



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

Case reference ; **MAN/30UH/HIN/2022/0016**

Property : **Quarry Heights, 36 Dumbarton Road,
Lancaster, LA1 3BX**

Applicant : **Quarry Rd Ltd**
Applicant's Representative : **Zubeir Mister**

Respondent : **Lancaster City Council**

Type of Application : **Housing Act 2004 – Schedule 1**

Tribunal Members : **Judge J.M.Going
I. James MRICS**

Date of Hearing : **1 December 2022**

Date of Decision : **15 January 2023**

DECISION

The Decision and Order

The Tribunal orders :-

- 1. the Variation of the Improvement Notice in accordance with the Schedule to this Decision, and the remedial action specified therein to be started within 30 days, and completed within 6 weeks, of the date of service of this Decision on the parties, and**
- 2. that QRL pay the Council £400 in respect of its reasonable costs relating to the Improvement Notice.**

Preliminary

1. By an Application received on 13 December 2021 the Applicant, Quarry Rd Ltd (“QRL”) appealed to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under paragraph 13(1) of Schedule 1 of the Housing Act 2004 (“the Act”) against the Respondent (“the Council”)’s issue of an Improvement Notice dated 23 November 2021 (“the Improvement Notice”) relating to the property.
2. The Tribunal gave Directions on 15 July 2022.
3. Both parties provided a bundle of relevant documents including written submissions which were copied to the other.
4. Arrangements were made and agreed for the property to be inspected at 10.30 on 1 December 2022 followed by a hearing at Lancaster Court beginning at noon.

The Property

5. The property is 3-storey building on a sloping site, at the corner of Dumbarton Road and Quarry Road in the centre of Lancaster, close to the canal. It was formerly a public house known as the Moorlands Hotel. Extensive works have been carried out, with 8 studio flats already created and occupied on the ground floors and 2 further flats (“the FMO flats”) licensed for and in multiple occupation, on the first and second floors. It is understood that all are let to students. Both FMO flats exit onto a first-floor landing and a carpeted staircase which leads to the outside of the premises without any outside door. The basement underneath the occupied flats has been greatly extended laterally into the grounds of the premises as part of further redevelopment. Presently, the basement and yard areas can best be described as a “building site”. At the time of the inspection there was an overfilled skip on the adjoining road, large amounts of different building materials in the basement area, and nothing to stop anyone accessing the same.

The Facts and Chronology

6. The following facts and timeline of events is confirmed from an analysis of the papers, the written witness statements, and the oral testimony. None have been disputed, except where specifically referred to.

19 September 2018	Planning Permission under reference 18/00891/FUL was granted by the Council for the change of use “of the first and second floors from public house (A4) to student accommodation comprising one 4 bed flat (C3) and one 7 bed flat (sui generis)”.
23 November 2018	A conditional approval notice under the Building Regulations under reference 18/00872/OTH was granted by the Council confirming the passing of plans for the “change of use of ground and lower floor to student accommodation” and setting out the stages at which inspections would be required.
21 November 2019	Land Registry entries show that the property, formerly known as the Moorlands Hotel, was purchased by QRL for £90,000.
25 October 2021	The Council received a complaint about the property “from a resident about leaking windows and concerns about the means of escape from fire”.
	The Council reported that Lancashire Fire and Rescue Service (“LFRS”) had received a similar complaint “following an incident the previous weekend where fire operatives were called by the residents because the fire alarm sounded but could not be switched off”.
25 October 2021	Mr Chadwick a Technician from the Housing Standards Department of the Council made arrangements to inspect the property on 28 October. Mr Moosa from QRL’s managing agents, Lancaster Student Lettings, was invited but was unavailable.
28 October 2021	Mr Chadwick together with Mr Birks and Mr Leece from LFRS inspected the property and “had significant concerns about the means of escape from fire and other fire precautions” and “a discussion was held as to whether to prohibit occupation of the building because of the immediate risk to the residents”. Mr Birks then contacted Mr Moosa specifying a list of urgent works required to avoid the need to prohibit occupation and with a request to provide a “waking watch” on the building. Immediate works were carried out, as referred to in an email from Mr Moosa to Mr Birks that evening.
29 October 2021	A further email was sent by Mr Moosa to Mr Chadwick confirming that further works had been carried out.
3 November 2021	Notice of a further inspection to be made the next day was delivered by Mr Chadwick to QRL’s registered address
4 November 2021	A meeting at the property was attended by Ms MacLeod the Council’s Housing Standards Manager, Mr Bone its Principal Building Control Surveyor and Mr Chadwick, as well as Mr Birks

