



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

Case reference : **CAM/00KF/HIN/2022/0047**

**HMCTS code
(paper, video,
audio)** : **F2F**

Property : **Ground Floor Flat, 16a Harcourt
Avenue, Southend on Sea, SS2 6HU**

Applicant : **Michael William Stapleton**

Respondent : **Southend on Sea City Council**

Representative : **Victoria Routledge**

Type of application : **Appeal against an Improvement Notice**

**Tribunal
member(s)** : **Mary Hardman FRICS IRRV(Hons)
Chris Gowman MCIEH
Roland Thomas MRICS**

Date of decision : **20 February 2023**

DECISION

Background

1. The Applicant is the sole owner of the Property which is occupied by tenants. On 12 August 2022 the Council served on the Applicant an Improvement Notice.
2. Schedule 1 to the notice provided a narrative to the deficiencies that were identified and the resulting hazards. Schedule 2 set out the actions to be taken in respect of the identified hazards. The Notice also provided some explanatory notes including the right to appeal and a statement of reasons for the service of the Improvement Notice.

3. The deficiencies identified in the notice were
 - Category 1 Excess Cold
 - Category 1 Domestic Hygiene, Pests and Refuse
 - Category 2 Damp and Mould
 - Category 2 Crowding and Space
 - Category 2- Entry by Intruders
 - Category 2 Structural Collapse and Falling Elements
4. The Improvement Notice required the Applicant to begin specified investigations/remedial works as set out in Schedule 2 in relation to both the Category 1 and 2 Hazards on 12 September 2022 and to complete them by 12 November 2022.
5. The Respondent also served a Demand Notice under section 49 of the Housing Act 2004, dated 12 August 2022, to recover expenses relating to enforcement action, namely serving an Improvement Notice, in the sum of £605 incurred in service of the notice as stated in the Private Sector Housing Group Enforcement Policy.
6. On 31 August 2022 the Tribunal received an application made by Mr Stapleton, appealing against the Improvement Notice. Directions were issued on 28 September 2022 and the matter came before us for hearing on 24 January 2023.

Inspection

7. The tribunal inspected the property on 24 January 2023 in the presence of the Applicant, Mr Michael Stapleton and Mrs Victoria Routledge, Private Housing Sector Team Leader for the Respondent and the tenant, Mrs Parsons.
8. The Property is a ground floor flat in a two-storey end of terrace house constructed of brick, rendered to all elevations under a pitched tile roof. It has upvc framed windows with double glazed units.
9. The Property comprises an entrance from the side elevation, kitchen, double bedroom, single bedroom, lounge and bathroom. There is a garden to the rear.
10. Space and water heating is by an electric central heating system with radiators to the lounge, both bedrooms and bathroom and the Property has mains water, electricity and drainage.
11. At the inspection the tribunal noted that some items of work had been carried out but that a number of issues remained.
12. Externally the tribunal noted that a chimney pot to the front stack, which had previously been shown in photographs in the council's bundle as

leaning had been re-bedded and the lean had been largely corrected. The cracks to the stack had been repointed.

13. There was paint to the rendering coming away in patches to the side of the house. Guttering and downpipes were plastic and appeared to be fairly recent although one downpipe had come apart, but this appeared to have happened very recently and was easily remediable.
14. The fencing panels to the rear had been replaced and the garden was fully enclosed.
15. It was difficult to establish relative levels of the internal and external floor levels, but it appeared likely that the internal solid floors were at a similar or lower level than the external ground level.
16. Internally there was evidence of damp to the bay in the front bedroom, rear wall in the rear bedroom and to the bottom of the window in that room, and to the flank wall to the living room. There was blown plaster and mould to the bathroom wall and when the flooring was lifted in the bathroom it appeared damp.
17. The tenants had two thermometers which showed the room temperature in the living room to be 15.6 degrees.

