



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY)**

Case Reference : **CAM/34UF/HIN/2021/0004**

Property : **309, London Road, Headington,
Oxford, OX3 9EJ**

Applicant : **Mr Adrian Ballantyne Mills-Haworth**

Respondents : **Oxford City Council**

Type of Application : **An appeal of an Improvement Notice
(Schedule 1 Part 3 Housing Act 2004)**

Tribunal : **Judge JR Morris
Mrs M Wilcox BSc MRICS**

Date of Application : **8th July 2021**

Date of Directions : **26th August 2021**

Date of Hearing : **10th December 2021**

Date of Decision : **3rd February 2022**

DECISION & ORDER

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Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties

entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

DECISION

1. The Tribunal Orders that the Improvement Notice dated 18th June 2020 be confirmed with the following variations:
 - a) The remedial action in respect of Category 2 Hazard no. 21 - Falling on stairs etc shall read:
“If the staircase is replaced ensure that the new staircase is of suitable design and construction. Prepare well opening to receive new flights. Fix flight in position. Tread length should be no less than 280mm or greater than 360mm. Riser heights should be no less than 100mm or greater than 180mm Adjust floor boarding as necessary, provide and fix new landing nosing.”
 - c) Category 2 Hazard no. 23 – Electrical hazards which required that an Electrical Installation Condition Report (EICR) with a ‘satisfactory’ rating be obtained shall be removed as the remedial action has been complied with.
 - d) The remedial action in respect of Category 2 Hazard no. 24 -Fire, requiring the gap between the door edge and door lining (or frame) to be not more than 4mm, expressed as “(maximum 4mm gap)” in respect of the internal doors, other than the basement door, that require overhaul or replacement, be removed.

The Remedial Actions are to be commenced 4 weeks from the date of this Order and finished 12 weeks from the date of this Order.

REASONS

Application

2. On 18th June 2021, the Respondent served an Improvement Notice on the Applicant pursuant to sections 11 and 12 of the Housing 2004 Act (“the 2004 Act”).
3. On 8th July 2021, the Applicant appealed to the Residential Property Tribunal. The Appeal was made within the 21 days of the service of the Improvement Notice and Directions were issued on the 26th August 2021.
4. The Appeal was heard on 10th December 2021. Under paragraph 15 (3) of Schedule 1 of the Housing Act 2004 a tribunal may by order, confirm quash or vary an improvement notice.

The Law

5. The legislation relating to the issues raised is the Housing Act 2004 and is set out in Annex 2 of this Decision and Reasons.

Description of Property

6. No inspection was made due to Government restrictions imposed under the Coronavirus Regulations but from the Housing Health and Safety Rating System Survey and the photographs provided, the Tribunal found the Property to be as follows:
7. The Property, called Holmleigh, is a four-storey semi-detached house constructed circa 1900 with solid brick walls under a slate roof. The windows are upvc double glazed units on the ground and first floors and Velux style windows on the second floor. The rainwater goods are upvc.
8. Space and water heating is by a radiator gas central heating system. The Property has mains gas, electricity, water and drainage.
9. Internally there is a hallway with stairs rising to the first-floor landing. On the ground floor there is a living room, bedroom and kitchen from which descend stairs to the basement which contains the gas meter and electrical consumer unit. Off the first-floor landing there are two bedrooms and a bathroom and stairs rising to the second floor, which is a loft conversion, with one bedroom. There is a fire door at the foot of the stairs to the second-floor bedroom.
10. Externally there is an entrance garden where the bins for waste and recycling can be stored. To the rear there is an enclosed garden which has a gravelled sitting area and a raised bed. There is a shared rear access and there is a garage to the rear of the Property.

The Notice

11. The Tribunal was provided with copies of the Improvement Notice served under Section 11 and 12 of the Housing Act 2004 which is being appealed.
12. The Improvement Notice was served on 18th June 2021 (a copy of which was provided) following an inspection of the property on 27th May 2021 at which a Housing Health and Safety Rating System Survey was carried out (a copy of which was provided). The Survey identified the hazards which are listed in the Notice. Details of the Category 1 and 2 hazards are contained in Schedule 1 of the Notice and remedial action is prescribed in Schedule 2. Both schedules are set out below. The hazard numbers refer to the Housing Health and Safety Rating System Guidance Notes. The Notice was served on all known addresses of the Applicant.

13. The Applicant is identified under Schedule 1 Part 1 paragraph 2(2)(a) as the person having control of the dwelling and paragraph 5(2) having a relevant interest as freeholder. A copy of the Notice was also served on the Occupiers under paragraph 5(1)(b). A copy of HM Land Registry Entry Title Number ON17393 was provided which showed the Applicant as the freehold proprietor since 31st July 2001.

14. ***Category 1 Hazard No. 1 - Damp and mould growth***

This category covers threats to health associated with increased prevalence of house dust mites and mould or fungal growths resulting from dampness and/or high humidities. It includes threats to mental health and social well-being which may be caused by living with the presence of damp, damp staining and/or mould growth.

15. The deficiencies giving rise to the hazard are: -

- Mould growth on the timber frames of the rear facing and front facing Velux style windows in the second-floor loft room resulting in decay.
- The partially boarded basement walls and ceilings were damp, measuring up to 80% saturation on the damp meter. At the time of inspection, the boards were covered in mould growth throughout the basement.
- The underside of the timber joists to ground floor, which form the ceiling in the basement were damp and beginning to rot in several sections of the basement.

16. Remedial action required:

Basement

- Remove the damp, mouldy boards fitted to the walls and part of the ceiling in the basement and dispose of in a suitable manner.
- Employ a suitably qualified damp surveyor/engineer to investigate the cause of damp in the basement. Carry out any remedial works specified in the surveyor's report to prevent further damp and replace any damaged building materials including joists where necessary.

Velux windows

- Thoroughly overhaul the Velux style timber window frames located in the second floor loft room. For this purpose, rub down all timber inside and outside and check timber condition. Where necessary, cut out any rotten or otherwise defective timber both inside and outside and replace with new sound timber. Seal with a suitable paint or varnish to protect against deterioration and leave windows weather tight and capable of being readily opened and securely closed.

17. **Category 2 Hazard no. 21 - Falling on stairs etc**
This category covers any fall associated with a stairs, steps and ramps where the change in level is greater than 300mm. It includes falls associated with:
- a) *Internal stairs or ramps within the dwelling;*
 - b) *External steps or ramps within the curtilage of the dwelling*
 - c) *Internal common stairs or ramps within the building containing the dwelling and giving access to the dwelling, and those to shared facilities or means of escape in case of fire associated with the dwelling, and*
 - d) *External steps or ramps within the curtilage of the building containing the dwelling and giving access to the dwelling, and those to shared facilities or means of escape in case of fire associated with the dwelling.*
18. The deficiencies giving rise to the hazard: -
- The timber staircase leading from the ground floor kitchen to the basement has further deteriorated and is in poor condition. The riser to the first step leading from the basement is loose and the timber has started to deteriorate. There is mould growth on the underside of the staircase.
 - The first step of timber staircase in the basement measured at 310mm from floor level. All other steps forming the staircase measured at 200mm.
 - There is no handrail either side of the staircase leading from the ground floor kitchen to the basement.
19. Remedial action required:

Basement staircase

- Hire a suitably qualified contractor to overhaul or replace the timber staircase leading from the ground floor kitchen to the basement. Ensure that the staircase is of suitable design and construction. Prepare well opening to receive new flights. Fix flight in position. Tread length should be no less than 280mm or greater than 360mm. Riser heights should be no less than 100mm or greater than 180mm Adjust floor boarding as necessary, provide and fix new landing nosing. Leave the whole sound and stable upon completion.
- Ensure that a suitable handrail and guarding are provided to the staircase. The handrail should follow the pitch line of the steps and must be at a height of no less than 900mm and at suitable distances to the step tread. The handrail should be shaped to allow a firm grip and provide firm support when required. The guarding must not have openings greater than 100mm, should be designed and constructed so as to discourage children climbing and strong enough to support the weight of people leaning against it.