	and Mr Leece from LFRS, and Mr Mister and Mr Moosa for QRL. Mr Bone advised that the conversion works did not meet current building regulations and advice was given to Mr Mister as to how to improve its fire safety. Mr Mister did not agree with the advice or the extent of the specified works.
23 November 2021	The Council, after having liaised with LFRS, served QRL with the Improvement Notice referred to in more detail below, sending copies at the same time to Mr Mister, Mrs Mister, Lancaster Student Lettings Ltd and the tenants of the property.
2 December 2021	The Council served QRL with a separate Notice demanding £400 in respect of its costs relating to the service of the Improvement Notice.
13 December 2021	Mrs Mister submitted the appeal to the Tribunal on behalf of QRL.

The Contents of the Improvement Notice

7. The Improvement Notice referred to:-

The nature of the hazards and the deficiencies giving rise to the hazard under section 11

Fire

Inadequate compartmentation between the basement and the ground floor.

The basement is not secure from unauthorised entry

Incomplete construction in the basement around the electricity meter area

Combustible surface materials on the common staircase

Common staircase is open to unauthorised access

Insufficient fire detection for the building design

Insufficient lighting and emergency lighting

Action to be taken for the hazard under section 11: Fire

Compartmentation.

Compartmentation to the uninhabited cellar/basement areas must achieve at least 30 minutes fire separation from the ground floor of the building, including fire stopping.

In particular:

There are no fire-resistant collars on the services and pipe penetrations (between the vacant basement and the ground floor level and ground floor flats).

Various holes have been formed in the ceiling/floor and these are not adequately fire stopped There is overuse of the pink-foam fire sealing material.

The fire-resistant ceiling in the cellar (under boarding) is unfinished and incomplete. There is no plaster skim coat to these plasterboards.

The basement is not secure against unauthorised entry— there are several large 'open' window openings at the rear/ lower yard level

- Fill all holes with solid mortar and masonry construction and intumescent fire pillows packed around any penetrating cabling or pipework.
- Fit fire-resistant collars compliant with BS 476: Part 20: 1987 and BS EN 1366-3: 2004 on all service and pipe penetrations between the vacant basement and ground floor level flats.
- Complete the fire-resistant ceiling and plaster skim coat the plasterboards in the cellar to provide a minimum of 30 minute fire separation.
- Ensure that the basement area is secured against unauthorised entry.

The Electric Meter area

The electric meter area (and 3 phase Electric Service entry) has been sub-divided from the basement but is unfinished.

- Complete construction of the electric meter area including a self-closing fire door to ensure 30 minutes fire resistance.

Common Staircase

The common escape staircase enclosure (walls) and their surface materials are not all of non-combustible materials — there are areas of timber panelling and the staircase is not sterile and contains a significant fire load.

The common escape route from the first floor flats in multiple occupation is by way of a timber staircase, there is no final fire exit door and thus this staircase and escape route is at risk from arson and unauthorised persons.

- Fit a door at the base of the stairway leading to the first and second floor flats in multiple occupation. This door should be secure and available for use from the inside without the need for a key or a code.
- Remove all combustible surface materials from the common staircase enclosure, including the wood panelling.
- Once the panelling and dado rail are removed, make good the walls and leave free from any holes or gaps, to ensure at least 30 minutes fire resistance.

Fire Detection

There is insufficient provision for the detection of fires, in particular:

- There are no fire detectors (smoke or heat) in the basement void, under the ground floor flats.
- The basement is not secure against unauthorised entry — there are several large 'open' window openings at the rear/ lower yard level.
- The common escape route (to the first floor and flats in multiple occupation) has inadequate detection.
- The installed Landlords Fire Alarm panel does not indicate which fire zones are enabled & active or which fire zones are in a fault condition.
- There is no fire zone schematic drawing or other fire alarm information for the use of attending fire crews.
- There is inadequate automatic fire detection installed to the flats in multiple occupation.