Submissions

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

Respondent's case

19. The Council's written submission consisted of some 171 pages with an additional bundle of 58 pages and included a number of documents. This included a witness statement of Victoria Routledge, Private Sector Housing Regulatory Services Officer for the Council. We noted carefully all that she set out, which included a history of her involvement with the property, copies of material communications with the applicant, a copy of a surveyor's report on the property, the HHSRS calculations and a large number of photographs.
20. The supplementary bundle contained the witness statement of Sarah Parsons, the tenant of the property.
21. The Respondent said that the property had been informally inspected several times in the last 5 years. Inspections by both previous officers and the current officer involved informal action in line with the council's

enforcement policy resulting in certain works being undertaken by the owner to reduce hazards around condensation dampness, cockroach infestation, defective rainwater goods and other matters of routine maintenance especially following a series of floods/water ingress from the upper flat, which was also owned by the Applicant.

22. The tenants had occupied the property since 2014 and kept it to a high standard of cleanliness and had carried out their own redecoration. They reported a long history of issues and delays in works being inspected and actioned by the owner and had involved the council and other agencies in an attempt to get the agent and owner to carry out repairs and remedy defects in a timely manner.
23. The property was inspected on 25 May 2022 which included an informal inspection of the upper flat, as it was determined that defects found there might contribute to the disrepair found in the lower flat.
24. The Category 1 and Category 2 hazards identified were scored using the Housing Health and Safety Rating System (HHSRS) and it was concluded that an improvement notice was the most appropriate course of action.
25. The inspection of the above property identified 6 hazards these being
 - Damp and Mould - Category 2 Hazard
 - Excess Cold - Category 1 Hazard
 - Crowding and Space - Category 2 Hazard
 - Entry by Intruders - Category 2 Hazard
 - Domestic Hygiene, Pests and Refuse - Category 1 Hazard
 - Structural Collapse and Falling Elements - Category 2 Hazard.
26. Ms Routledge said that in respect of **Damp and Mould – Category 2 Hazard** that she accepted that the condensation control unit in the living room had partially addressed the condensation issue. However some more persistent damp and cold issues had reoccurred over time suggesting that the actual cause of the damp problems had not been properly investigated or addressed by the owner or his agent. The occupiers had striven to maintain the property/ their home in good decorative order and make use of the condensation unit and this had in part disguised the long-term damp issues at the property.
27. During her visit she had made a visual inspection of the external areas of the whole building and internal visual inspection of the ground floor flat. She had used a damp meter in areas reported by the occupiers and seen to be or likely to be prone to dampness, both in relation to external defects seen and due to the property's construction, subdivision and age
28. In her bundle she provided a survey by S W Anstell FRICS carried out in 2018 which noted a difference in floor levels on entering the property which he said implied that the ground levels around the perimeter of the property

had been built up historically and that ground levels to the rear projection were effectively at the same level as the internal floor.

29. He reported that he observed rising damp in the internal wall separating the entrance hall from the front bedroom which he believed was due to a breakdown on the dpc and/or bridging by high external ground levels.
30. Damp was detected in the flank wall and around the chimney breast to the main bedroom and the defective salt contaminated plasterwork was moisture attracting (Hygroscopic) affecting the décor.
31. A similar situation pertained to the second bedroom and to living room although he could not get to much of the wall surfaces due to the presence of furniture and floor covering and effects.
32. In the bathroom he detected high levels of dampness to the external wall and severe deterioration of the plasterwork which was hygroscopic. He believed this to be due to a breakdown of the dpc and bridging by high ground levels and the floor.
33. Mrs Routledge stated that recurring water ingress to the living room could be due to an internal plumbing defect or overspill of water in the bathroom and kitchen, but she identified that the upper flat was also suffering from ingress from the roof/rainwater goods or from the external walls. She also thought overflow from the hopper to the flank wall may have caused internal dampness to the living room.
34. She felt that the lack of a door between the living room and the kitchen meant that moisture from cooking or washing travelled to other parts of the flat.
35. In respect of **Excess Cold – Category 1 Hazard** she said that the property has solid wall construction; lack of insulation to the external walls, suspended and solid floors and high damp readings to the bathroom walls, solid floors to the kitchen and bathroom and dampness as described above.
36. The living room window had broken glazing affecting the weathertightness of the property which will contribute to the risk of excess cold; the living room lacks a door to the kitchen which has no fixed heating and there was also no door to the hallway which also lacked any fixed heating; the hallway and the kitchen were access routes to the external front and rear doors; there were excessive cold air streams from the opening of the doors and the radiator to the living room was unable to provide consistent temperatures to these areas.
37. The external temperature recorded on the day of her inspection was 15.6°C, the weather was dry, the heating had been on for several hours and the room thermostat was set to 32°C. Temperatures recorded in the living room ranged between 19.6°C and 20.7°C above the radiator, thus failing to achieve the temperature set on the thermostat or even the minimum required temperature on a cold day, despite the external temperature being significantly higher than -1°C. The schedule of works required the minimum temperatures to be achieved when the external temperature was -1°C to be