- Work is to be carried out with reference to the guidance contained in Approved Document K, Protection from falling, collision and impact Building Regulations 2010 (updated 2013).
20. **Category 2 Hazard no. 23 – Electrical hazards**
This category covers hazards from shock and burns resulting from exposure to electricity, including from lightning strikes. (It does not include risks associated with fire caused by deficiencies to the electrical installations, such as ignition of material by a short-circuit).
21. The deficiency giving rise to the hazards: -
- The light switch to the first floor hallway is damaged and has been partially covered in brown tape.
 - There is a double socket with the switch plate removed in the basement on the inner wall.
 - There are exposed wires protruding from the socket box.
22. Remedial action required:
 Works needed according to electrical installation condition report (EICR)
- Employ a qualified electrician approved by the NICEIC (National Inspection Council for Electrical Installation Contracting), the ECA (Electrical Contractor Association) or “equivalent approved contractor to repair or replace the light switch to the first-floor hallway and the incomplete double socket in the basement on the Inner wall.
 - The installation is to be further tested and inspected by a suitably qualified electrician and all Works to remedy all faults where damage, deterioration and/or defects which may give rise to danger are to be carried out.
 - On completion a new inspection report is to be issued with a ‘satisfactory’ rating. All electrical works are to be carried out in accordance with 387671: 2018, 18th Edition of the IEE regulations and are to be Part P approved under the current Building Regulations requirements, (Approved Document P, Electrical Safety).
23. **Category 2 Hazard no. 24 -Fire**
This category covers threats from exposure to uncontrolled fire and associated smoke at a dwelling.
24. The deficiencies giving rise to the hazard: ~
- On the date of the inspection there were battery operated smoke alarms fitted to the basement and second floor bedroom which were not linked with the mains alarms on the ground and first floor. This does not provide an adequate fire detection and warning system.
 - The ground floor stair enclosure providing access to the basement area and accessed via the kitchen does not provide adequate fire separation between basement and upper floors.

- The basement ceiling remains mostly unboarded, with exposed floor joists therefore does not provide 30-minute fire separation between the basement and the upper floors.
- Doors:
 - The door to the first-floor front bedroom has a gap of 8mm between the door and frame (on the edge of the door where the door knob is fitted) when closed. The door knob is loose.
 - The door to the first floor rear bedroom does not fit the frame and is incapable of being closed securely. There is a gap between the door and the frame when closed, which measured at 25mm at the widest point. The door knob is loose
 - The door to the ground floor living room scrapes along the floor and is not capable of being closed securely into the frame. The door knob is loose.
 - The door knob fitted to the door to the ground floor bedroom is loose.
 - The door between the ground floor hallway and kitchen does not fit the frame and is incapable of being closed securely.
 - The thin timber door to the basement has further deteriorated and is not securely attached to its hinges.
 - The door stops within the frames of all of the above doors listed above, with the exception of the basement door, have not been suitably adjusted to accommodate the newer thicker doors, preventing the doors from closing flush to the frames.
 - The front entrance door which is also the final exit door in the event of a fire does not provide a keyless exit.

24. Remedial action required:

The remedial action set out in the schedule was in accordance with National Housing Fire Safety Guide. The works specified were one means of meeting the minimum standards for escape in case of fire. If an alternative means could achieve the same level of protection, then the proposals should be made in writing to the fire officer.

Basement ceiling

- Ensure that the separation between the basement and the ground floor is constructed to 30 minutes fire resistance.
- Under draw the basement ceiling with 12.5mm fire resistant plasterboard or a single layer of 6mm rigid fire resisting board (e.g., Supalux or similar approved) securely fixed to the underside of joists with joints taped and filled finished with a plaster skim.

Basement stair/veil enclosure

- The timber tongue and groove plank partition and the staircase soffit forming the basement entrance and staircase enclosure are to be upgraded to a structure that will provide a fire-resistant standard of thirty minutes.

- In accordance with the manufacturers fixing instructions, apply 12.5mm “Gyproc Fire Line” 'or similar. approved plasterboard and fully line the surface area of the partition and under draw the staircase soffit. On completion, tape and fill joints, apply a plaster skim and when dry re-decorate.
- Alternatively: supply and fix one layer of 6mm rigid fire resisting board (e. g. Supalux or similar) securely fixed to the underside of the stairs. Ensure that any gaps are adequately sealed with plaster to prevent ingress of smoke

Basement door

- Replace the existing door to the basement with a new manufactured fire door so as to provide 30-minute fire-resisting construction and satisfy the requirements of BS EN 1634-122014+A1 12018. The door must be fitted with three plain steel butt hinges of not less than 100mm x 75mm. The gap between the door edge and door lining (or frame) to be not more than 4mm and where there are gaps between the door lining and the surrounding construction all voids must be filled using fire stopping material.
- The door must be installed to satisfy the requirements of BS 8214:2016 as set out below:
 - (1) Fitted with three (3) plain steel butt hinges of not less than 100mm x 75mm.
 - (2) Fitted 'with heat activated intumescent seals and cold smoke seals.
 - (3) Fitted with a self-closing device (preferably of the overhead hydraulic type) manufactured to satisfy the requirements of BS EN 1154: 1997.
 - (4) The self-closing device to be capable of closing the door positively onto the latch, or, where a latch is not required, of holding the door closed for not less than 30 minutes.
 - (5) The gap between the door edge and door lining (or frame) to be not more than 4mm.
 - (6) All hinges and latch parts necessary for holding the door in place during a fire to have a melting point in excess of 800°C and to comply with BS 8214: 2008 and BS EN 12209: 2016.
 - (7) Where there are gaps between the door lining and the surrounding construction all voids must be filled using fire stopping material.
 - (8) Where glazing is incorporated into fire doors, 6mm Georgian-wired glass or fire-resistant glazing is to be used. The glazing must be fixed according to BS 476 Parts 20-23.
 - (9) Any locks in doors opening onto the escape route, and final exit must be keyless thumb turn locks

Internal doors

- With the exception of the basement access door, internal doors at ground floor level and above are not required to be of 30-minute

fire resistant standard but should be robust, of sound construction, close fitting to the frame (maximum 4mm gap) and capable of being easily opened and closed positively onto their latch. Overhaul/replace the doors/frames and hardware in the following locations as necessary to meet these requirements:

- The door to the first-floor front bedroom
- The door to the first-floor rear bedroom
- The door to the ground floor living room
- The door to the ground floor bedroom
- The door between the ground floor hallway and kitchen

Mains operated, interlinked smoke alarm system

- Install mains operated, interlinked smoke alarms to the second floor loft room and the basement. Ensure that the alarms on all floors comply with BS EN 14604: 2005, are interlinked and are to incorporate an integral rechargeable standby supply or be fitted with long life, (10 year) lithium battery cells. The installation is to be in accordance with BS5839-6: 2019, Category LD3, Grade D. The system is to be connected to an independent circuit at the dwellings main distribution board, (Landlord's supply) and all wiring is to comply with BS7671: 2018, 18th Edition of the IEE regulations. On completion a commissioning certificate in accordance with BS.5839-6: 2019 is to be provided. All electrical Works are to be carried out in accordance with BS7671: 2018, 18th Edition of the IEE regulations and are to be Part P approved under the current Building Regulations requirements, (Approved Document P).
- As an interim measure ensure that the battery-operated smoke alarms fitted to the second-floor loft room and the basement are to be maintained in working order.