The total requirements for automatic fire detection to the basement, all common areas, studio flats, first and second floor flats in multiple occupation are for a mixed system in accordance with BS5839 Part 6 as described below:

- Grade A: LD2 coverage consisting of:
- smoke detectors in the common areas including the basement, the common staircase, meter cupboard, and any roofspace containing a risk factor such as a boiler or photovoltaic equipment
- heat detector in each flat (including all studio flats and the first and second floor flats in multiple occupation) in the room/lobby opening onto the escape route (interlinked); and
- Grade DI: LD2 coverage in each flat (interlinked heat and smoke alarms with integral tamperproof battery back-up) consisting of:
 - Smoke alarm in the flat hallway
 - Smoke alarm in the lounge
 - Smoke alarm in each bedroom
 - Heat alarm in the kitchen

Grade DI: LD2 coverage in each studio consisting of a smoke alarm with integral tamperproof battery back up. This system is for the benefit of the studio resident so will not be interlinked.

On completion the installation must be certified by an Electrical Engineer as fully complying with BS5839 and then be maintained in operational condition to comply with that standard.

A copy of the certification must be forwarded to Private Housing Services

Landlord Lighting / Emergency Lighting

There is no landlord lighting or emergency lighting to the basement, the electric meter room, and its related unused and insecure voids.

The common escape route leading from the base of the escape staircase to the place of ultimate safety (the public footpath/street) is not illuminated by permanent lighting or emergency lighting. (The public street lighting cannot be used as a means of compliance with the Fire Safety Order or Part B of the Building Regulations.)

- Install emergency lighting designed to comply with BS 5266 to the:
- Basement
- Electric meter room
- Common escape routes to the place of ultimate safety (the public footpath/street). This must also be installed to the exterior of the property as necessary taking account of the location and positioning of the escape route. The use of street lighting as a compensatory feature is not acceptable

Note: Alternative works proposed to those set out above will be considered must only be carried out after receipt of approval from Private Sector Housing.

8. The Improvement Notice stated that the specified works should begin no later than 21 December 2021 and be completed within 28 days of that date. It also set out in detail the rights of appeal.
9. A separate Notice under section 49 of the Act (“the Demand Notice”) was served on 2 December 2021 demanding payment of £400 to cover expenses that the Council had incurred in (a) determining whether to serve a notice; (b) identifying the works to be specified in the notice; and (c) serving the notice.

The Statutory Framework and Guidance

10. The Act introduced a new system, the Housing Health and Safety Rating System (HHSRS), for assessing the condition of residential premises, which can be used in the enforcement of housing standards. The system entails identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.
11. Those hazards which score 1000 or above are classed as Category 1 hazards. If a local housing authority makes a Category 1 hazard assessment, it becomes mandatory under Section 5(1) of the Act for it to take appropriate enforcement

action. Hazards with a score below 1000 are Category 2 hazards, in respect of which the authority has a discretion whether to take enforcement action.

12. The duty of a local authority to inspect a property is set out in Section 4 of the Act. Inspections are governed by the Housing Health and Safety Rating System (England) Regulations (2005/3208) which by reg.5 provide that an inspector must:-
 - (a) have regard to any guidance for the time being given under Section 9 of the Act in relation to the inspection of residential premises;
 - (b) inspect any residential premises with a view to preparing an accurate record of their state and condition; and
 - (c) prepare and keep such a record in written or electronic form.
13. The relevant Guidance is the Housing Health and Safety Rating System – Operating Guidance (“the Operating Guidance”) and the Housing Health and Safety Rating System - Enforcement Guidance (“the Enforcement Guidance”) issued by the Secretary of State under Section 9 of the Act in February 2006. Authorities must also take it into account in assessing hazards: see Section 9(2).
14. Section 5(2) of the Act sets out seven types of enforcement action which are “appropriate” for a Category 1 hazard. These include serving an Improvement Notice.
15. 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: Section 11(2). If the authority serves an Improvement Notice in respect of a Category 1 hazard, the remedial action must be such as to ensure that the hazard ceases to be a Category 1 hazard but may extend beyond that: Section 11(5). An Improvement Notice may provide for its operation to be suspended until a time, or the occurrence of an event specified in the notice: Section 14(1) of the Act. By Section 14(2): “The time specified may in particular be the time when a person of a particular description begins, or ceases, to occupy any premises”.
16. A “relevant person” may appeal to the Tribunal against an Improvement Notice (Schedule 1, paragraph 10 of the Act).
17. The appeal is by way of re-hearing and accordingly the Tribunal must consider the state of the property as at the time of the hearing.
18. The Tribunal may confirm, quash or vary an Improvement Notice (paragraph 15(3)).