Living room 21 °C
Bathroom 22 °C
Elsewhere 18 °C

38. **Crowding and Space - Category 2 Hazard-** The Improvement notice stated that the flat, consisting of one double and one single bedroom was over occupied as it was occupied by three generations of the same family – grandmother, daughter and teenage granddaughter who all required separate bedrooms.
39. In the written submission she said that when the family accepted the flat in 2014 the granddaughter was only 6/7. She also said that there were solutions including subdividing the larger bedroom, extending or altering the property or offering suitable affordable alternative accommodation. However, these were not included in the schedule of works as it was not considered appropriate and in fact no works were included for this item.
40. **Entry by Intruders – Category 2 .** The boundary wooden fencing was old and in disrepair with rotting timbers and loose and insecure panels and failed to provide a defensible barrier to the rear garden and rear points of entry to the ground floor flat. This meant there was greater risk of burglary or aggravated burglary.

41. **Domestic Hygiene, Pests and Refuse - Category 1 Hazard .**

Both flats the ground floor and first floor flat had an infestation of cockroaches and harbourage areas within the communal joists between the ground and first floor were allowing access to both the first and the ground floor flats. This was due in part to inadequate separation and sealing between the two properties.

She found the owner's comments of not being made aware of the cockroaches found to both flats surprising as the occupiers had sent numerous photos and videos of the insects, both caught on sticky traps provided by the Applicant's agent's pest control operative, and seen coming through the opening to the living room ceiling. She had included photographs in the bundle. He had also confirmed, via email, that his agent would continue to deal with the pest control issues.

42. **Structural Collapse and Falling Elements -** The property's rear chimney stack was in disrepair; there was plant growth; cracks and defects to the rendering and cement flaunching; a significant structural crack from the top of the stack corresponding with the end chimney pot significantly leaning. The stack to the front main roof also had defects to the rendering and cement flaunching and cracks around the top edge with potential instability to the chimney pots. There was a risk that they could fail and fall to the ground.
43. A detailed Description of Works Required was provided which identified what the Council required the owner to do to remove or reduce the hazards. The officer advised that some of these works may require temporary or

permanent possession by the owner to be able to complete the necessary works.

44. The council reviewed its reasons for enforcement action following the consultation and sought views before deciding on a suitable enforcement action. However, they did not receive any views or requests for variation or amendment from the Applicant, agent, or tenants so an Improvement Notice was duly served on Mr Stapleton and copies sent to his agent and his tenants on 12th August 2022.
45. The council had identified hazards at the property that the owner had not rectified within a reasonable time frame and which in the main he refused to acknowledge existed. His stance was either refusal to carry out the required works or to unreasonably delay doing any works he did agree to do. On this basis they decided to oppose the appeal against the improvement notice.
46. A meeting was held with Mr Stapleton on 27 October 2022 with a view to narrowing differences which was useful, and it was agreed that Mr Stapleton would revisit the property to have a closer look at some structural issues and would reread the council's schedules to the improvement notice with a view to presenting proposals to reduce the identified hazards.