Keyless Exit

- For safety egress purposes, there is a requirement for exterior doors to be fitted with locks that can be opened from the inside without the use of a key. For this purpose:
- Install a keyless egress deadlock to the front entrance door of the property. the lock is to conform to BS 8621:2007+A2:2012 (Thief resistant lock assemblies- Keyless Egress) to enable the door to be operated for the inside without the use of a key. Ensure that the door is left capable of being readily opened and securely closed and when in the closed position is capable of being securely locked.
- Fit an internal cover plate to the letterbox if closer than 400mm from the lock.

25. **Category 2 Hazard no.29 – Structural collapse and falling elements**

This category covers the threat of whole dwelling collapse, or of an element or a part of the fabric being displaced or falling because of inadequate fixing, disrepair, or as a result of adverse weather

conditions. Structural failure may occur internally or externally within the A cartilage threatening occupants, or externally outside the curtilage putting at risk members of the public.

26. The deficiencies giving rise to the hazard: -
 - There are a number of slipped slates on the main roof as viewed from the rear of the property
27. Remedial action required:
 - Hire a suitably qualified contractor, ideally registered with the National Federation of Roofing Contractors (NFRC) to examine the condition of the roof above the first floor.
 - Ensure that any necessary repairs are carried out to the roof. Re-secure or replace any slipped/missing slates.
28. The Notice specified the following time scales:

The date on which the remedial action is to be started is: 18th August 2021.

The period within which the remedial action is to be completed: - 18th November 2021.
29. The Respondent gave the following reasons for its decision to take enforcement action by way of Improvement Notice under sections 5(2) and 7(2) and of the Housing Act 2004: -

It was satisfied that the following Category 1 and 2 hazards

 - No.1 Damp and mould growth
 - No. 21 Falling on stairs etc
 - No. 23 Electrical hazards
 - No. 24 Fire
 - No. 29 Structural collapse and falling elements
30. The fire safety in the premises does not meet the requirements recommended in the National Fire Safety Guidance and therefore requires improvement work to ensure that it has adequate fire separation and detection. Works to improve protection of inhabitants from Falls on Stairs, and Structural Collapse and Falling Elements will reduce the risk of physical injury. Works to address Damp and Mould Growth will prevent further deterioration of the property and reduce exposure to the risks associated with damp and mould. Inspection and repairs to the electrical installation by a qualified electrician will reduce the risks associated with Electrical Hazards, including those identified during the most recent Housing Health and Safety Rating System (HHSRS) inspection.
31. Definitive time scales to carryout improvement works to reduce the hazards to an acceptable level are considered necessary to prevent further delays to improvement works for the tenants. The property has

further deteriorated in some areas following the Respondent's initial investigation; therefore, further remedial works are required.

32. The Applicant has previously been served with an Improvement Notice for the property but has failed to arrange for all works to be completed, despite receiving a Financial Penalty. Confidence in the landlord carrying out the works is low and with due consideration of the Enforcement Guidance, serving a further Improvement Notice is the most appropriate course of action.
33. The nature of the hazards and the risks posed to occupiers and visitors to the property does not warrant the service of a Hazard Awareness Notice because there are numerous deficiencies that require action. The property falls below minimum statutory and recommended standards. Advising the persons responsible of the existence of these hazards and not requiring remedial action would not be appropriate as there is low confidence that the responsible person will carry out the works on an advisory basis.
34. The service of a Prohibition Order is not considered appropriate as there is no imminent risk of serious harm to the occupants. The current occupants are also aware of the current conditions.
35. The taking of Emergency Remedial Action or the making of an Emergency Prohibition Order is also not considered appropriate in this instance and it would not allow sufficient time for the occupants to make suitable arrangements to find alternative accommodation and there is no imminent risk of serious harm to the occupants. The current occupants are also aware of the current conditions. Remedial works can be carried out while the current tenants are residing at the premises and it would not allow sufficient time for the occupants to make suitable arrangements to find alternative accommodation.
36. There is no known justifiable reason for the Respondent to suspend carrying out the works for a period of time that would warrant serving a Suspended Improvement Notice or Suspended Prohibition Order.
37. High property values in Oxford and the demand on available accommodation in the City would deem that Demolition or Clearance is not the most appropriate course of action.

Written Representations

38. As the proceedings are an appeal against the Respondent's Notices above the Respondent's Case giving the reasons for the Notices is set out first followed by the Applicant's Case which addresses the objections to the Notices.

Respondent's Case

39. The Respondent provided the following timeline:

- 25th January 2017 the Respondent carried out a Housing Health and Safety Rating System (HHSRS) inspection of the Property. A Section 4 notice under Prevention of Damage by Pests Act 1949 was served on the Applicant Landlord.
- 20th April 2017 at an inspection, it was found that none of the required works had been completed.
- 26th April 2017, the Respondent served an Improvement Notice under the Housing Act 2004 on the Applicant.
- 22nd December 2017 at a re-inspection it was found that, with the exception of replacement of a faulty RCD, no works required by the Improvement Notice had been completed.
- 15th May 2018 the Respondent issued the Applicant with a Financial Penalty under the Housing Act 2004: Section 249A and Schedule 13A (as amended by Housing and Planning Act 2016 Schedule 9: Financial Penalties as an alternative to prosecution under the Housing Act 2004).
- 16th October 2018, case reference: CAM/38UC/HNB/2018/0002, the Financial Penalty was appealed by the Applicant and a Tribunal upheld but reduced the penalty from £9,749 to £5,000. The Applicant stated that the majority of the works required by the Improvement Notice had been completed.
- 12th November 2018 at a re-inspection, it was found that the works had not been completed. Following the inspection, the Respondent met contractors at the Property and obtained quotes for completing the works in preparation for carrying out works in default. Two quotes were obtained (copies provided) and neither contractor stated that they would need the property to be vacated in order to carry out the works.
- The Respondent has had ongoing correspondence with the Applicant since the Tribunal to ask them to provide a plan and timescale for completion of the remaining works.
- 26th February 2019 Mr Nick Loco, a builder hired by the Applicant, stated that he would be able to carry out the works.
- 18th April 2019 at a re-inspection, it was found the following works had been carried out: removal of decking, installation of a handrail to the basement staircase and installation of a window restrictor to the second floor front Velux style window.
- 29th July 2019 following the sad demise of Mr Loco the Respondent requested an update on progress with the works, and timescale for their completion.
- 12th November 2019, the Applicant stated that fire doors had been fitted throughout and that the fire boarding to the basement had resulted in water seeping into the plasterboard.
- March 2020 the Applicant stated that further works had been carried out but that he had coronavirus and was looking after his children.
- 30th October 2020 the Respondent carried out a re-inspection of the property and found that the condition of the basement had

deteriorated and that there were still works required by the Improvement Notice which had not been completed.

