

RPT Decisions

PVMoxon

Housing and Environmental
Consultant

Appeal v Improvement Notice (Cheltenham Borough Council)

- 2nd Floor flat – purpose built
- Underfloor heating not working – disconnected
- Improvement Notice served which included – “Excess Cold” amongst other elements of disrepair
 - Poor Thermal insulation
 - Inadequate heating
 - Poor ventilation
- Appellant claimed that –
 - Premature service of Improvement Notice
 - There were no Category 1 hazards
 - Some items of disrepair already rectified

Appeal v Improvement Notice (2)

- RPT concluded – LA acted too hastily/prematurely
 - Elderly couple
 - They were in regular correspondence with LA
 - Already carried out substantial works
 - Thought no need to serve statutory notice
- RPT found LA failed to comply with Enforcement Concordat
 - Fair, practical, consistent enforcement
 - Clear explanation of what to do
 - Give opportunity to resolve before statutory action
- RPT quashed notice for
 - Not applying common sense to situation
 - No proper assessment of situation
 - Not working properly with landlord

Appeal v Emergency Remedial Action (1) (Gloucester City Council)

- 5 storey property – converted into 5 s/c flats
- Out of date fire precautions – L/L agreed to implement works
- LA received further complaint from tenant
 - Damp penetration from S&VP
 - On-going problems with fire precautions
- LA – informed Managing Agents – they promised to tell Appellants of the problems – exchanged emails with the Appellants
- Managing Agents arranged with tenant for visit by LA accompanied by a Fire Officer
- BUT Appellant claimed did not receive notice of intention to inspect

Appeal v Emergency Remedial Notice (2)

- LA maintained they were invited to inspect the flat
- LA stated that obliged to serve a ERN (Cat 1 hazards)
- RPT – agreed that Managing Agents had received hand delivered notice to enter and properly acted on it
- RPT accepted this situation even though the Appellants apparently not received notification
- RPT may have been persuaded that the Appeal was lodged out of time

Appeal v Improvement Notice (1) (LB Newham)

- 19 century 2 storey terraced house
- Bathroom between 2 houses – no natural light/ventilation plus partly demolished/leaning/dangerous garden wall
- LA request -
 - for Improvement Notice to be varied – more work found since service of original I/N
 - LA wanted RPT to consider the question of validity and service of notice (served on Managing Agents NOT L/L)
- RPT agreed
 - that more work needed from their own inspection (but no Council Officer on site at the time of RPT survey)
 - and that name of owner is included on varied notice

Appeal v Improvement Notice (2)

- LA said
 - owner not party to proceedings – not had time to react to notice – thus should be excluded from varied notice.
 - RPT did not accept this argument
- RPT dismayed that dangerous wall had not be dealt with quickly and expeditiously prior to Tribunal – reprimanded Council for not dealing with urgent matters quicker
- RPT – also emphasised that good practice to have representative from the Council with RPT inspection of the premises to explain any outstanding issues

Appeal v Improvement Notice (1) (Vale of White Horse DC)

- Complaint that house uninhabitable due to flooding
- Prop owned by Oxford University (owner and L/L) but had Managing Agents
- Tenant in receipt of HB – paid directly to Managing Agents
- LA inspected following informal letter to Agents with copy to owner and tenant – then followed up with Improvement Notice 7 days later served on all parties
- College/Managing Agents appeal to RPT
 - Notice invalid – owner not given 24 hours notice of intention to inspect by LA
 - Agent not “person having control”
 - Remedial action required by LA was excessive

Appeal v Improvement Notice (2)

- RPT required 24 hour notice of LA intention to inspect the property
- Notice **must** be given to the owner and occupiers
- RPT ruled that Council inspection was NOT authorised since owner not informed of LA intention to inspect
- RPT ruled Improvement Notice invalid

This decision is contrary to the previous case in terms of the rules associated with the LA intention to inspect

Appeal v Overcrowding Notice in HMO (1) (Tower Hamlets)

- 3 bed ex council flat on 2nd/3rd floors of 4 storey building
- LA served overcrowding notice – 8 people in occupation at time
- Appellant said 7 of 8 people were related – all tenants were asked to leave when notice was served
- LA satisfied that
 - occupants were not part of 1 household (based on the fact that there were locks on all bedroom doors) –
 - admitted at the RPT that some measurements of floor area were inaccurate (fitted cupboards)

Appeal v Overcrowding Notice HMO (2)