Grounds for Appeal

47. The Applicant's written submission consisted of some 74 pages with an additional bundle of 8 pages. They included various documents to include a witness statement from Mr Reed - the Applicant's letting agent, a statement from his heating engineer, the EPC and EICR for the property and a tribunal decision in respect of another property which he owns, and a copy of a report from Guy Imray MRICS.
48. Mr Stapleton said that in respect of **Damp and Mould – Category 2 Hazard** that there is no evidence of widespread damp or mould at the property. A flat master condensation unit was installed some time ago to combat condensation dampness and this had largely but not completely controlled the level of condensation. The only room where there was still evidence of condensation dampness was the bathroom and, in this respect, he had offered to overhaul the defective plaster and make good.
49. He said that there was no penetrating dampness or rising dampness at the property. Lack of direct access to the solid floor of the kitchen or bathroom meant to allege failure of the floor membrane was speculation and there were no visible signs to suggest that the solid floor structure in the kitchen and/or bathroom were suffering from dampness.
50. The remainder of the flooring to the premises was of a suspended timber type, so there was no membrane incorporated within the construction. Neither was there any rising dampness at the premises. He was a chartered surveyor and had undertaken tests with an electronic moisture meter where it was possible to gain access and readings were found within normal

tolerances. He had checked with the tenants and they confirmed that when the Council officer visited the premises none of the furniture or other belongings were removed. Accordingly, it would have been impossible for the officer to have concluded that rooms were suffering from any form of rising damp.

51. In terms of penetrating damp, he had noted a stain to the flank wall in the living room, but a moisture meter suggested no penetrating damp and he thought it arose from a previous blockage to the hopper head.
52. There was no significant dampness to the chimney breast in the living room and it was vented. He accepted there were areas of hollow plaster to the bathroom which he said could be addressed as part of routine maintenance and there was no evidence of widespread penetrating or low-level dampness.
53. He produced a report dated 26 November 2022 by Guy Imray MRICS which concluded that any excessive condensation in the property could only be due to the way in which the occupiers chose to live in the building and that the building itself was not the problem.
54. In respect of **Excess Cold – Category 1 Hazard** Mr Stapleton said that the property had good quality double glazing and a serviceable electrical central heating system. It had solid walls and as such did not have insulation to the external walls as that was the nature of the construction of such properties. The property had an EPC rating of D.
55. The crack to the living room window was to the outer layer of the glazing and did not contribute to 'excess cold' at the property. The tenants did not want additional doors to the kitchen and the lounge which would be inconvenient for them.
56. He provided a report from a David Apted, Plumbing and Heating Engineer dated 21 November 2022 which said that 'the radiators heated quickly and to a satisfactory temperature 'and that overall, the system performed satisfactorily and within safety requirements. No further action was required at this stage
57. With regard to **Crowding and Space - Category 2 Hazard** the Applicant said he could not accept any responsibility for the size of the property in relation to the tenants' needs. The property was sourced by the Council for the tenants and it now said that it was unsuitable for their needs. He believed that the tenants were looking to be rehoused and that the issuing of an improvement notice would improve their position on the housing list.
58. He had also offered the tenants suitable larger alternative accommodation which they declined.
59. **Entry by Intruders – Category 2** – He accepted some of the fencing panels had become distorted and damaged over the years but were still in situ and serving their purpose. He felt that the suggestion that the condition of the fence panels could represent a threat, such as a burglary,

or injury to the occupants caused by an intruder (aggravated burglary) was nonsense.

60. **Domestic Hygiene, Pests and Refuse - Category 2 Hazard**

Mr Stapleton said that he had never seen any evidence of cockroaches in the property and that his agent, Reed Residential had sent a pest control specialist to the property and had reported no evidence of cockroaches to him. During an inspection on 22 August 2022, he had asked the tenant to provide evidence of cockroaches and none had been provided.

61. If, as was alleged they were coming from the first floor flat, then the council should challenge the occupier of that flat.

62. **Structural Collapse and Falling Elements - Category 2 Hazard.** On this he felt that the housing officer exaggerated the disrepair in respect of the chimney stack. There was a minor crack in one of the pots and it was slightly out of plumb where it had settled into a new repose. There was minor vegetation growth. He did not consider these to be of any obvious significance but would be arranging for a closer inspection at roof level.

Hearing

63. The hearing was attended by the Applicant Mr Stapleton, his letting agent and witness for the Applicant, Mr Reed. Mrs Routledge, Private Sector Housing Regulatory Services Officer for the council and the tenant, Ms Parsons as witness for the Respondent.