- 27th May 2021 a re-inspection by the Respondent found that the basement had further deteriorated and there were still works outstanding, HHSRS assessment indicated the hazards were significant.
 - 18th June 2021 a new Improvement Notice was served on the Applicant outlining the remaining hazard related deficiencies at the property, as well as new hazards which had arisen through lack of management of the property.
40. The Respondent stated that Under Section 5 of the Housing Act 2004, Local Authorities have a duty to take enforcement action to address Category 1 hazards. Section 7 of the Housing Act 2004 gives Local Authorities discretion to take enforcement action to address Category 2 hazards. The Improvement Notice was served under the Housing Act 2004, and in accordance with the Housing Health and Safety Rating System Enforcement Guidance and the Respondent's Enforcement Policy. An Improvement Notice was considered to be the most appropriate course of action for the reasons given.
41. The Respondent said that the Applicant has been provided with opportunities to carry out improvement works prior to service of a notice; however, sufficient progress had not been made and some aspects of the Property have deteriorated. She said that the Applicant has a history of non-compliance relating to this Property, which has resulted in a conviction for non-return of a Requisition for Information (copies were provided) and a Financial Penalty for non-compliance with the previous improvement Notice in 2017.
42. The Respondent said that the Applicant had stated that he is a part time landlord. However, he has not hired an agent in his place and Tribunal case reference: CAM/38UC/HNB/2018/0002 said [17] this had been an aggravating factor in respect of the Financial Penalty.
43. The Respondent submitted that:
- Being a landlord is a fulltime responsibility, which must be taken seriously;
 - The Applicant has not provided evidence of his seeking other builders to carry out the remedial works;
 - The Respondent was able to find two contractors willing to complete the works, with the tenants in the property;
 - A section 21 eviction notice has now been served, but it is likely that the tenants will still be in the property for several months, exposed to the hazards.
44. With regard to the Applicant stating that HHSRS assessment was carried out on the basis that there are children and vulnerable persons at the Property giving a higher rating than should be the case the Respondent said in accordance with the Enforcement Guidance

account was taken of visitors to the Property. The assessor found that children regularly visit the Property, as witnessed during some of the previous inspections of the Property. Additionally, all hazards outlined on the Improvement Notice present a risk of harm to occupiers or visitors outside of the vulnerable age groups. For example, people aged 60 or over are considered the most vulnerable to Fire but the current fire detection in the property does not meet the specifications outlined in LACORS (Local Authorities Coordinators of Regulatory Services) Housing - Fire Safety guidance or Approved Document 3 - Fire Safety.

45. The lack of interlinked mains wired alarms to the basement and second floor room reduce the risk of occupiers being alerted to a fire in time to make a safe escape, regardless of their age. The poorly fitted doors throughout, as well as the exposed floorboards and underside of the staircase leading to the first floor (as viewed from the basement) would allow smoke and flames to spread more rapidly. The requirement for occupants to have a key to unlock the front door would further impede escape.
46. With regard to the Tenants having been disturbed by the Respondent's need to carry out inspections and accuses the Respondent of assault and harassment. In addition to objecting to these serious accusations, the Respondent would like to remind the Applicant that if the first Improvement Notice had been complied with, the case would have been closed in 2017 and Respondent would not have to continue monitoring progress of the still outstanding works. The Respondent has accommodated the needs of the Tenants, for example by rescheduling inspections if requested.
47. The Respondent submitted that the Applicant's claim during the tribunal in 2018 that the majority of the works had been carried out and any remaining works would be arranged was not correct.

List of Photographs

- 27/05/21 Photograph showing taped up light switch on the first-floor landing
- 27/05/21 Photograph showing light mould growth to bathroom ceiling on the first-floor.
- 27/05/21 Photograph showing a gap of approximately 7mm to the Side of the first-floor rear bedroom door.
- 27/05/21 Photograph showing a gap of approximately 7mm to the top of the first-floor rear bedroom door.
- 27/05/21 Photograph showing the loose door handle to the first-floor rear bedroom.
- 27/05/21 Photographs showing damp and discoloured wood the rear Velux window in the second floor bedroom '
- 27/05/21. Photograph showing a gap around the frame of the rear Velux window to the second-floor bedroom.
- 27/05/21 Photograph showing mould and tape on the front Velux window to the second-floor bedroom.

- 27/05/21 Photographs showing a wedged shaped gap to the top of the first floor front bedroom door.
- 27/05/21 Photograph showing key operated deadlock to the front door final exit.
- 27/05/21 Photograph showing a gap above the living room door.
- 27/05/21 Photographs showing the damaged bottom step to the basement staircase.
- 27/05/21 Photographs showing extensive mould growth to the basement.
- 27/05/21 Photographs Showing loose cabling and lack of boarding to the basement Ceiling.
- 27/05/21 Photographs showing red and amber damp meter readings (16–90% saturation).
- 27/05/21 Photograph showing a missing electrical socket in the basement with exposed wiring.
- 27/05/21 Photograph showing the basement staircase with unguarded side
- 27/05/21 Photographs showing slipped and missing tiles the rear pitch of the roof, including around the Velux window that is damp to the inside.

Grounds for Appeal

- 48. The Applicant submitted the following grounds for appeal:
 - 1. The Property is not a House in Multiple Occupation but the requirements imposed by the Respondent treat it as such.
 - 2. A number of the requirements set out in the Improvement Notice have been completed.
 - 3. The hazards listed in part relate to elderly people living in the Property and children under a certain age. These persons do not live at the Property. The assumption that vulnerable persons inhabit the property has resulted in the Housing Health and Safety System Rating scores being high leading to category 1 and 2 hazards being identified which are not actually present.
- 49. With regard to the Tenants the Applicant said that they are more than happy with the condition of the house and have written to the Applicant stating that the Council is harassing them by their visits to inspect the Property.
- 50. With regard to the work being carried out in compliance with the Improvement Notice the Applicant said that a builder had been employed before the covid situation but died in the middle of completing the job which was very traumatic for both the Tenants and the Applicant. Attempts have been made to engage other builders but they have refused to carry out the work because of the covid pandemic. The Tenants have been reluctant to allow anyone into the house as they are afraid of catching the virus.
- 51. In addition, the Applicant said he was not able to visit the Property as he had caught the covid virus and had suffered from 'long covid' which

limited his ability to deal with a number personal issues including compliance with the improvement notice.

52. With regard to his personal position he said that he had received a court order to sell the property as part of a divorce settlement. Therefore, the Property would be returning to a normal house for single family occupation. He was also struggling with issues such as child access which had put an enormous pressure on him and his mental health has suffered.
53. The Applicant submitted that the Improvement Notice should be set aside.
54. In addition to the statement above made on the Application Form the Tribunal noted a number of emails between the parties as follows.
55. 6th September 2021 from the Applicant to the Respondent stating that the Property is not a house in multiple occupation but occupied by one family: Azza, Mohammed, Reda, Amar and Khalid Abbas.
56. 14th September 2021 from the Applicant to the Respondent stating that all the children are adults and it is very rare for children to visit the Property. The Applicant said that he had told the family that he would have to serve a notice of eviction on them due to the divorce settlement.
57. The Applicant said that it was nigh impossible to find a contractor to do the works required by the Improvement notice without the Property being vacant.