Submissions and the hearing

19. The grounds for the appeal, - as set in the Application, whilst not always clearly expressed, appeared to be that (1) the premises had been incorrectly classified by the Council (2) certain items had been wrongly identified as

hazards, and (3) a number of the remediation works specified in the Improvement Notice were either unnecessary or overly onerous.

20. In its statement of case QRL raised two “points of law”. The first being that the Improvement Notice should not have referred to the building as an HMO “on the basis that the building comprises separate self-contained flats with no shared facilities”. The second was that “the Improvement Notice sets out certain requirements which are outside the scope of the Housing Act 2004. The LHA has not been conferred with powers to issue an Improvement Notice for parts of the building that do not form part of the residential unit – those areas are a matter for other authorities”.
21. QRL also stated that there was a 60-minute fire resistance to the lower ground floor structure, the provisions relating to the common stairs showed that the Building Regulations had been misinterpreted, that the conversion works have been carried out under the supervision of Building Inspectors in compliance with the Building Regulations 2010, the timber panelling within the stairwell had been treated with spray protection, that a “stay put” policy was in place as recommended, that an Automatic Fire Detection System (AFDS) was not mandatory, that the requirement for addressable system showing which fire zones are in active or fault condition was to confuse the property with larger commercial premises, that it is an unnecessary requirement have a fire zones schematic drawing in buildings with a single escape stair in one direction, that adopting standards from the LACORS guidance was flawed because that guidance was properly applicable to buildings converted into self-contained flats to standards otherwise than in compliance with the building regulations, whereas the property “has been converted under the supervision of building inspectors and standards set out by Building Regulations... and although a final completion certificate is yet to be issued for the conversion, the standard of construction compartmentation has been satisfied”.
22. QRL included with its bundle copies of a report dated 29 March 2011 by Exova Warringtonfire on testing yellow pine timber treated with a flame retardant, the Building Regulations 2010- Fire safety Approved Document B, HM Government’s Fire safety Risk Assessment Guide, LACORS Housing-Fire Safety Guidance, an acknowledgement of the Building Regulation application and passing of plans on 2 October 2018, and a record of the fire risk assessment of the communal stairwell access on 28 October 2021 signed by Mrs Mister on behalf of QRL.
23. The Council in its bundle included its statement of case, copies of the registered title to the property, witness statements by Mr Birks, Mr Leece, Mr Chadwick, Ms MacLeod and Mr Bone, various letters and emails, photographs, its HHSRS score sheet, the Improvement Notice, the Demand Notice, and an affidavit as to service.
24. The witness statements attested to various matters which have already been outlined in the timeline. Mr Birks confirmed that he had been employed by LFRS for 24 years and that his current role is as a Fire Safety Inspector. LFRS had been telephoned by a student occupier concerned over fire safety and fire alarm panel, that the alarms would not go off if there was a fire, and who

reported not having been given any fire safety information since moving into the property. Mr Birks confirmed that on his first inspection on 28 October he noticed immediately that there were various compartment breaches between the ground floor and the 7 studio flats above, a water leak 45cm away from the main electrical intake and that his concerns were such that he immediately contacted the Watch Manager, Mr Leece. When he arrived, they made their way up from the basement and found that there was no communal entry/exit door to access the first floor stairs, making it vulnerable to arson. They also found various combustible materials within the stairs area and various other fire hazards. On the first floor and was noted that the fire alarm panel had a snapped key which was used as access to the fire alarm panel controls. It was also noted that there were no fire action notices or fire alarm zone plan. The details of his further visits to the property were also referred to.