Respondent's case

64. At the hearing we heard first from Mrs Routledge who took the tribunal through the history of the case and the procedure that the council had followed which was documented in their submission.

65. She said that in the light of the re inspection that morning and the work undertaken very recently by the Applicant that the council agreed that works in respect of **Entry by Intruders, Domestic Hygiene, Pests and Refuse** and **Structural Collapse and Falling Elements** had been complied with and they were no longer a hazard.

66. There was therefore no requirement for the tribunal to consider them further.

67. In respect of **Crowding and Space** she had felt it inappropriate to specify any works to correct this and she was content to reduce this to a Hazard Awareness notice. She did not accept that the council had found or approved the accommodation for the tenants – rather that they worked with letting agents to identify properties but that the tenants have a choice, and the council involvement was more in respect of supporting the rent deposit

68. Of the remaining hazards she took the tribunal through the HHSRS score for **Damp and Mould**. She said that she had been trained on HHSRS and used it all the time. She explained how she had arrived at the score, adopting a likelihood score of 1 in 6, but was unable to tell the tribunal what the normal likelihood score would be.
69. She took the tribunal through the issues she had identified in respect of damp as outlined in her written submission and said that there were a number of causes of damp at the property. The walls were solid and rendered and some of the brickwork had perished. Ground levels were high to the flank/rear wall and damp was bridging from the outside into the interior walls with potential failure of the dpc. The French drain to the rear didn't drain. The valley gutter to the roof had evidence of plant growth which was likely to cause it to overflow and rainwater run down the external walls although she accepted the guttering and downpipes had been fairly recently replaced. Rendering to the rear addition was in a poor state in parts and had not been adequately maintained.
70. The bathroom was particularly damp with insufficient tiling. There was damp to the living room caused by breaching or failure of the dpc.
71. In terms of works to remedy the issue she was asking that the issue be investigated by a specialist who would identify the issues and recommend a solution. She was not particularly worried about condensation in the property as the humidity levels were not at a level to cause concern.
72. In respect of **Excess Cold** she had measured temperatures during the inspection in May and whilst all valves on the radiators were at the highest, the system did not achieve the required temperature despite the outside temperature being 15.6°C. It appeared that the controls were not operating correctly and the radiators not of adequate size for the space. There was no heat source in the kitchen and no door to contain the heat. The extent of the dampness also reduced the capacity of the system to achieve the required temperatures. Whilst there was a letter from a plumbing and heating engineer it was not a report 'in any shape or form'.
73. When questioned by Mr Stapleton the tenant, Mrs Parsons said that she had first complained of cold in 2014. She also said that the plumbing and heating engineer sent by Mr Stapleton had said that the system could support heating or hot water but not both.
74. In terms of the HHSRS assessment Mrs Routledge said that she had moved the likelihood to 1 in 100 although again could not tell the tribunal what the 'normal' likelihood was but had not adjusted the outcome score. The score of 3275 was well in excess of the starting point for a category 1 hazard (1000).
75. In terms of works she referred to Schedule 2 of the Improvement Notice and said that the temperatures for the rooms that she had stipulated were as recommended in the HHSRS/CIEH guidance.

76. Overall, she felt that it was appropriate to serve an improvement notice for the two items as the landlord did not respond to reports of issues and still took too long when the council became involved.

