



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

Case reference : **BIR/OOFK/HIN/2023/0054**

Property : **119 Old Mansfield Road
Derby
DE21 4SA**

Applicant : **Mr S Oliver**

Representatives : **None**

Respondent : **Derby City Council**

Representative : **Ms S Akhtar
Solicitor for Derby City Council and
Ms A Broster
Environmental Health Officer**

Type of application : **Application under paragraph 10(1) of Schedule
1 of the Housing Act 2004 to appeal against an
Improvement Notice**

Tribunal and members : **Mr G S Freckelton FRICS
Mr R Chumley-Roberts MCIEH. JP**

Venue : **The property was inspected on 17th September
2024 followed by a hearing at Derby County
Court**

Date of decision : **03 October 2024**

DECISION

Crown Copyright

BACKGROUND

1. This is an Application by Mr S Oliver (“the Applicant”) under the Housing Act 2004 (“the Act”) against an Improvement Notice (“the Notice”) served by Derby City Council (“the Respondent”) in respect of 119 Old Mansfield Road, Derby, DE21 4SA (“the Property”).
2. On 27th June 2023 the Respondent received a request from the tenant of the property alerting it to possible defects. The Respondent notified the Applicant that it intended to inspect on 5th July 2023 which it subsequently did. The Applicant did not attend that inspection.
3. On 20th July 2023 the Respondent served an Improvement Notice (Reference 012577) on the Applicant requiring works to be completed by 16th October 2023. This alerted the Applicant to the presence of various hazards at the property.
4. The Respondent carried out a further inspection on 17th October 2023 and noted some of the deficiencies detailed in the Improvement Notice had been dealt with. A further inspection was carried out on 14th November 2023 and it was noted that the defects to the garden still remained.
5. On 16th November 2023 the Respondent re-assessed the hazards at the property as noted in Improvement Notice (Reference 021577) and concluded that all the items referred to with the exception of ‘Falling between Levels’ in the garden and some ‘Electrical Hazards’ had been reduced to an acceptable level.
6. On 17th November 2023 the Respondent reassessed ‘Falling between Levels’ and on 24th November 2023 an Improvement Notice (Reference 022196) was served on the Applicant. This was accompanied by a Schedule of Deficiencies, a Statement of Reasons and a Schedule of the Remedial Action Required.
7. The Tribunal infers that there was no demand for the Recovery of Costs in respect of this second Improvement Notice. The Tribunal understands that there was a previous demand for recovery of costs in respect of Improvement Notice number 0212577 but these do not form part of this application.
8. The Respondent carried out further inspections of the property on 19th December 2023 and 1st March 2024.
9. On 14th December 2023, the First-tier Tribunal (Property Chamber) (“the Tribunal”) received an application from the Applicant dated 28th November 2023 appealing against the Improvement Notice number 022196 dated 24th November 2023.
10. Directions were issued by the Tribunal on 22nd January 2024 with further Directions being issued on 6th March 2024 and 18th April 2024, following which submissions were made by both parties.
11. For the avoidance of doubt the Tribunal confirms that this application and decision is only in respect of the Improvement Notice number 022196 served by the Respondent dated 24th November 2023. There has been no application against any earlier Improvement Notice or against any of the deficiencies noted in them. Therefore, the Tribunal has disregarded the extensive submissions made by the Respondent in respect of all works, except those referred to in the Improvement Notice dated 24th November 2023.

