

**LONDON RENT ASSESSMENT PANEL  
RESIDENTIAL PROPERTY TRIBUNAL**

**Case Reference: LON/00AY/HIN/2006/0001**

**HOUSING ACT 2004 SCHEDULE 1 PART 3**

Property:	First Floor Flat, 43 Tunstall Road, London SW9 8BZ:
Appellant:	Miren Limited
Represented by:	Mr C Henman - Property Manager - Goddard & Jones (Surveying) Ltd
Respondent:	The London Borough of Lambeth
Represented by:	Mr D Haddadi - Senior Environment Officer Mr M Swain-Surveyor Miss C Thomas- Senior Environment Officer
Date of Hearing:	12 December 2006
Tribunal:	Mr J C Sharma FRICS JP (Chairman) Mr C Norman BSc MRICS CPE Mr L Packer

**First Floor Flat, 43 Tunstall Road, London SW9 8BZ**  
**LON/00AY/HIN/2006/0001**

**DECISION AND REASONS**

**Decision**

The Improvement Notice made by the London Borough of Lambeth on 4 October 2006 in respect of First Floor Flat, 43 Tunstall Road, London SW9 8BZ is confirmed. The appeal by Miren Limited is accordingly dismissed.

**Reasons**

Background

1. Miren Limited made an appeal dated 25 October 2004 to the Leasehold Residential Property Tribunal against the making of an Improvement Notice by the London Borough of Lambeth in respect of the Flat known as First Floor Flat, 43 Tunstall Road, London SW9 8BZ.

2. The Improvement Notice, dated 4 October 2006, was made under Section 12 of the Housing Act 2004 ("the Act") by Lambeth because it considered that three category 2 hazards existed in the Flat.

3. The nature of the hazards identified were:-

(1) COLLISION AND ENTRAPMENT

Stiff and difficult to operate sash windows.

(2) STRUCTURAL COLLAPSE

Bulged and cracked ceiling plaster.

(3) FIRE

Absence of fire warning system

Absence of fire fighting equipment in the kitchen

The remedial action required to be taken was:-

WC

Hack off all bulged and defective ceiling plaster in the WC. Make good all works disturbed and key to receive new plaster. Replaster to match existing and finish with a smooth set coat flush with adjacent areas.

WINDOWS

Overhaul all sliding sash windows in the flat. Repair or replace all members found to be defective and leave in a condition to work smoothly.

#### KITCHEN

Provide and fix a mains wired heat detector with battery back up to the ceiling.

Provide and fix to the wall a fire blanket complying with BS 6575.

#### HALLYWAY

Provide and fix a mains wired smoke detector with battery back up to the ceiling of the flat hallway.

It was noted that:-

Mains wired smoke alarm and heat detector should be interlinked so that both sound when any one alarm is activated.

Smoke and heat alarms to comply with BS 5839-6:2004

System to be designed, installed and maintained by a Competent Person.

4. The appeal is in respect of the fire hazard only; particularly with the type of heat and smoke detectors to be provided. Whether or not they are necessary was not an issue.

5. The Flat is said to be on the first floor of a three storey Victorian terrace building. The building was converted prior to the 1991 Building Regulations into three self-contained flats.

6. The building is constructed of solid brick and has a slate roof. The windows are timber framed and, in the main, double lining sliding sash type.

7. The accommodation in the Flat comprises two rooms, a kitchen, a bathroom and a separate WC. Heating is by means of a fixed gas fire to the living room and additional wall mounted gas converter heaters to the bedroom and dining room.

8. The Tribunal did not inspect the building or the Flat.

9. Directions for the hearing were issued by a Residential Property Tribunal on 31 October 2006. Both parties complied with the Directions and that was helpful to the Tribunal.

#### **The Law**

10. Part 1 of the Housing Act 2004 sets out a new regime for the assessment of housing conditions and a suite of new powers for local authorities to enforce housing standards. Housing conditions are assessed by the application of the Housing Health and Safety Rating System (HHSRS).

11. Where hazard or several hazards in a property are rated as HHSRS category 2 hazards, the options for enforcement include, by section 7 of the Act, the power to serve an improvement notice under section 12.

12. By section 8 of the Act, the authority must prepare a statement of the reasons for their decision to take the relevant action.

13. An improvement notice is a notice requiring the person on whom it is served to take remedial action in respect of the hazard, for example by carrying out works.

14. Appeals in respect of improvement notices are dealt with in Part 3 of Schedule 1 to the Act.

### **The Hearing**

15. At the start of the hearing, and in accordance with the Respondent's Statement of Case, Mr Haddadi asked the Tribunal, as a preliminary point, to dismiss the appeal on the ground that it was made out of time. He said that the Improvement Notice is dated 4 October 2006 and was posted on the same day.