Hearing

58. The Hearing was attended by the Applicant and the following Respondent's Officers: Ms Helen Broadhurst, the lead Environmental Health Officer in this case, Ms Rebecca Jeffries, an Environmental Health Officer who attended the inspection of the Property on 27th May 2021 and took photographs with Ms Broadhurst and by Mr Michael Browning, Manager of the Private Sector Housing Team.
59. The Tribunal addressed each of the Hazards identified by the Notice in Turn.

Hazard 1 Damp & Mould Growth – Category 1

Mould growth on the Velux Windows in the second-floor loft room

60. The Applicant said that the mould growth could be wiped away with a good proprietary cleaner and considered it unnecessary to be part of an Improvement Notice. He added that the windows had a trickle vent and that the Tenants needed to open this and the windows to air the room.

61. Ms Broadhurst said that she thought the mould went deeper than just the surface and that there were signs of decay which would require more attention than just cleaning. She said that mould spores could be damaging to young persons. Reference was made to the photographs provided.

Damp in the Basement

62. The Applicant said that the basement was damp because of the remedial action that the Respondent required to be done previously in the basement in the Improvement Notice in 2017, which included the blocking up of the window. He said that he was required to block up the window because there was a rodent infestation from the property across the road. The window was the entry route into his own Property. He said the Respondent had taken a very heavy-handed approach by requiring him to block up the window and line the basement with fire resistant plasterboard. He said that the result was that there was no ventilation in the basement which caused it to become damp. He added that it had never been damp before the action required by the Respondent.
63. Ms Broadhurst said that the previous Notice had not required the Applicant to block up the windows to prevent the rodent infestation or to affix fire resistant plasterboard to the walls to provide a half hour barrier in the basement in the event of fire. That was his own interpretation which had caused the damp. She referred to the photographs of the damp in the basement.
64. In response to the Tribunal's questions Ms Broadhurst confirmed that the Notice required the employment of a damp proofing and timber treatment company to carry out the remediation.

Hazard 21 Falling on stairs – Category 2

Renew or Repair Basement Staircase

65. The Applicant stated that the basement had only been used for storage by the Tenants and due to the risk of falls and fire he had instructed the Tenants to use the garage for storing things, which they had done. Therefore, there was no reason for the Tenants to go down to the basement. If a circuit had tripped, a torch would be needed to set the switch and would be sufficient to negotiate the stairs.
66. Ms Broadhurst said that as the electrical consumer box was in the basement, if a miniature circuit breaker (MCB) or the residual circuit device (RCD) tripped then they would need to go to the basement to reset it. This could mean that the basement light might be out and a Tenant would be reliant on the hand rail to guide and support. In addition, the bottom stair was unstable as it was rotten and needed to be renewed or replaced. The existing stairs did not comply with current

Building Regulations and if they were renewed, they would need to meet the present standards.

Hazard no. 23 Electrical Hazards Category 2

Works needed for Satisfactory EICR

67. Ms Broadhurst confirmed that the Applicant had provided a satisfactory electrical installation condition report (EICR) in accordance with the requirements of the Improvement Notice and therefore this deficiency had been remedied.

Hazard no. 24 Fire - Category 2

Basement ceiling

Basement stair/veil enclosure

Replacement of the Basement Door with a Fire Door

Mains operated, interlinked smoke alarm system

68. The Applicant submitted that the Respondent was treating the Property as House in Multiple Occupation and placing undue requirements on the Property through the improvement Notice which should not be imposed on a house let to a single family.
69. He considered an alternative such as a fire-resistant cupboard for the consumer box would be adequate, especially if it was fitted with an alarm inside. It would have the same effect as having the whole of the basement 30-minute fire resistant with an alarm.
70. He said that the basement was unoccupied and the Tenants had the garage for storage so there was no need to use the basement at all. The Applicant said that the Property complied with the fire requirements. The second-floor loft room had a fire door in accordance with the regulations when the loft was developed into a room. He said that the door to the basement was appropriate to the house and that the work that was being required changed the character of the Property.
71. He added that the Respondent's Officers had said to him that if he moved the consumer box onto the ground floor then the requirements would not be as stringent, however he said the cost of doing so would be excessive.
72. The Tribunal found from the evidence of Mr Broadhurst's Housing Health and Safety Rating Systems assessment on 17th May 2021 there are mains wired smoke alarms in the hallway on the ground floor and on the landing on the first floor. There are also battery-operated smoke detectors in the basement and second floor. This is in compliance with the Smoke Alarm and Carbon Monoxide Regulations 2015.
73. Both the Government 2018 review and 2020 consultation regarding these Regulations gave support for the view that a higher standard of

specification than that set out in the statutory instrument required reasons, as might be given following a Housing Health and Safety Rating System Survey. The Tribunal asked the Respondent's Officer what the reasons were for the higher specification.

74. Ms Broadstairs and Mr Browning submitted that extensive fire provisions were required because the electricity consumer box was situated in the basement and in the event of a fire caused by an electrical fault it was likely to spread without being discovered until it was too late for those in occupation to escape. It was stated that as there was a great deal of wiring in the basement there was a higher risk of a fire.
75. In particular it was said that:
 - a) 30-minute fire-resistant plasterboard was required on the ceiling to protect the suspended timber floor;
 - b) 30-minute fire-resistant plasterboard was required on the tongued and grooved partition between the kitchen and the basement and around the entrance to the basement from the kitchen; and
 - c) Replacement of the existing door to the basement with a fire door so as to provide 30-minute fire-resistance.
76. The purpose was to provide a 30-minute fire resistant seal between the basement and the rest of the house.
77. Mr Browning submitted that it was necessary to install mains operated, interlinked smoke alarms to all floors but to the second floor loft room and the basement in particular. He said that if a fire started in the basement, even though the basement alarm may sound it might not be heard in the second-floor loft room unless it was interlinked. If all the alarms were interlinked as required by the Improvement Notice, then wherever the fire started, they would all sound simultaneously. This would ensure occupants would have the maximum 30-minute escape time irrespective of where they were in the house. This was important as there were four floors and the exits were on the ground floor.
78. Mr Browning said that he did not consider a cupboard around the consumer box sufficient even with an alarm within the cupboard, because this would not address the risk caused by items catching fire in the basement or by an electrical fault occurring in respect of other wiring in the basement. He also said that the timber kitchen floor which formed the ceiling of the basement and the timber partition between the basement and the kitchen did not give a 30 minute fire resistance. The fact that the basement was unoccupied increased rather than reduced the need for the fire resistance as a fire there would be undetected but for the installation of an interlinked smoke/heat detector. If the consumer box was on the ground floor and in full view then the requirements would be different.