THE PROPERTY INSPECTION

12. The Tribunal inspected the property on 17th September 2024 by courtesy of the Tenant. The Applicant was not present. Ms Amy Broster from Derby City Council Environmental Health Department attended.
13. The property was found to comprise a detached house situated in a pleasant residential area. The Tribunal did not inspect the property internally but limited its inspection to the rear garden, this being the subject of the application.
14. The property has a small rear garden which is stepped upwards from the rear of the house towards the rear boundary.
15. Immediately to the rear of the house is a slabbed patio area. This is restricted in depth to the width of a pathway immediately to the rear of the conservatory. A flight of seven timber steps to the left side of the patio leads first to a timber decked area and this in turn leads to the main lawned area to the right of the steps. This lawned area runs the majority of the entire width of the garden and is slightly in excess of 1 metre above the patio.
16. At the time of the Tribunal's inspection the whole length of this wall was faced with timber boarding similar to scaffolding planks. It is assumed that the areas of brick retaining wall have been clad in this boarding and that it replaces the smaller area of the rotten timber retaining wall between the two brick walls shown in various photographs. The general appearance is considerably better and much improved from earlier photographs provided to the Tribunal by the Respondent.
17. To the left of the decked area at the top of the steps is what the Tribunal assumes was originally intended to be a raised garden bed. There is a brick wall rising from the patio to the level at the top of the steps which would form a retaining wall. At the time of the Tribunal's inspection this was partly filled with bricks and rubble and only the tenants garden furniture prevented it being accessed by anyone from the upper decked area.
18. To the rear of the lawned area, there is a further lower level retaining wall providing a further narrow raised area up to the rear boundary. There are large mature conifers planted along the line of the rear boundary and lower branches appear to have been cut away to prevent them from encroaching too much onto the garden area and although they undoubtedly provide privacy from properties at the rear they do prevent a lot of light to the garden area.

THE APPLICABLE LAW

19. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards. The Housing Health and Safety Rating System ('HHSRS') replaces the system imposed by the Housing Act 1985, which was based upon the concept of unfitness. The HHSRS places the emphasis on the risk to health and safety by identifying specified housing related hazards and the assessment of their seriousness by reference to (1) the likelihood over the period of 12 months of an occurrence that could result in harm to the occupier and (2) the range of harms that could result from such an occurrence. These two factors are combined in a prescribed formula to give a numerical score for each hazard. The range of numerical scores are banded into ten hazard bands, with band A denoting the most dangerous hazards and Band J the least dangerous. Hazards in Bands A to C (which cover numerical scores of 1000 or more) are classified as

'category 1 hazards' and those in bands D to J (which cover numerical scores of less than 1000) are classified as 'category 2 hazards.

20. Where the application of the HHSRS identifies a category 1 hazard the local housing authority has a duty under section 5 (1) of the Act to take appropriate enforcement action. Section 5 (2) sets out the courses of action (which include the serving of an enforcement notice) which may constitute appropriate enforcement action.
21. Where the application of the HHSRS identifies a category 2 hazard the local housing authority has a power under section 7(1) of the Act to take enforcement action. The serving of an Improvement Notice is one of the types of enforcement action which may be taken.
22. Section 9 of the Act requires the local authority to have regard to any guidance for the time being given by the appropriate national authority about the exercise of their functions in connection with the HHSRS. In February 2006 the Secretary of State issued 'Housing Health and Safety Rating System – Operating Guidance' ('Operating Guidance') which deals with the assessment and scoring of HHSRS hazards. At the same time the Secretary of State also issued 'Housing Health and Safety Rating System – Enforcement Guidance' ('Enforcement Guidance') which is intended to assist local housing authorities in deciding which is the most appropriate course of action under section 5 of the Act and how they should exercise their discretionary Powers under section 7 of the Act.
23. The person upon whom an Improvement Notice is served may appeal to a First-tier Tribunal and (Property Chamber), who may by order confirm, quash or vary the Improvement Notice under Part 3 of Schedule 1 to the Act.

THE IMPROVEMENT NOTICE

24. The item identified in the Notice as being outstanding on 24th November 2023 was:

Falling between levels etc.

The deficiencies giving rise to the hazard:

- 1) *The raised grassed area in the garden (which spans several metres) is 1m above the level of the adjacent patio but has no edge protection. This increases the likelihood of an accident involving a fall from this area.*
- 2) *The walkway between the brick steps and the decking to the left side of the garden has collapsed. This means that there is an unguarded drop of over 0.5m from the top of the brick steps to the ground below.*
- 3) *There is no edge protection to the decking steps in the garden. The wooden steps are also slippery underfoot. This increases the likelihood of a fall off the edge of the steps onto the adjacent ground.*

25. The Remedial action required to be taken was:

- 1) *Provide edge protection (e.g. railings or similar) of suitable design and construction, to all unguarded edges to raised areas and steps in the rear garden. Properly fix into position. The guarding should be at least 1,100mm high and be designed and constructed so as to discourage children climbing and strong enough to support the weight of people leaning against it. There should be no openings to the guarding which would allow a 100mm sphere to pass through.*

*The date on which the remedial action is to be started is 1st January 2024.
The remedial action is to be completed by 31st January 2024.*

26. There were no alternative Remedial actions proposed.

27. The Improvement Notice included the following specification:

When arranging for the works in this specification to be carried out you will - if you are the building owner or managing agent - be a client with legal duties under 'The Construction (Design and Management) Regulations 2015'. Please refer to the Health and Safety Executive website and leaflet. www.hse.gov.uk/pubns/indg411.htm

Cart away all debris and surplus material, as arising, and on completion of the works leave the premises in a clean and tidy condition.