Applicant's case

77. In respect of **Crowding and Space** Mr Reed, letting agent and witness for the Applicant said that his company worked with the council. On identifying a suitable property for the tenants, representatives from the council had visited to ensure that the property was compliant – for example that it had alarms, the right facilities etc. Reports were issued and the council officer had acknowledged that it was not overcrowded. There was an email chain to this effect which was not in the bundle. He felt that there was tension within the council between the Homelessness team and the Enforcement team.
78. In respect of the **Damp and Mould** Mr Stapleton said that he did not accept that Mrs Routledge was in a position to undertake sufficient tests to determine that the damp proof membrane was defective or identify the sources of the damp.
79. He did not accept that the chimney breast was not ventilated – as a grill was clearly present. He also did not accept that debris had fallen into the chimney breast as he didn't see how this was ascertainable. Mrs Routledge said that she had merely said that this was a possible outcome of the failure to cap the chimney.
80. He said that the walls were obstructed by the tenants and the property was over occupied by the amount of possessions and was too small for the family. He believed that they didn't want a private landlord but wanted to be rehoused by the council.
81. He had installed a flat master condensation unit but that could not eradicate the whole problem, but he had used best endeavours to deal with it.
82. He had offered to send someone to the property to carry out work to the plasterwork in the bathroom, but they had been refused access.
83. He accepted that there was some blistering to external plaster but no falling render. He also accepted that there may be an area of isolated rising damp to the flank wall which could be looked at but did not see that the service of an improvement notice was a proportionate response by the council.
84. He did not accept that there was a damp issue to the bathroom floor and said that the floor would naturally sweat under the floor covering
85. On **Excess Cold** he did not see the relevance of an assessment on the basis that the occupier was over 65 which Mrs Routledge explained that

that was the assumption for scoring of hazards under the HHSRS guidance.

86. He was assured by Mrs Routledge that the council had regard to the EPC rating (D) but that the certification had a life span of 10 years and work could have been done over that period and no testing was done prior to issue.
87. He had commissioned a plumbing and heating engineers report which found that the radiators heated quickly and to a satisfactory temperature – although it was not stated what this was. The engineer concluded that overall, he found the system to be performing satisfactorily and within all relevant safety requirements and that no further action was required at this stage.
88. As part of his written submission, he had provided a First-tier Tribunal decision in respect of 8a Quebec Avenue Southend dated 14 October 2013 and wanted to draw the tribunal’s attention to the decision in this case. He said the position in respect of this property was similar. This was a parallel type of construction and was otherwise identical.

Determination

89. At the hearing Mrs Routledge for the council agreed that there was no longer a hazard in relation to Entry by Intruders, Domestic Hygiene, Pests and Refuse and Structural Collapse and Falling Elements. Therefore, the tribunal did not need to consider these any further
90. With regard to Crowding and Space, which was a Category 2 hazard the council had reconsidered and suggested that it was more appropriate to serve a Hazard Awareness Notice. Mr Stapleton felt that it should be dropped and had suggested this at the meeting with Mrs Routledge in October 2022, but the council was not prepared to do so.
91. The tribunal considered the submissions put forward by both parties. It accepts that accommodation, which may have been suitable for a family where the youngest member was only 6/7, may no longer be suitable some 8 year later when they are a teenager, irrespective of whether the council had approved the accommodation at the lettings stage or not.
92. However, Mrs Routledge accepted that there were no works specified in Schedule 2 and on questioning by the tribunal she said it would ‘not be fair’ to include works in respect of Crowding and Space. The tribunal finds that the Improvement Notice does not meet the requirements of 13 (2) (d) in that it does not specify the nature of the remedial action. She then suggested that a Hazard Awareness Notice (HAN) was more appropriate.
93. Mr Stapleton does not see what he is able to do to remedy the situation other than serve notice of eviction, which he was not inclined to do.