Internal doors

79. The Respondent's Officers acknowledged that with the exception of the basement door the internal doors were not in this instance required to be fire doors. The Tribunal is aware that for new developments Building Regulations now require that doors in a property of over two storeys high need to be 30-minute fire resistant along the escape route. In the present case the Respondent referred to the Local Authority Coordinators of Regulatory Services (LACORS) Housing Fire Safety Guidance for Existing Buildings.
80. The Applicant felt aggrieved that he was being required to undertake further work on doors which he had renewed since the Improvement Notice in 2017. He submitted that if he had questioned the 2017 Improvement Notice which required him to replace the existing doors for fire doors it would have been found that the work was not required.
81. The Tribunal noted that the Improvement Notice required the Applicant to overhaul the doors and that an adjustment by a carpenter might be sufficient to meet the requirements. Ms Broadhurst submitted that two fitted so badly that they would probably need to be replaced.

Keyless Exit

82. The Applicant said that the Tenants had made their own arrangement with the key and that the added expense of fitting new lock was unnecessary.
83. Ms Broadhurst referred to the safety standards for egress in the event of fire.

Hazard no.29 – Structural collapse and falling elements Category 2

Slipped Slates on the Main Roof at the Rear of the Property

84. The Applicant considered that slipped slates in a house of the age of the Property was common and a relatively minor issue. Ms Broadhurst said that the concern was that the slates that were displaced were over the back door and an area where the Tenants might sit.

General Submissions

85. The Applicant said that he should have appealed the first improvement Notice as many of the items on that he now believes were unnecessary.
86. The Applicant said that following the previous Notice he had tried to carry out the works required and had employed a builder who sadly had died suddenly. Since then, it had been well-nigh impossible to find another contractor particularly during the coronavirus epidemic.

87. The works required by the current Improvement Notice were so intrusive that the Property would have to be empty especially as the Tenants were unwilling to have contractors in the house as they were fearful of being infected. He said that the conduct of the Respondent's Officers in repeatedly returning to inspect the Property had made the tenants feel uncomfortable. And they were happy with things as they are.
88. The Applicant referred the Tribunal to an email he had sent on 14th September 2021 to the Respondent and the Tribunal in which he said that since the first Improvement Notice was served in 2017, he had spent over £23,000. He said that the rent for the Property was £1,500 which was relatively low and out of which he paid a mortgage of £400 per month. Together with the Financial Penalty and fines totalling £12,000 the Property had cost him £35,000. In addition, there is the wear and tear from the Tenants. Therefore, over the past 4 years he had made a loss.
89. The Applicant itemised the works he had carried out as follows:
New boiler
New kitchen
Fire boarding the cellar
Replacement of fire doors to all rooms
Rewiring of electrics where appropriate
Addressing the leak from the shower
Removal of the decking
Relandscaping of the garden to reduce the height to below 50 cm
Blocking up of the cellar window
Servicing of the Velux window
Repair and rebuild of the fence to the side of the Property
Replacing of breaker fuse
Additional break fuses to the main board
New cooker
Electrical work to cooker
90. He said that he had served a section 21 Notice under the Housing Act 1988 to evict the tenants in order that he could sell the Property to comply with the Court Order made on his Divorce.
91. Ms Broadhurst and Mr Browning said that many of the defects are outstanding from the Improvement Notice made on 26th April 2017 which was the subject of a Financial Penalty. The Penalty was reduced because that tribunal were led to believe many of the works had been done.
92. They added that they had been able to find contractors willing to carry out the works identified in the Improvement Notice in a Coronavirus safe way and without requiring the tenants to vacate.

Decision

93. The Tribunal considered all the evidence adduced. As a new hearing the Tribunal could consider matters of which the Respondent was not aware when it made its decision to serve the Improvement Notice.
94. The Tribunal only considered the Improvement Notice served on 18th June 2021. The Tribunal considered each item of the Improvement Notice in turn. The Tribunal found that the Property was not a House In Multiple Occupation at the time of the hearing.

Hazard 1 Damp & Mould Growth – Category 1

Mould growth on the Velux Windows in the second-floor loft room

95. The Tribunal noted the photographs provided and the extent of the mould and decay to the Velux style windows and determined the remedial action set out in the Improvement Notice to be appropriate.

Damp in the Basement

96. The Tribunal from its knowledge and experience doubted the appropriateness of drywalling. It found the remedial action specified in the Notice of removing all the plasterboard to be appropriate as it would all be infected by mould.
97. Basements and cellars have a tendency to be damp and this is exacerbated by a lack of ventilation. For a basement to be suitable for occupation, tanking and asphalt flooring might be needed. As this basement was not used for occupation, then a more basic treatment of the walls and timber would be satisfactory. The Tribunal noted the remedial action stated in the Notice included employing “a suitably qualified damp surveyor/engineer to investigate the cause of damp in the basement”. The Tribunal is aware that there are a number of damp proofing and timber treatment companies that will carry out an investigation, give a quotation for the necessary remediation and carry out the remedial work, which would adequately fulfil the requirements of the Notice. The Tribunal determined the remedial action specified in the Notice to be appropriate except that it should require the Applicant to “replace and/or treat any damaged building materials including joists where necessary” and not just “replace”.

Hazard 21 Falling on stairs – Category 2

Renew or Repair Basement Staircase

98. The Tribunal found that according to the Respondent’s Statement of Case at an inspection carried out on 18th April 2019 a hand rail had been affixed to the basement stairs. However, it appears that this was to the side flanked by the basement wall. From the photographs provided it was apparent that there was no hand rail to the open side.

Therefore, the Tribunal determined the remedial action specified in the Notice to be appropriate.

99. The Tribunal found that it was appropriate to overhaul or replace the timber staircase leading from the ground floor kitchen to the basement. However, the following remedial action only applies if the staircase is renewed:
“Ensure that the staircase is of suitable design and construction. Prepare well opening to receive new flights. Fix flight in position. Tread length should be no less than 280mm or greater than 360mm. Riser heights should be no less than 100mm or greater than 180mm Adjust floor boarding as necessary, provide and fix new landing nosing.”
100. The Tribunal determined that the alternatives of overhauling or renewing should be made clear as the specifications referred to do not apply to existing structures.

Hazard no. 23 Electrical Hazards Category 2

Works needed to for Satisfactory EICR

101. The Tribunal found the Applicant had complied with the remedial action specified in the Notice with regard to the electrical hazard and therefore determined that this be removed for the Notice.

Hazard no. 24 Fire - Category 2

Basement ceiling

Basement stair/veil enclosure

Replacement of the Basement Door with a Fire Door

Mains operated, interlinked smoke alarm system

102. The Tribunal accepted the reasons given by the Respondent for specifying a higher standard under the Housing Health and Safety Rating System than that proscribed under the Smoke Alarm and Carbon Monoxide Regulations 2015.
103. Notwithstanding the Property is not a House in Multiple Occupation and that the basement was unoccupied and that the Tenants had the garage for storage, the Tribunal considered that a fire-resistant cupboard for the consumer box even if fitted with an alarm would not adequately protect against potential risk of fire.
104. All domestic consumer units installed after 2016 must be either enclosed in a non-combustible material or housed in a cabinet made from a non-combustible material recognising the risk of fire posed by this part of the electrical installation (Building Regulations and currently 18th Edition Wiring Regulations BS 7671:2018). From the Tribunal’s knowledge and experience as the occupants had access to the basement it found that there is a risk that flammable items might be stored there. There is also a suspended timber floor above the

basement and a timber partition between the basement and the kitchen, the failure of either to contain a fire in the basement may compromise the escape route from the Property. The risk of this occurring is also increased because there is a second storey from which it would take longer for an occupant to reach the front or back doors and a place of safety.