Properly make good all work (including internal decorative work) disturbed during the carrying out of the specified works.

Carry out all works in a good and proper manner using good quality suitable materials to match existing and in accordance with relevant British Standards/Codes of Practice where applicable.

All work shall be executed in the most careful and efficient manner to cause as little inconvenience as possible to the occupier and to adjoining occupiers and to the public. All necessary precautions must be taken to prevent damage to the existing structure and to the decorations both internally and externally. Temporary screens, temporary roofs and dust sheets shall be provided where necessary to protect the existing structure, decorations, furniture and effects.

Unless otherwise specified, materials used in the carrying out of the works shall be materials which have been tested, licensed, certified or approved by an independent third party (e.g. the British Board of Agrément, and the British Standards Institution).

Unless otherwise specified, the practice followed in the carrying out of the works shall be in accordance with the latest relevant Codes of Practice issued by an independent third party (e.g. The British Standards Institution). And, all work shall be carried out by or under the close supervision of experienced trades' people, skilled in the particular type of work.

Where appropriate, the necessary applications must be made for Building Regulation and Planning approval, and nothing in this notice shall be taken as implying such approval.

Where appropriate, works to comply with the requirements of the water company/electricity company/gas company.

Any hazardous materials, toxic substances, or solvents used shall be properly transported and stored and contained and labelled in accordance with the requirements of current relevant British Standards and Codes of Practice and regulations.

References to 'left' and 'right' and 'front' and 'rear' in this schedule are to be read as viewing from the road or house frontage facing the building.

Further information and advice regarding this schedule may be obtained from: Housing Standards, Derby City Council, Corporation Street, Derby, DE1 2FS

Note: Alternative works to those specified will be considered so long as they achieve the same objective. Alternative proposals shall be submitted to Housing Standards for approval before works commence.

Your attention is drawn to the problems of working in occupied property. Allowance must be made to maintain services and security. Due regard must be given to the tenant's welfare.

All works shall be carried out to the satisfaction of the supervising officer.

28. The Improvement Notice included a Statement of Reasons as follows:

Following an inspection of the premises on 14 November 2023, the Council is satisfied that a Category 1 hazard exists and that action ought to be taken in respect of that hazard.

Where a Category 1 hazard has been identified the Council is under a duty to take formal action under section 5 of the Housing Act 2004.

*Accordingly an **Improvement Notice** dated 24 November 2023 has been served. The hazards and the deficiencies giving rise to those hazards are described in the Notice.*

The Notice requires remedial works to reduce the risk to the health and safety of any occupants or their regular visitors to an acceptable level within a reasonable and defined time period.

The reasons why the Council has decided to take the relevant action rather than any other kind (or kinds) of enforcement action under the provisions of sections 5(2) or 7(2) of the Act are as follows:

*An **Improvement Notice** has been served because the hazard identified is significant and it poses a serious risk to the health and safety of occupiers of the premises and to their regular visitors. The service of a Hazard Awareness Notice, a suspended Improvement Notice or a Suspended Prohibition Order is not considered to be a strong enough course of action. Conversely both the use of Emergency Remedial Action or an Emergency Prohibition Order is considered disproportionate in that there is no imminent risk of serious harm. Remedial action is practicable and can be undertaken at reasonable expense; therefore a Prohibition Order is not considered an appropriate course of action. Demolition and Clearance are disproportionate responses to the hazards found.*

THE APPLICANT'S SUBMISSIONS

29. Following the inspection a hearing was held at Derby County Court. This was attended by Ms. S Akhtar and Ms. A Broster on behalf of the Respondent. The Applicant did not attend.

