these matters have been dealt with and accordingly the Notice can be amended to dispense with those items as giving rise to a hazard.
28. As this case has evolved, the main bone of contention between the parties has boiled down to whether there are any Code 1 or 2 items, and whether or not the same have been rectified.
29. Having considered the matter in detail the Tribunal finds that despite what is asserted by the Applicant at paragraph 3.3.4 of the Witness Statement dated 6<sup>th</sup> July 2018 there clearly are four Code 2 items identified in the Abbey Electrical report being namely:
  - (1) No earth connectivity conductors in the lighting cables with metallic light fittings installed;
  - (2) The 6 Wylex DB has too many circuits that have multiple cables with a too high circuit MCB rating;
  - (3) A large number of the ground floor sockets have no earth present.
  - (4) The recessed light fittings in the two bathrooms are not fire rated.
30. It was accepted on behalf of the Applicant at the hearing that there was a requirement for an Electrical Installation Condition Report. As referred to above an undertaking was given that any works identified as defective will be attended to. Whilst it subsequently appears the Applicant, since giving that undertaking, by the nature of the contents of the covering letter dated 18<sup>th</sup> April 2018 to the Tribunal Office seeks to deviate from that undertaking, that departure is of no relevance to our decision in relation to issue before us.
31. Having considered all matters we find that:-
  - (1) The Improvement Notice as served is not factually incorrect and/or illegal. The specific deficiencies relating to the light switch in the front hallway and the use of the front porch light have been dealt with and the Notice should be amended to dispense with those items as being cited as deficiencies.

- (2) The deficiency phrased as "Unknown Condition of the Installation" can be dispensed with as the Respondent accepts the content of the Report from Abbey Electric.
  - (3) The Code 2 deficiencies as identified in the Abbey Electrical Report are hazards that clearly require rectification.
  - (4) As a consequence the Notice should be amended to require the Applicant to carry out the Code 2 deficiencies identified within the Electrical Installation Report of ABBEY Electrical dated the 3<sup>rd</sup> April 2018 and to provide all appropriate documentation to verify that all Code 1 and 2 items have been attended to. All electrical work must be carried out by a suitably qualified electrician.
32. For the sake of completeness in relation to the other matters the Applicant raised the Tribunal rules as follows:
- (1) For the purposes of the Tribunal's decision it is not relevant to rule as to whether or not the Property was a House of Multiple Occupation. The Housing Act 2004 requirements under which the Respondent served its Notice apply to any residential premises in the district and not simply Houses of Multiple Occupation.
  - (2) The Tribunal accepts that the Respondent Authority has a duty to investigate when complaints are raised. A letter was sent out on the 15<sup>th</sup> of September 2017 to the Applicant informing her of the visit to the property on the 19<sup>th</sup> September 2017. Accordingly we do not accept the Applicant's contention that the Improvement notice is invalid as the correct procedure was not followed.
  - (3) The Applicant also refers the Tribunal to the case of *Naz -v- Redbridge London Borough Council 2013 EWHC 1268 Admin.* in respect of reliance upon information given by the then Tenant Mr Bracken.
  - (4) Having read the decision in *Naz -v- Redbridge* (supra) carefully, the Tribunal find that the matters before it can be distinguished from that case for the following reasons:
    - (a) The Applicant was given notice of the initial visit on the 19<sup>th</sup> September 2017 by way of a letter dated the 15<sup>th</sup> September 2017 (Exhibit AT2 to the Witness Statement of Miss Thomas);
    - (b) Although Mr Bracken's evidence and information was relied upon by the Respondent it was supplemented by a visit to the property by Miss Thomas on the 19<sup>th</sup> September 2017 at which time she formed her own view as regards the deficiencies she considered relevant. In the circumstances the Tribunal accepts that the Respondent Authority did not simply rely upon assertions made by Mr Bracken at the time of issuing the Improvement Notice. Accordingly, the Tribunal does not find the Notice invalid upon this basis.
  - (5) In her Statement dated the 6<sup>th</sup> July 2018, at paragraphs 50 to 53 the Applicant suggests that the Tribunal was misled. The Tribunal accepts that initially Miss Longworth in closing submissions made the point that the Applicant had been informed but failed to respond and when this was challenged by the Applicant's

representative in closing submission, Ms Longworth retracted her comments. Whilst not relevant to our decision, for the avoidance of doubt the Tribunal does not form a view that this was done by Ms Longworth as a deliberate attempt to mislead the Tribunal, but was by way of a genuine mistake which in any event having been brought to the attention of the Tribunal has not had a detrimental effect upon the Applicant's appeal.

**Dated this 5<sup>th</sup> day of November 2018**

A handwritten signature in black ink, appearing to read 'W. Longworth', written over a horizontal line.

**Chairman**