105. The Tribunal therefore agreed that the ceiling, stair enclosure and door of the basement should have a 30-minute fire resistance. Taking into account that the Property is in effect four storeys with the escape to a place of safety being on the ground floor the Tribunal also agreed that mains operated, interlinked smoke alarms should be installed. Therefore, the Tribunal determined the remedial action specified in the Notice to be appropriate with regard to the basement ceiling, basement stair/veil enclosure, replacement of the basement door with a fire door and mains operated, interlinked smoke alarm system.

Internal doors

106. The Tribunal was concerned that the Respondent's Officers were using the LACORS Fire Safety guide as a prescriptive requirement. The remedial action to be taken following a Housing Health and Safety System assessment should be commensurate with the risk. Legislation sets mandatory requirements and actions beyond this must be reasonable and proportionate and where they are specified in an Improvement Notice local authority officers should be prepared to explain and justify them.
107. It was apparent that new doors had been fitted to the first-floor front and rear bedroom, and the bedroom, living room and kitchen on the ground floor. The Tribunal could not make a determination with regard to the previous Improvement Notice but as far as the current Notice was concerned fire doors were not required. However, as new doors had been fitted, Regulation 7 of the Building Regulations 2010 as amended applies. This requires that "work shall be carried out in a workmanlike manner". The doors should therefore fit the frames which may require the door linings, stops and architrave to be adjusted.
108. Whereas the measurements taken regarding the doors in the Housing Health and Safety Risk System inspection were illustrative that the installation had not met the Regulation they are only a guide to the standard to be achieved. The Tribunal agreed that the new doors should be robust, of sound construction, close fitting to the frame and capable of being easily opened and closed positively onto their latch. However, to specify a maximum 4mm gap was unduly prescriptive and the Tribunal determined that this requirement should be deleted as these doors are not fire doors.
109. Under Part B1, Fire Safety, in the Approved Documents of the Building Regulations 2010 doors are to be easy to open and therefore the door

handles must operate effectively, e.g., they must not snag on floor coverings, door linings or frames.

110. The Tribunal found that apart from the specification of a maximum 4mm gap between the door edge and door lining the remedial action in respect of the new internal doors was appropriate.

Keyless Exit

111. The Tribunal found that an internal keyless exit as specified in the Notice was an appropriate remedial action.

***Hazard no.29 – Structural collapse and falling elements
Category 2***

Slipped Slates on the Main Roof at the Rear of the Property

112. The Tribunal noted the position of the slipped slates over the back door and sitting area and found that the specified remedial action in the Notice was appropriate.

Summary

113. The Tribunal Orders that the Improvement Notice dated 8th September 2020 be confirmed with the following variations:
- a) The remedial action in respect of Category 2 Hazard no. 21 - Falling on stairs etc shall read:
“If the staircase is replaced ensure that the new staircase is of suitable design and construction. Prepare well opening to receive new flights. Fix flight in position. Tread length should be no less than 280mm or greater than 360mm. Riser heights should be no less than 100mm or greater than 180mm Adjust floor boarding as necessary, provide and fix new landing nosing.”
 - c) Category 2 Hazard no. 23 – Electrical hazards which required that an Electrical Installation Condition Report (EICR) with a ‘satisfactory’ rating be obtained shall be removed as the remedial action has been complied with.
 - d) The remedial action in respect of Category 2 Hazard no. 24 -Fire requiring the gap between the door edge and door lining (or frame) to be not more than 4mm, expressed as “(maximum 4mm gap)”, in respect of the internal doors, other than the basement door, that require overhaul or replacement, be removed.

The Remedial Actions are to be commenced 4 weeks from the date of this Order and finished 12 weeks from the date of this Order.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 – THE LAW

1. The relevant legislation is set out below:

Housing Act 2004

2. Part 1 Chapters 1 and 2 of the Housing Act 2004 established a system for assessing housing conditions and enforcing housing standards. The assessment is carried out under the Housing Health and Safety Rating System. This involves the classifying of hazards according to a Hazard Score – a numerical representation of the overall risk of the hazard. The Score is based on the evaluation of the likelihood of an occurrence and of the probable spread of harms that could result.

2. Those hazards which score 1000 or above (Bands A-C) are classed as Category 1 hazards. If a local housing authority makes a Category 1 hazard assessment, it is mandatory under section 5(1) for it to take appropriate enforcement action. Hazards with a score below 1000 (Bands D-J) are Category 2 hazards, in respect of which the authority has discretion to take enforcement action.

3. Section 3

- (1) A Local Housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under subsection (2).

Subsection 2 amongst other actions provides for the Authority to take action under Part 1 of the Act.

4. Section 4

- (1) (a) as a result of any matter of which they have become aware in carrying out their duty under section 3 or

(b) for any other reason

that it would be appropriate for any residential premises to be inspected with a view to determining whether any category 1 or 2 hazard exists on those premises the authority must arrange for such an inspection to be carried out.

5. Section 5:

- (1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated by subsection (3) or (4) –

(a) serving an improvement notice under section 11;

[Other Remaining provisions relate to other actions not relevant to this application]

6. Section 7

(1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they would consider that a category 2 hazard exists on residential premises

(2) The provisions are-

(a) section 12 (power to serve an improvement notice)

[Other provisions relate to actions not relevant to this application]

7. Sections 11 and 12 provide that an improvement notice is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice.

8. Section 13 Contents of improvement notices.

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists.

(c) the deficiency giving rise to the hazard, .

(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,

(e) the date when the remedial action is to be started (see subsection (3)), and

(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

- (4) The notice must contain information about—
 - (a) the right of appeal against the decision under Part 3 of Schedule 1, and
 - (b) the period within which an appeal may be made
- (5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

9. Section 15 Operation of improvement notices

- (1) This section deals with the time when an improvement notice becomes operative.
- (2) The general rule is that an improvement notice becomes operative at the end of the period of 21 days beginning with the day on which it is served under Part 1 of Schedule 1 (which is the period for appealing against the notice under Part 3 of that Schedule).
- (3) The general rule is subject to subsection (4) (suspended notices) and subsection (5) (appeals).
- (4) If the notice is suspended under section 14, the notice becomes operative at the time when the suspension ends. This is subject to subsection (5).
- (5) If an appeal against the notice is made under Part 3 of Schedule 1, the notice does not become operative until such time (if any) as is the operative time for the purposes of this subsection under paragraph 19 of that Schedule (time when notice is confirmed on appeal, period for further appeal expires or suspension ends).
- (6) If no appeal against an improvement notice is made under that Part of that Schedule within the period for appealing against it, the notice is final and conclusive as to matters which could have been raised on an appeal.

10. Section 49 Power to charge for certain enforcement action

- (1) A local housing authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in—
 - (a) serving an improvement notice under section 11 or 12;
 - (b) making a prohibition order under section 20 or 21;

- (c) serving a hazard awareness notice under section 28 or 29;
 - (d) taking emergency remedial action under section 40;
 - (e) making an emergency prohibition order under section 43;
or
 - (f) making a demolition order under section 265 of the Housing Act 1985 (c. 68).
- (2) The expenses are, in the case of the service of an improvement notice or a hazard awareness notice, the expenses incurred in—
- (a) determining whether to serve the notice,
 - (b) identifying any action to be specified in the notice, and
 - (c) serving the notice.