30. The Applicant's submissions were contained in the application to the Tribunal. These are summarised as follows:

- 1) The Applicant was a private landlord and that he felt the Improvement Notice relating to the rear garden of the property was disproportionate.
- 2) The property is let to a Council tenant.
- 3) There has been no application for any planning permission or Building Regulations and the property was therefore 'as built'.
- 4) The tenants have caused many issues throughout the entire tenancy.
- 5) The property was a recently refurbished four-bedroom detached house in a good residential area. However, following an inspection by an Environmental Health Officer an exhaustive list of remedial actions was submitted as being required in an Improvement Notice. However, the notice was never formally served on the Applicant.
- 6) Following the Improvement Notice the majority of the items referred to were completed although some were not required and others had occurred as a direct result of the tenant's negligence.
- 7) Although previous Improvement Notices had been served the current Notice relates to the external rear garden of the property. There is a raised area which is the same as in adjoining properties in the row where there is decking and steps up to the higher-level area.
- 8) The Applicant had experienced difficulties in having works carried out due to the obstructive behaviour of the tenants. In particular damage had been caused to an electrical isolation box which the Applicant believed was deliberately caused by the tenants. As such the Applicant considered that the Environmental Health Officer had been deliberately obstructive and exerted considerable pressure due to the history of the case which appeared, in the opinion of the Applicant, to be a deliberate act of victimisation.
- 9) That the tenancy had now ended with rent being owed and works have been carried out to the property and in particular to the rear garden to restore it to its original layout and ensure that steps etc. are safe.
- 10) As the rear garden, and the differing levels had not been altered but were, 'as built', the Applicant did not consider the Improvement Notice was correctly served.

31. The Applicant submitted photographs of the property prior to its occupation and further photographs showing the condition of the property with the tenants living in it.

THE RESPONDENT'S SUBMISSIONS

32. The Respondent's submissions were extensive and included a considerable amount of information relating to the previous Improvement Notice which is not the subject of this application.

33. Briefly the Respondent's relevant written submissions and at the hearing are:

- 1) It is not accepted by the Respondent that the decision to serve an Improvement Notice was unreasonable. In the opinion of the Respondent the service of the Improvement Notice was valid and justified as it was clear from the Applicant's own evidence that the outstanding works which were required were intended to be completed at a future date.
- 2) In particular these works included:
 - the decking will be jet washed and maintained
 - the rotten wooden planks will be replaced which will make safe the unguarded drop as described in the Notice.

- 3) In the submission of the Respondent this was not an adequate measure to remove the high risk of the 1m high unguarded edge of the decking steps and collapsed decking walkway.
 - 4) As a landlord, the Applicant had a duty to ensure that the property was safe and properly maintained.
34. The Respondent submitted that during the inspection of 14th November 2023 photographs were taken of the garden. These were included in the Respondent's bundle.
35. During the inspection carried out on 1st March 2024 the photographs (which were also included in the Respondent's bundle) confirmed that the works required had not been completed and that the conditions in the garden had deteriorated. In particular the right-hand section of the retaining wall consisting of wooden posts was defective and no longer retaining any of the garden. As such, the gap posed a further danger.
36. The Respondent also submitted that the inventory of photographs provided by the letting agents prior to the occupation of the house confirmed the absence of any edge protection to the elevated lawn.
37. The Respondent's submissions included a witness statement from Amy Broster, the Environmental Health Officer employed by Derby City Council which confirmed in considerable detail the various inspections, re-inspections and actions taken, briefly as described above.
38. In particular the witness statement from Amy Broster detailed the hazard assessment undertaken in respect of the rear garden:
- 1) On 16th November 2023 a re-assessment of the hazards listed in the Improvement Notice 021577 was undertaken and all hazards with the exception of falling between levels and electrical hazards were determined to have been reduced to an acceptable level.
 - 2) It was therefore determined to revoke Improvement Notice 021577.
 - 3) On 17th November 2023, a re-assessment of the falling between levels hazard was undertaken in accordance with the HHSRS Operating Guidance. After reviewing the deficiencies within the property in combination with the determined likelihood and harm outcome of the hazard, the risk was determined to be significantly greater than the average for properties of this age and type.
 - 4) As defined within the HHSRS Operating Guidance (B7) an inspection was a snapshot of the dwelling and its condition at that particular time. Clearly the weather on the particular day and the days prior to the inspection, and the time of year have a dramatic effect on the conditions in the dwelling. It was submitted that the assessment of the likelihood judging whether there is likely to be an occurrence during the 12 months following the inspection (B8) is relevant.
 - 5) The assessment was undertaken in accordance with chapter 3 of the Operating Guidance to calculate the hazard bands. The assessment for this hazard identified the following deficiencies relating to the hazard:
The raised walkway between the brick steps and the decking to the left of the garden has collapsed. This has created a void between the edge of the top step and the edge of the decking, into which a person could fall. The main decking steps have no edge protection to the left side and are slippery underfoot. Additionally, there is no edge protection to the raised grassed area of the garden (1040 mm high).