25. Ms MacLeod, Mr Leece and Mr Birks's witness statements referred (inter alia) to revisiting the property together on 25 January 2022 by which time it was noted that "works to convert the basement into flats had progressed but was still not complete. Efforts have been made to improve the separation between the basement and the rest of the building, but the basement was still open to access."
26. Mr Bone in his witness statement dated 5 September 2022 confirmed his professional qualifications and over 30 years' experience working in Building Control at a range of levels, including his present role as Principal Building Control Surveyor with the Council. He confirmed that there had been three Building Regulation applications noted against the property. The first in 2017 reference 17/00465/REVER related to conversion to 2 self-contained units, against which he noted "works not carried out as the submitted plans and specifications – incomplete – no final inspection requested by applicant/owner". The second in 2018 under reference 18/00872/OTH related to change of use of ground and lower floor to student accommodation against which he again noted "works not carried out as the submitted plans and specifications – incomplete – no final inspection requested by applicant/owner". The third application in 2019 under reference 19/00575/OTH in respect of erection of a side extension and with the comment "incomplete – buried – not in accordance with submitted plans or design. No revised specification, or layout. New external foul drainage not inspected and tested before burial. No stage inspections requested, and no final inspection requested, by applicant/owner prior to applicant/owner letting flats to students, in 2021". He confirmed that no requests for any building control inspections had been received in the past 2 years. He listed 10 instances of the property not complying with building regulations on 21 October 2021, including the fire alarm not functioning, and made 19 separate observations concerning problems with compartmentation and surface spread of flame, the inadequacy of the fire doors, electric meter area, the fire alarm system, landlord lighting/emergency lighting and generally. He concluded "it is my professional opinion that the building and associated flats do not comply with the relevant requirements of the Building Regulations 2010 namely Part B (including B1, B2, B3 and B4 and B5). The works also don't appear to comply with the Regulatory Reform (Fire Safety) Order 2005 and the Housing Act 2004". His statement included a series of photographs.

27. The Council, in response to QRL's grounds for appealing the Improvement Notice, made (inter alia) the following points
- the property is considered to be an HMO under the provisions of sections 254 and 257 of the Act, pointing out that section 254 states that "a building or part of the building is a "house in multiple occupation" if – (e) it is a converted block of flats to which section 257 applies, and that section 257 (2) states that "This section applies to a converted block of flats if – (a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and (b) less than two thirds of the self-contained flats are owner occupied...
 - Mr Bone's evidence was "in my professional opinion the building and associated flats do not comply with the relevant requirements of the Building Regulations 2010..."
 - work to the basement is ongoing whilst the ground, first and second floor flats are occupied
 - no evidence has been provided that the building has been converted in accordance with the current building regulations and no building regulation completion certificate has been provided
 - the HHSRS Operating Guidance identifies that the risk of fire is higher in flats and houses in multiple occupation. The Guidance also identifies that the likelihood and severity of harm suffered will depend on how quickly fire can spread and how soon it is detected and occupiers are made aware of it
 - the relevant factors affecting the likelihood and spread of harms were described in the Improvement Notice
 - the hazard of fire was scored in accordance with the Guidance and a category 1 hazard identified
 - the decision on the required works was made following advice from officers from the LFRS and the Council's building control department
 - because the building did not comply with current building regulations, the standards outlined in the LACORS guidance were applied
 - because the building had not been converted in compliance with the building regulations, the principle of a stay put evacuation strategy, which is based on the fire being contained in the flat of origin, and common escape routes being maintained relatively free from smoke and heat, does not apply.
 - breaches in the compartmentation were noted at inspection on 4 November 2021
 - the staircase is the only means of escape from two flats in multiple occupation and must be regarded as a protected route
 - in a multi occupancy building combustible surfaces should not be permitted within the protected escape route.

28. Present at the Tribunal's inspection of the property on 1 December 2022 were Ms MacLeod, Mr Cunningham from the Council's Building Control Department and Mr Leece. Despite the start of the inspection having been delayed, Mr Mister did not attend.
29. Mr Mister was still absent when the hearing was supposed to begin. He was telephoned by a caseworker from the Tribunal's office and explained that he had put the wrong date in his calendar. The start of the hearing was delayed until 2pm to allow him to attend. Present at the hearing were Mr Mister, Ms MacLeod, Mr Chadwick, Mr Bone, Mr Leece and his colleague from LFRS as an observer.
30. Mr Mister was not sure if he was a Director of QRL but confirmed that he was acting as its representative and could speak as a witness having been intimately concerned with the project management of the development.
31. He confirmed that each of the 8 studio flats had a single bedroom and were presently let singly but each probably had a capacity to be let to couples. He also confirmed that flat 9 was licensed for and occupied by 6 students and that flat 10 was licensed for and occupied by 7. At present therefore the property was tenanted by 21 student occupants, each with a 50-week tenancy. He confirmed that they had been no problems in letting the same. He estimated that the present gross annual income for the property was in the region of £140,000, with the landlord being responsible for the utilities and the internet, but not council tax where students are exempt.
32. Both flats 9 and 10 had been licensed as HMOs which was confirmed by Ms MacLeod.
33. Mr Mister's reiterated the comments made in his written submissions that the Council was wrong to have designated the premises as a whole as an HMO in the Improvement Notice. He did not however dispute that it had been correctly served and also confirmed that he and the company had readily understood its contents.
34. Ms MacLeod explained the Council had followed the definitions set out in the 2004 Act which were detailed. The Tribunal also confirmed that the Act and the Guidance that went with it allowed the Council, in any event, to have regard to the full extent of the premises in any assessment that it was duty-bound to make when alerted to hazards in residential premises.
35. Mr Mister's main concern was that the designation, which he disputed, had led the Council, acting in concert with LFRS to specify remediation works which were not necessary or too onerous, and did not take into account his belief that the property had been converted in accordance with the modern building regulations, albeit that separate works were ongoing. He did however acknowledge and agree that the site was unsafe at present.
36. Mr Mister said that the original parts of the development involving flats 9 and 10 had been overseen by a private firm known as Approved Inspectors which