16. The appeal to the Tribunal is dated 25 October 2006 and was date stamped "Received" by the Tribunal on 30 October 2006. In its appeal to the Tribunal, the appellant stated that the Improvement Notice was received on 9 October 2006.

17. In accordance with paragraph 14 of Part 3, Schedule 1, of the Act an appeal must be made within 21 days beginning with the date on which the Improvement Notice was served.

18. Mr Haddadi submitted that the date of postage is the date of service and there is precedent for this view. The Tribunal granted an adjournment to enable Mr Haddadi to obtain copies of precedents. He was unable however to produce any such precedent or authority to assist the Tribunal and consequently withdrew his application. The Tribunal accepted the withdrawal and proceeded with the substantive appeal regarding the Improvement Notice.

19. Mr Henman said that to provide main's wired detectors would necessitate the lifting of floorboards throughout the flat. This would inevitably lead to major disruption to the tenant, Miss Fust, who is elderly and understood not to be in perfect health.

20. He said that fire protection to the flat can be provided by means of battery powered smoke and heat detectors which can be installed simply, without major disruption to Miss Fust.

21. In cross-examination and answers to questions from the Tribunal, Mr Henman said that he was not aware of any battery operated heat detectors for sale. The applicant's proposal was not discussed with the London Fire and Emergency Planning authority (LFEPA) to see if it was a satisfactory alternative or not. The appellant is prepared to provide surface wiring to avoid disruption from the lifting of floor boards and chasing of walls.

22. Mr Haddadi for the respondent, the London Borough of Lambeth, in opposing the appeal said that in general terms HHSRS is based on the risk to the potential occupant who is most vulnerable to that hazard. In this regard, the assessment of the hazard from fire is the likelihood of a fire which will cause harm, and not the likelihood of a fire occurring.

23. When dealing with Fire under the HHSRS, the following deficiencies were considered to have an impact upon the likelihood of an occurrence and the harm outcome:

1. The dwelling has three storeys.
2. Conversion into flats took place prior to the 1991 Building Regulations.
3. Layout of the flat. In certain circumstances a vulnerable occupier would have to travel through two rooms one of which is a kitchen to exit the flat in the event of a fire.
4. There is no provision for fire fighting in the kitchen.
5. Polystyrene ceiling tiles to some rooms.
6. Condition and adequacy of space heating installation as the dwelling has gas room heaters.
7. Means of escape from fire and other fire precautions.

24. In making an improvement notice, the views of the current occupant have to be taken into account, and some consultation with Mrs Fust had taken place before the necessary action was taken. Further the current occupier's vulnerability to the fire hazard was taken into account.

25. The works required were reasonable in relation to the hazard. Particular attention was paid to the effectiveness of the proposed action, cost of compliance and implications of the failure. To this end, the LFEPA were consulted about Lambeth's proposals on the 21 September 2006. On the 26 September 2006, the LFEPA responded that they were satisfied with the proposals.

26. He said that due to the location of the WC and bathroom (off the kitchen) there may be insufficient warning for the tenant, should a fire occur, to escape from the flat if she was using the WC/bathroom at the time..

27. The proposals made by the appellant place an onus on the vulnerable occupier to regularly test the detectors and periodically to change the batteries. Mrs Fust has indicated she would not like to have battery operated smoke detectors installed. The respondent is not opposed to surface mounted electric wires to power the smoke alarm and heat detectors.

28. The Tribunal also heard from Mr M Swain, Environment Housing Surveyor for Lambeth. He gave evidence of his inspection on 26 July 2006 and events leading up to the making of the Improvement Notice.

### **The Tribunal's reasons for rejecting the appeal**

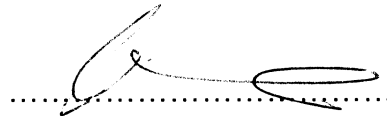
29. It is clear from the evidence that a fire hazard exists on the premises. There was no fire warning system in the Flat or fire fighting equipment in the kitchen. The layout of the Flat and the vulnerable age of the tenant added to the potential danger from fire. The appellant did not dispute any of this.

30. The requirement in the Improvement Notice for the landlord to provide wired smoke alarm and heat detector has the approval of LFEPA. The applicant's alternative battery operated system was not put to LFEPA, it is doubtful both whether such alarms could be linked and whether there is an appropriate battery operated heat detector in the market.

31. The applicant's concerns about disruption to the tenant by the lifting of floorboards for the necessary wiring could be overcome by surface mounted wire. The respondent does not object to this.

32. In all the circumstances it is considered that the requirement to provide and maintain linked mains wired smoke alarm and heat detector in the Flat is reasonable. The appeal is accordingly dismissed and the improvement notice confirmed.

Chairman: Mr J C Sharma FRICS JP

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small flourish.

Date: 8 January 2006