- 6) The HHSRS Operating Guidance (paragraph 22.01) states the 'Falling between Levels' category covers falls from one level to another, inside or outside a dwelling, where the difference in levels more than 300mm. It includes falls from balconies and over garden retaining walls.
 - 7) The HHSRS Operating Guidance (paragraph 22.12) states that the distance of a 'balcony' above the adjacent ground will affect the severity of the health outcome of a fall as will the nature of the ground. The greater the distance and the less forgiving the ground finish, the more severe the health outcome is likely to be.
 - 8) The guidance further states (paragraph 22.18) that guarding (e.g. balustrade) should be provided to 'balconies' to prevent falls. This should be at least 1,100mm high and designed and constructed so as to discourage children climbing and strong enough to support the weight of people leaning against it. There should be no openings to the guarding which would allow a 100mm sphere to pass through.
 - 9) The elevated lawned area in the garden and the elevated decking have no edge protection at all. The unprotected edges span for several metres across the width of the garden. Consequently, there is nothing to prevent a fall from the elevated areas to the lower-level patio surface. A child in the vulnerable group (aged under five years) playing on the garden would be unlikely to have any real awareness of the unprotected garden edge. Those children with any awareness of the edge would likely be distracted whilst playing on the garden and would not be constantly aware of the edge. A child is also more likely to be running and jumping in this area, which means there is less chance of them stopping themselves from falling, even where an awareness of the edge exists. The likelihood of a fall from the elevated area is therefore increased.
 - 10) The lawn sits over 1m above the patio, which is a hard unforgiving surface. A fall from the lawn would therefore be likely to have increased serious outcomes.
 - 11) Having considered all of the above the assessed likelihood was 1 in 10. The lack of any edge protection significantly increases the likelihood of a fall above the national average. The harm outcomes for this hazard were slightly increased for class 111 serious harm outcomes to 31.6% which includes skull fracture and concussion.
 - 12) For this hazard, a score of 1016, Band C-, and therefore a Category 1 hazard was assessed. The hazard scoring assessment was included at page 100 of Applicant's bundle 1.
39. The Respondent, in the witness statement then submitted that after undertaking the assessment it had consideration to its enforcement policy and the HHSRS Enforcement Guidance. Consideration was also given to the previous history of the property and actions taken by the Applicant. In particular:
- 1) Section 5 of the Act places a duty on the Local Housing Authority to take the appropriate enforcement action in relation to Category 1 hazards existing on the residential premises. Section 5(2)(a) of the Act states that one of the appropriate enforcement actions is serving an Improvement Notice.
 - 2) Section 7 of the Act provides the Local Housing Authority the power to take particular types of enforcement action in cases where they consider that a Category 2 hazard exists. This may be either formal or informal action. The HHSRS Enforcement Guidance states at paragraph 2.2 that:
'The decision to take enforcement action will require a judgement as to the necessity for intervention, given the authority's priorities and wider renewal policies and, where appropriate, their knowledge of a landlord and his or her compliance history.'
 - 3) The Respondent acknowledged that it may have been appropriate to wait before serving the notice, however paragraph of the Enforcement Guidance 2.19 states:

‘There may be circumstances in which authorities do not wish to delay in beginning formal enforcement action. This is likely to arise where the authority are concerned that the owner will not cooperate’.