had been authorised to undertake inspections under the Building Regulations but that the inspection role had thereafter reverted to the Council. Mr Bone confirmed that where private firms undertake such work they are not compelled to register any certification, whether as to stage inspections or as to completion, with the Council. Mr Mister confirmed that the certification for flats 9 and 10 had been remitted to the Council when dealing with their licensing of those two flats as HMOs which Ms MacLeod confirmed would have been the case.

37. Mr Mister also confirmed that various photographs had been emailed to the Council's planning officers in August as evidence of compliance with some of the works relating to the compartmentation issues, but this was disputed.
38. The Tribunal noted, which was agreed, that both the Building Regulations and LACORS set out standards and guidance based on broad risk assessments which always have to be judged against individual, particularly non-standard, properties on a case-by-case basis.
39. Ms MacLeod readily agreed that works had been undertaken to the basement since the Improvement Notice had been served, but not that the Council been given the opportunity to oversee the ongoing works or properly inspect them at the relevant stages.
40. The Tribunal adjourned to consider the evidence before reconvening with the parties and confirming its findings :
 - that the Council had jurisdiction under the Act to serve the Improvement Notice in respect of the premises as a whole, and for that to include reference to the common parts serving the flats in multiple occupation as well as the basement,
 - that a Category 1 hazard still exists at the premises,
 - but that it was evident that works had been undertaken to parts of the basement since the serving of the Improvement Notice.
41. The Tribunal also confirmed, both at the Hearing and in subsequent Directions, that the parties would be given a short opportunity to allow the Council and LFRS to properly reinspect all such parts of the premises as they deemed appropriate, with Mr Mister in attendance, with a view to trying to agree a revised schedule of such works or actions as are still required and that each party should thereafter report back to the Tribunal with its up-to-date position statement.
42. The Council has done so, but Mr Mister has not.
43. The Council's position statement confirmed that a site visit was carried out on 7 December 2022 attended by Mr Mister, Ms MacLeod, Mr Bone, and Mr Leece following which it was agreed that the compartmentation between the basement and ground floor flats is now compliant, security against unauthorised access to the basement would be improved, the missing door to the electricity cupboard would be replaced that day, a door fitted at the base of

the common staircase, the carpet on the common staircase would be acceptable with evidence that it is wool or an 80/20 wool mix, and that emergency lighting would be fitted to the external area of the building. The Council confirmed that Mr Mister did not agree with the Council and LFRS that LACORS is the appropriate guidance, that the wall finishes to the common staircase were not acceptable or that the present alarm system is not suitable nor sufficient. He did however agree to the replacement of the smoke detectors in the hallways of the FMOs with heat detectors and the relocation of the smoke detectors in the common hallway to provide better coverage. The Council stated that it was not certain, and remained to be confirmed, whether the smoke detectors in the studio flats were sufficient.

The Tribunal's Reasons and Conclusions

44. The Tribunal has determined the position on the basis of all of the evidence before it and its inspection of the property.
45. The Tribunal found that the Council had acted entirely reasonably and appropriately in issuing the Improvement Notice on 23 November 2021, and that the remedial works then specified in the Improvement Notice were reasonable.
46. Section 4(2) of the Act states that "if an official complaint about the condition of any residential premises... is made to the proper officer of the authority, and the circumstances complained of indicate – (a) that a Category 1 or Category 2 hazard may exist on the premises,... the proper officer must inspect the premises...
47. Section 5(1) also makes it clear that "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."
48. Having found Category 1 hazards at the property and that they were not being properly addressed the Council had a statutory duty to act.
49. No issue was taken with the effective service of the Improvement Notice, and the Tribunal found that it was validly served and complied with all the technical requirements in the Act.