94. On balance, the tribunal does not accept that it is appropriate to serve an HAN in these circumstances. It therefore quashes this element of the Improvement Notice and does not substitute it with an HAN,
95. On **Damp and Mould** the Council made multiple findings which are documented above in both their written submission and at the hearing. Mr Stapleton in his written submission did not accept that there was a damp issue beyond condensation which he attributed in its entirety to overcrowding, variously due to overcrowding by people and/or possessions. At the hearing he did concede that there may be an area rising damp to the flank wall which could be looked at.
96. He had commissioned a report by a chartered surveyor (para 53). The tribunal was not provided with a copy of the instructions to the surveyor. However, the surveyor states that *'The purpose of the report is provide information on the causes of the condensation and internal damage as a result of the condensation dampness seen within this flat, no other issues are within the scope of our instructions'*. This is unfortunate and somewhat puzzling given the Applicant was seeking to establish that rising and penetrating damp was not an issue.
97. The surveyor did not attend as a witness to enable the tribunal to question him on his instructions and his findings.
98. Mrs Routledge similarly produced a report by a chartered surveyor carried out on behalf of the tenants in 2018. This report covers all aspects of damp and found both rising damp and penetrating damp. The surveyor equally was not presented as a witness but his report did meet the requirements of an expert witness report under Rule 19(5) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
99. Mr Stapleton objected to the inclusion of the surveyor's report included in the evidence bundle by the council on the basis that the report included a stipulation that it could not be *'reproduced in whole or in part or relied upon by any third parties without the express written authority of Hair & Son'*. On questioning by Mr Stapleton Mrs Routledge agreed that she had not sought permission for it to be used in these proceedings.
100. Equally, the report commissioned by Mr Stapleton included such a disclaimer. Such a disclaimer is entirely contractual between the parties and does not impact of the ability of the tribunal to have regard to the reports and attach whatever weight it judges appropriate.
101. The tribunal comprised of two chartered surveyors and an environmental health professional who inspected the property and carefully considered the evidence before them. They found that the property did indeed suffer from issues with damp – condensation to the internal surfaces of walls in the bedrooms and the bathroom, rising damp to the flank wall and possibly elsewhere and what appeared to be penetrating damp to the bathroom. The tribunal does not accept that the damp to the bathroom

floor can be dismissed as sweating of the solid floor due to the floor covering.

102. The landlord had installed a unit to seek to manage the condensation and the council accepts that this is not a significant issue. The tribunal finds that there is a hazard associated with Damp and Mould which requires investigation and remediation. It finds that the works stipulated in the Improvement Notice are too specific in advance of a damp survey by a suitably qualified expert. It therefore substitutes the works in Schedule 2 with a requirement to:

Instruct an appropriate expert to carry out a damp report on the property, provide a copy to the council and carry out any recommended works and make good. All work to be completed by 31 May 2023.

103. In terms of **Excess Cold**, the tribunal accepts that the property has relatively recently installed double glazing and that the exterior pane that was cracked has been replaced. It also accepts that there is an electric central heating system with radiators in 4 of the 5 main rooms.
104. However, the council provided readings to show that the system was not heating the accommodation to the recommended temperatures – although it would clearly have been unrealistic to expect that any system would heat the property to 32 degrees. The tenants had a supplementary oil filled radiator in the living room. When the tribunal inspected the two thermometers in the living room showed less than 16°C – and whilst the heating had apparently not been switched on for very long, the external temperature was significantly in excess of -1°C.
105. Mr Stapleton provided a report by a plumbing and heating engineer, but it was very lacking in its content. It provided no detail of what testing had been done, what the ‘satisfactory’ temperature the radiators reached was or what temperature was achieved in the rooms. The tenant reported that the engineer had said that it was a question of either heating or hot water. However, the tribunal has had little regard to this as hearsay.
106. On balance the tribunal is persuaded by the evidence of the council and finds that there is a Category 1 Hazard of Excess Cold.
107. In respect of the Description of Works Required for this hazard in Schedule 2 the council states:

Electric Heating System:

Overhaul the existing electric central heating and ensure it is capable of maintaining the following internal temperatures when the external temperature is -1°C:

Living room 21 °C

Bathroom 22 °C

Elsewhere 18 °C

Works may require servicing or upgrading of boiler, upgrading/ fitting larger or additional radiators to achieve the above internal

temperatures. Provide suitable documentation and written report/opinion of a suitably qualified or competent person to prove that the existing or intended system will achieve these requirements. Provide details/ calculations of boiler and radiator sizing with regard to the properties age, structure, size of rooms, u values of walls and windows, floors etc.

Remove and replace any radiators found to be defective and damaged by rust, for minor surface rust remove rust thoroughly and treat affected areas/ prime radiator and repaint with suitable radiator paint to manufacturer's instructions.

All works to comply with the latest edition of the IEE Regulations and Part P of the current Building Regulations.

108. This appears to be a reasonable requirement and the tribunal confirms this in entirety. It varies the date for this to be completed by to **31 May 2023**. Clearly if Mr Stapleton can show that the heating is as efficient as he claims then this should not be difficult to comply with and the council will be able to revoke this part of the Improvement Notice fairly rapidly.
109. The tribunal does not accept that the decision on 8A Quebec Avenue Southend is helpful as the issues are not on all fours with the issues here.