11. Section 239

- (1) Subsection (3) applies where the local housing authority consider that a survey or examination of any premises is necessary and any of the following conditions is met—
- (a) the authority consider that the survey or examination is necessary to carry out an inspection under section 4(1) or otherwise to determine whether any functions under any parts 1 to 4 or this part should be exercised in relation to the premises
- (3) Where this subsection applies—
- (a) a person authorised by the local housing authority (in a case within subsection (1))
 - (b) may enter the premises in question at any reasonable time for the purpose of carrying out a survey or examination of the premises
- (5) Before entering any premises in exercise of the power conferred by subsection (3) the authorised person or proper officer must have given at least 24 hours' notice of the intention to do so—
- (a) to the owner of the premises (if known) and
 - (b) to the occupier (if any)

12. The relevant paragraphs to Schedule 1 Part 3 Appeals against Improvement Notices are set out below:

Appeal against improvement notice

13. Paragraph 10

- (1) The person on whom an improvement notice is served may appeal to the appropriate tribunal against the notice.
- (2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

Powers of ... tribunal on appeal under paragraph 10

14. Paragraph 15

- (1) This paragraph applies to an appeal to the appropriate tribunal under paragraph 10.
- (2) The appeal—
 - (a) is to be by way of a re-hearing, but
 - (b) may be determined having regard to matters of which the authority was unaware.
- (3) The tribunal may by order confirm, quash or vary the improvement notice.
- (4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

“The operative time” for the purposes of section 15(5)

Paragraph 19

- (1) This paragraph defines “the operative time” for the purposes of section 15(5) (operation of improvement notices).
- (2) If an appeal is made under paragraph 10 against an improvement notice which is not suspended, and a decision on the appeal is given which confirms the notice, “the operative time” is as follows—
 - (a) if the period within which an appeal to the Upper Tribunal may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;
 - (b) if an appeal to the Upper Tribunal is brought, “the operative time” is the time when a decision is given on the appeal which confirms the notice.
- (3) If an appeal is made under paragraph 10 against an improvement notice which is suspended, and a decision is given on the appeal which confirms the notice, “the operative time” is as follows—
 - (a) the time that would be the operative time under sub-paragraph (2) if the notice were not suspended, or

- (b)if later, the time when the suspension ends.
- (4) For the purposes of sub-paragraph (2) or (3)—
 - (a)the withdrawal of an appeal has the same effect as a decision which confirms the notice, and
 - (b)references to a decision which confirms the notice are to a decision which confirms it with or without variation.

“The operative time” for the purposes of section 16(7)

Paragraph 20

- (1) This paragraph defines “the operative time” for the purposes of section 16(7) (postponement of time when a variation of an improvement notice comes into force).
- (2) If no appeal is made under paragraph 13 before the end of the period of 28 days mentioned in paragraph 14(2), “the operative time” is the end of that period.
- (3) If an appeal is made under paragraph 13 before the end of that period and a decision is given on the appeal which confirms the variation, “the operative time” is as follows—
 - (a)if the period within which an appeal to the [F9Upper Tribunal] may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;
 - (b)if an appeal to the Upper Tribunal is brought, “the operative time” is the time when a decision is given on the appeal which confirms the variation.
- (4) For the purposes of sub-paragraph (3)—
 - (a)the withdrawal of an appeal has the same effect as a decision which confirms the variation, and
 - (b)references to a decision which confirms the variation are to a decision which confirms it with or without variation.

Deregulation Act 2015

Section 33 - Preventing retaliatory eviction

- (1) Where a relevant notice is served in relation to a dwelling-house in England, a section 21 notice [under the Housing Act 1988] may not be given in relation to an assured shorthold tenancy of the dwelling-house—
 - (a)within six months beginning with the day of service of the relevant notice, or
 - (b)where the operation of the relevant notice has been suspended, within six months beginning with the day on which the suspension ends.
- (13) In this section and section 34—
 - “assured shorthold tenancy” means a tenancy within section 19A or 20 of the Housing Act 1988;
 - “common parts”, in relation to a building, includes—
 - (a) the structure and exterior of the building, and

- (b) common facilities provided (whether or not in the building) for persons who include one or more of the occupiers of the building;
- “controlling interest” means an interest which is such as to entitle the landlord to decide whether action is taken in relation to a complaint within this section or a relevant notice;
- “dwelling-house” has the meaning given by section 45 of the Housing Act 1988;
- “relevant local housing authority”, in relation to a dwelling-house, means the local housing authority as defined in section 261(2) and (3) of the Housing Act 2004 within whose area the dwelling-house is located;
- “relevant notice” means—
- (a) a notice served under section 11 of the Housing Act 2004 (improvement notices relating to category 1 hazards),
 - (b) a notice served under section 12 of that Act (improvement notices relating to category 2 hazards), or
 - (c) a notice served under section 40(7) of that Act (emergency remedial action);
- “section 21 notice” means a notice given under section 21(1)(b) or (4)(a) of the Housing Act 1988 (recovery of possession on termination of shorthold tenancy).

Section 34 - Further exemptions to section 33

- (1) Subsections (1) and (2) of section 33 do not apply where the condition of the dwelling-house or common parts that gave rise to the service of the relevant notice is due to a breach by the tenant of—
 - (a) the duty to use the dwelling-house in a tenant-like manner, or
 - (b) an express term of the tenancy to the same effect.
- (2) Subsections (1) and (2) of section 33 do not apply where at the time the section 21 notice is given the dwelling-house is genuinely on the market for sale.
- (3) For the purposes of subsection (2), a dwelling-house is not genuinely on the market for sale if, in particular, the landlord intends to sell the landlord’s interest in the dwelling-house to—
 - (a) a person associated with the landlord,
 - (b) a business partner of the landlord,
 - (c) a person associated with a business partner of the landlord, or
 - (d) a business partner of a person associated with the landlord.
- (4) In subsection (3), references to a person who is associated with another person are to be read in accordance with section 178 of the Housing Act 1996.
- (5) For the purposes of subsection (3), a business partner of a person (“P”) is a person who is—

- (a) a director, secretary or other officer of a company of which P is also a director, secretary or other officer,
 - (b) a director, secretary or other officer of a company in which P has a shareholding or other financial interest,
 - (c) a person who has a shareholding or other financial interest in a company of which P is a director, secretary or other officer,
 - (d) an employee of P,
 - (e) a person by whom P is employed, or
 - (f) a partner of a partnership of which P is also a partner.
- (6) Subsections (1) and (2) of section 33 do not apply where the landlord is a private registered provider of social housing.
- (7) Subsections (1) and (2) of section 33 do not apply where—
- (a) the dwelling-house is subject to a mortgage granted before the beginning of the tenancy,
 - (b) the mortgagee is entitled to exercise a power of sale conferred on the mortgagee by the mortgage or by section 101 of the Law of Property Act 1925, and
 - (c) at the time the section 21 notice is given the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power.
- (8) In subsection (7)—
- (a) “mortgage” includes a charge, and
 - (b) “mortgagee” includes a receiver appointed by the mortgagee under the terms of the mortgage or in accordance with the Law of Property Act 1925.