Mr Mister's complaint that the premises as a whole had been referred to as an HMO in the Improvement notice.

50. The Tribunal finds that the Council rather than Mr Mister has correctly stated and interpreted the appropriate statutory provisions.
51. Section 1(1)(a) of the Act confirms that the HHSRS applies to the assessment of the condition of "residential premises" which are further defined in section 1(4) as meaning "(a) a dwelling; (b) an HMO; (c) unoccupied HMO

accommodation; (d) any common parts of the building containing one or more flats”.

52. There is no dispute that the initial complaints to both the Council and LFRS were made by an occupier or occupiers of the flats and included concerns about the faulty fire alarm system. The Tribunal is satisfied that as a consequence the Council then had a statutory duty to inspect all and any other parts of the premises which it then reasonably considered necessary to fulfil its statutory duties.
53. Section 4(4)(b) makes it clear that an inspection “is to extend to so much of the premises as the local housing authority... consider appropriate in the circumstances”.
54. The Operating Guidance also makes it clear that any form of dwelling can be assessed under the HHSRS, whether it is self-contained or not, whether is contained within a larger building or not (see paragraphs 2.04- 2.06 and 5.02). Annex B sets out detailed guidance on inspections including separate sections on multi-occupied buildings confirming the need to include internal shared areas and specifically any means of escape in case of fire which could be used by occupants of the dwelling, including any fire detection and alarm systems and firefighting equipment; as well as the exterior of the building containing individual dwellings.
55. Having identified Category 1 hazards at the property and that they were not being properly addressed the Council clearly had a statutory duty to act. The duty imposed is not discretionary, it is mandatory. Section 5(1) states “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”. Section 11(1) confirms that in such circumstances “an improvement notice is a course of action available to the authority”.
56. It is clear from all of the foregoing that it matters not in this case whether the property is classed as an HMO or as separate dwellings. The legislation clearly allows the Council to impose an Improvement Notice on the property as a whole and does not limit it to having to issue separate improvement notices individually on its component parts, even if that is a possibility.
57. The point is reaffirmed by Section 11 which relates specifically to Improvement Notices, where in subsection (3) it is stated that “the notice may require immediate action to be taken in relation to the following premises – (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO; (b) if those premises are one of more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts; (c) if those premises are the common parts of the building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.” Subsection (6) further confirms “an improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing

one or more flats.” Section 11(4) contains identical wording as regards category 2 hazards.

The extent of the remedial works

58. The Tribunal reminded itself that paragraph 15(2) of Schedule 1 to the Act confirms that the appeal is by way of a re-hearing and not simply a review of a housing authority’s decision.
59. From its inspection and the evidence, the Tribunal found that some, but certainly not all, of the hazards identified in the Improvement Notice had been addressed, and consequently that the specification of necessary remedial works should now be varied.
60. Nevertheless, the Tribunal was unimpressed by what appeared to be Mr Mister and QRL’s prioritising the monetary return from the premises rather than the safety of its occupants, and a lack of proper regard to the inherent and obvious dangers resulting from the ongoing building works exacerbated by the lack of any proper security against unauthorised entry into the basement area.
61. Section 9(2) of the Act confirms that regard must be had to the Operating Guidance and the Enforcement Guidance.
62. The Operating Guidance states in bold letters in paragraph 1. 12 that the underlining principle of HHSRS is that: –
“Any residential premises should provide a safe and healthy environment for any potential occupier or visitor.”
63. The Operating Guidance in paragraph 3.02 confirms “The rating system procedure requires, for each hazard, 2 judgements from the Inspector. These are an assessment of: –
 - (a) the likelihood over the next 12 months of an occurrence that could result in harm to a member of the vulnerable group; and
 - (b) the range of potential outcomes from such an occurrence.”In other words, a 2-stage process of addressing first the likelihood of an occurrence and then the range of potential harm outcomes.
64. Paragraph 3.14 makes it clear that assessing likelihood is not determining or predicting that there definitely will be an occurrence.
65. Paragraph 1.18 of the Operating Guidance also states that “For the purposes of the HHSRS, the assessment is solely about the risk to health and safety. The feasibility, cost or extent of any remedial action is irrelevant to the assessment.”
66. The Tribunal, having made its own assessment, is clear that the property still suffers from both Category 1 and Category 2 hazards, and that the fire detection system as installed is inadequate. In this case the seriousness of the

potential harm outcomes is clearly compounded by the levels of and nature of occupancy and the ongoing building works. Dwellings in multiple occupancy bring high economic returns, but they also clearly pose higher risks, particularly as regards fire.