Appeal against the council's costs of £605

110. Section 49 of the Housing Act 2004 gives the local housing authority the power to charge for serving an improvement notice, limited to the reasonable costs incurred in determining whether to serve the notice, identifying any action to be specified in the notice and serving the notice. Section 49(7) of the 2004 Act states that where a tribunal allows an appeal against the underlying notice it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of any charge under this section made in respect of the notice or order.
111. Although the works are now limited to 2 hazards from the original 6, that is due in the main to works having been carried out following service of the notice in August of last year. Given that the tribunal has upheld the notice (albeit varying the works required), we do not consider that the appeal has been allowed. In any event we consider that the charges are reasonable, taking into account the work done by Mrs Routledge and the failure of Mr Stapleton to respond at the initial stages. To the extent that the tribunal has any power in respect of those costs, they are confirmed

**Mary Hardman FRICS IRRV(Hons)
Regional Surveyor**

Appendix 1
Housing Act 2004
Schedule 1 PROCEDURE AND APPEALS RELATING TO
IMPROVEMENT NOTICES
Part 3 APPEALS RELATING TO IMPROVEMENT NOTICES

Appeal against improvement notice

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(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 subparagraph (1).

11

(1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—

(a) take the action concerned, or

(b) pay the whole or part of the cost of taking that action.

(2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

12

(1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.

(2) The courses of action are—

(a) making a prohibition order under section 20 or 21 of this Act;

(b) serving a hazard awareness notice under section 28 or 29 of this Act; and

(c) making a demolition order under section 265 of the Housing Act 1985 (c. 68).

13

(1) The relevant person may appeal to [the appropriate tribunal] against—

(a) a decision by the local housing authority to vary an improvement notice, or

(b) a decision by the authority to refuse to revoke or vary an improvement notice.

(2) In sub-paragraph (1) “the relevant person” means—

(a) in relation to a decision within paragraph (a) of that provision, the person on whom the notice was served;

(b) in relation to a decision within paragraph (b) of that provision, the person who applied for the revocation or variation.

14

(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

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(2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.

(3) A [The appropriate tribunal] 1 may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

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 were 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.

16

(1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 11.

(2) On the hearing of the appeal the tribunal may—

(a) vary the improvement notice so as to require the action to be taken by any owner mentioned in the notice of appeal in accordance with paragraph 11; or

(b) make such order as it considers appropriate with respect to the payment to be made by any such owner to the appellant or, where the action is taken by the local housing authority, to the authority.

(3) In the exercise of its powers under sub-paragraph (2), the tribunal must take into account, as between the appellant and any such owner—

(a) their relative interests in the premises concerned (considering both the nature of the interests and the rights and obligations arising under or by virtue of them);

(b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned; and

(c) the relative degree of benefit to be derived from the taking of the action concerned.

(4) Sub-paragraph (5) applies where, by virtue of the exercise of the tribunal's powers under sub-paragraph (2), a person other than the appellant is required to take the action specified in an improvement notice.

(5) So long as that other person remains an owner of the premises to which the notice relates, he is to be regarded for the purposes of this Part as the person on whom the notice was served (in place of any other person).

17

(1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 12.

(2) When deciding whether one of the courses of action mentioned in paragraph 12(2) is the best course of action in relation to a particular hazard,

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the tribunal must have regard to any guidance given to the local housing authority under section 9.

(3) Sub-paragraph (4) applies where—

- (a) an appeal under paragraph 10 is allowed against an improvement notice in respect of a particular hazard; and
- (b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 12(2) is the best course of action in relation to that hazard.
- (4) The tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned.

18

- (1) This paragraph applies to an appeal to [the appropriate tribunal] under paragraph 13.
- (2) Paragraph 15(2) applies to such an appeal as it applies to an appeal under paragraph 10.
- (3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.
- (4) If the appeal is against a decision of the authority to refuse to revoke an improvement notice, the tribunal may make an order revoking the notice as from a date specified in the order.

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.

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 [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 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.

Appendix 2

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).