- RPT criticised LA – not giving the Appellant guidance on how to remedy overcrowding
- RPT found that LA
 - Failed to make reasonable enquiries regarding the occupants
 - Failed to establish the status of occupants within the premises
 - Failed to establish relationship of residents with one another
- RPT declared overcrowding notice invalid and quashed the said notice
 - Failure to comply with mandatory statutory requirements
 - There were technical inaccuracies within the Notice

Appeal v Emergency Prohibition Order (1) (Newcastle City Council)

- 3 storey semi detached in bedsits (some rooms not occupied)
- LA identified Fire hazard – served Improvement Notice
- RPT visit – not able to gain access to all rooms – noted some works were in progress at the time
- RPT visit
 - revealed poor kitchen and bathroom facilities for which LA had already served an EPO
- **Appellant argued**
 - that the fire risk had been reduced - some works having been carried out but admitted that not all rooms had detectors installed

Appeal v Emergency Prohibition Order (2)

- RPT agreed that service of EPO good
- RPT believed that hazard scoring by LA ***too high*** in that
 - All occupied rooms had fitted fire detectors
 - There were detectors on hallways and landings
 - BUT no fire detection in empty rooms
- RPT varied EPO – to include rooms not having fire detectors

Appeal v Prohibition Order (1)

(Bristol City Council)

- LA asked to investigate overcrowding problem in 2 storey semi detached house (1965) – visited the same day – spoke to lady occupier who refused entry at that time
- Call from the Managing Agents –
 - owner had confirmed that 3 people in occupation only with 1 empty room
 - no visit required
- LA however ***DID*** visit – by arrangement with Managing Agents
 - confirmed that 6 people in occupation
- LA served PO on owner –
 - suspended calling for action to reduce to 5 persons or increase facility provision to allow for 7 persons
 - Request for notice payment demand followed

Appeal v Prohibition Order (2)

- Appellant countered –
 - 4 people in occupation
 - any other persons found were friends of occupants and not responsibility of the owner or Agent
- RPT deemed the notice to be technically correct in every respect
- RPT critical of LA on the following basis –
 - Not notifying occupants of inspection to allow time to prepare for the inspection
 - Notifying the Agents and owner did **NOT** count
- RPT completely quashed the Notice

Appeal v Prohibition Order (1)

(LB Waltham Forest)

- Elderly lady (late 60`s) requested LA for help regarding repairs to 2 storey house
- LA identified several hazards – served a PO to temporarily prevent use of steep staircase (open string with inadequate lighting)
- Lady appealed against PO
 - requested that Improvement Notice should be served instead so she could use the staircase –
 - stated that she had used the staircase for the last 30 years without mishap
 - PO would prevent her from using first floor bedroom

Appeal v Prohibition Order (2)

- LA argued that replacing stairs would be too costly - hence PO
- RPT said that LA
 - Had not considered tenants case on merit in that she is fit and in possession of her faculties and could make her own decision on risk
 - They highlighted the Enforcement Guidance that LA`s should have regard to in terms of risk of exclusion of vulnerable people from the house
 - Even though the cost of replacement stairs was high – this only represented a small % of the properties market value
- RPT quashed PO – substituted Improvement Notice as necessary

Learning Points (1)

- Ensure compliance with the Enforcement Concordat
- Whilst fact and degree
 - Common sense decisions
 - Full assessment of situation
 - Work with Landlord on all occasions if possible
- Ensure accuracy of the notice

Learning Points (2)

- RPT have identified (from on site visits) – certain issues where LA should have taken action prior to RPT on potentially dangerous hazards (i.e. dangerous structures)
- Ensure that in preparation for RPT site visits there are no significant outstanding issues which should have been included in any notice served etc

Learning Points (3)

- Notice of Intention to enter for the purposes of inspection has assumed more importance from RPT decisions
- 24 hours notice minimum – **must** be given to owners, occupiers and any other interested persons
- Failure to comply with this request – Councils inspections may be deemed to be **Not Authorised**
- Subsequent notices which may be subject to appeal to RPT may be declared invalid even if deemed to be technically correct
- ***(Lacors to issue guidance soon)***

Learning Points (4)

- RPT have been critical of LA`s **not** giving landlords and owners guidance (verbal or in writing) on how to comply with the notices served
- Relates back to the Enforcement Concordat

Learning Points (5)

- Whilst rare – RPT can comment on the LA`s hazard scoring!!
- Therefore –
 - Consistency in scoring is essential – taking into consideration any mitigation
 - Make reference to worked examples
 - If and as necessary – confer with colleagues to ensure the correct banding of the property in question