67. The piecemeal and continuing development of the multi-occupancy premises, its unusual and complex configuration, and there being but one exit route from the FMO flats on the first and second floors all exacerbate the fire risk.
68. The Tribunal accepts and agrees with the Council's and LFRS' assessment that the LACORS guidance provides an appropriate benchmark by which to specify the remedial works which are still needed for satisfactory fire protection. Mr Mister and QRL have not provided any separate or independent fire engineers specification as an alternative.
69. The Tribunal, having carefully assessed all of the evidence, concluded that the Improvement Notice should therefore be varied in accordance with the provisions referred to in the Schedule to this Decision.
70. The Tribunal also considered what timescales should be set for the completion of the outstanding remedial works. It reminded itself that whilst there had already been many months for the issues to be addressed Section 13 of the Act states that an Improvement Notice "may not require any remedial action to be started earlier than the 28th day after that on which the notice is served".
71. The Tribunal has therefore determined that the remedial works are to be started within 30 days of service of this Decision and completed within 6 weeks of the date of service.

Charge by the Council

72. Having found that the Council acted appropriately in issuing the Improvement Notice, the Tribunal also found it appropriate to make an order under section 49(7) of the Act requiring QRL to make payment of the Council's charges of £400 as specified in the Demand Notice.

The Schedule

The Improvement Notice shall henceforth be read and construed, as if the references to inadequate compartmentation had been deleted, and by substituting the following specification of the actions to be taken for those which were originally included :-

Actions to be taken

Ensure that the basement area is properly secured against unauthorised entry whenever left unattended.

Complete (if not already completed) the construction of the electric meter area by installing a self-closing fire door to ensure 30 minutes fire resistance.

Fit a door at the base of the stairway leading to the first and second floor flats in multiple occupation. This door should be secure and available for use from the inside without the need for a key or a code.

Remove all combustible surface materials from the common staircase enclosure, including the wood panelling. The existing carpet must be removed unless suitable evidence is provided to confirm that it has an 80 percent or more wool content (i.e., a content of no more than 20 percent man-made fibre).

Once the panelling and dado rail are removed, make good the walls and leave free from any holes or gaps, to ensure at least 30 minutes fire resistance.

Complete the total requirements for automatic fire detection to the basement, all common areas, all the studio flats, and the FMO flats as a mixed system in accordance with BS5839 Part 6 as described below providing:

- Grade A: LD2 coverage consisting of:
- smoke detectors in the common areas including the basement, the common staircase (with sufficient separate smoke detectors to cover the whole of the landing, stairway and the bottom of the stairs), the meter cupboard/room, and any space containing a risk factor such as a boiler or photovoltaic equipment
- a heat detector in each flat (including all studio flats and the FMO flats) in the room/lobby opening onto the escape route (interlinked); and
- Grade DI: LD2 coverage in each FMO flat (interlinked heat and smoke alarms with integral tamperproof battery back-up) consisting of:
- Smoke alarm in the flat hallway
- Smoke alarm in the lounge
- Smoke alarm in each bedroom
- Heat alarm in the kitchen

Grade DI: LD2 coverage in each studio flat consisting of a mains powered smoke alarm with integral tamperproof battery back-up. This system is for the benefit of the studio resident(s) so will not be interlinked.

(For the avoidance of any doubt it is confirmed that the BS 5839 – 1 system must be extended to the ground floor meter room as this is an area where fire could develop unseen, and that the smoke detectors in each of the studio flats must be mains wired, rather than just battery-powered.)

On completion the installation must be certified by an Electrical Engineer as fully complying with BS5839 and then be maintained in operational condition to comply with that standard.

A copy of the certification must thereafter be forwarded to Private Housing Services forthwith.

Install emergency lighting designed to comply with BS 5266 to the:

- Basement
- Electric meter room
- Common escape routes to the place of ultimate safety (the public footpath/street). This must also be installed to the exterior of the property as necessary taking account of the location and positioning of the escape route. The use of street lighting as a compensatory feature is not acceptable

J M Going
Tribunal Judge
15 January 2023