- 4) The enforcement policy of Derby City Council (paragraph 7.3(b)) states:
‘In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things the past and current performance of any business and/or individual concerned’.
 - 5) A full assessment of the most appropriate course of action was undertaken. This took into account the property and landlord history, hazards present in the property and the risks posed by them, strategic considerations, circumstances/vulnerability and views of the current occupiers and their regular visitors and the circumstances of the landlord.
 - 6) It was considered that informal action would not be sufficient to ensure that satisfactory remediation would be undertaken. It was therefore determined that the most appropriate course of action in relation to disrepair found at the property on 14th November 2023 was formal enforcement by way of an Improvement Notice.
 - 7) The hazard of Falling Between Levels was identified as a category 1 hazard. In the opinion of the Respondent this posed an unacceptable risk to any occupants, visitors and potential future occupants of the dwelling and negatively impacted on their well-being.
 - 8) Consideration was given to the seriousness of the hazard identified and the effect that this was having on the occupants. In combination, these factors led to the decision that a Hazard Awareness Notice would not be an appropriate form of action in this case.
 - 9) In accordance with Section 8 of the Act and paragraph 4.7 of the HHSRS Enforcement Guidance, a statement of reasons for the decision to take enforcement action was completed and attached to the improvement notice served on the Applicant.
 - 10) The schedules of works were worded so that it was clear to the Applicant what was requested and so that contractors could be instructed accordingly. The schedules did not require the Applicant to commence the works until 28 days after the notice was served. A reasonable time period within which the works were required to be completed was also stated in the Notice. Copies of the Improvement Notice and associated schedules were included within the Respondent’s written submissions.
40. Based on the above the Respondent was satisfied that the most satisfactory course of action under the Housing Act 2004 was the service of an Improvement Notice requiring works be carried out. The Respondent considered that service of the notice was proportionate having regard to the risk.
41. The Improvement Notice served was accompanied by a covering letter a copy of which was also included within the Respondent’s written submissions. Copies of the Improvement Notice were sent to the occupier of the property and to the mortgagee as well as to the managing agents.
42. The Improvement Notice served on the Applicant was sent by first class post via Royal Mail as well as being sent by email. A copy of the Certificate of Service was provided within the Respondent’s written submissions.
43. On 1st March 2024 the Respondent carried out a re-inspection of the property. At that time there was still no walk way between the top of the brick steps and the decking to the left of the garden. There was also no edge protection to the left side of the main decking steps and no edge protection to the elevated lawned area of the garden.

44. In the opinion of the Respondent the conditions in the garden had deteriorated in that the right-hand section of the retaining wall which was made up of wooden posts to the front of the elevated lawned area was completely defective and no longer retaining any of the garden. This created a gap between the earth under the lawn and the remainder of the wall in which a child could become trapped following a fall off the edge of the lawn. The Applicant was not present at the inspection and at that time no remedial action had been taken to address the hazard.
45. The Respondent then proceeded to deal with the various grounds of appeal put forward by the Applicant. The Tribunal does not intend to repeat the grounds of appeal previously detailed in this decision but in summary the Respondent submits:
- 1) The property is not a Council House but is rented out by the Applicant within the private rented sector.
 - 2) The schedule of works associated with Improvement Notice 022196 was used following an assessment of the hazard under the HHSRS.
 - 3) There is no reference to Building Regulations within the schedule of works.
 - 4) The property is a large family house and there is a significant possibility that any family renting the property will have children in the most vulnerable age group for '*Falling between Levels*' or have visitors with children in the most vulnerable age group.
 - 5) The Applicant is responsible for ensuring that the Category 1 hazard of '*Falling between Levels*' is removed. In the opinion of the Respondent, jet washing the decking and replacing the rotten sections of the retaining wall will not be adequate to remove the hazard as this goes nowhere towards reducing the risk posed by the 1.0m unguarded edge of the raised lawned area, unguarded edge of the decking steps and collapsed decking walkway.
 - 6) In the opinion of the Respondent, it was believed that the deficiencies present in the garden at the time of the inspection in November 2023 were also present at the commencement of the tenancy in March 2023. This was evidenced by the absence of any edge protection to the elevated lawn area shown in the letting agent's inventory of 21st March 2023.
 - 7) That the Improvement Notice 021577 was not the subject of this appeal and the decision to revoke it was made following a re-assessment of the hazards present at the time of the inspection on 14th November 2023.
 - 8) That the submission of the Applicant not to rent the property out again to a council tenant was not relevant as the principle underlying the HHSRS was that any residential premises should provide a safe and healthy environment for any potential occupier or visitor. This does not discriminate between different types of occupiers.

DETERMINATION

46. The Tribunal accepts that the Respondent initially contacted the Applicant on 30th June 2023 by both telephone and letter notifying him of the intention to carry out an inspection of the property.
47. The Tribunal accepts that an initial inspection was carried out on 5th July 2023 and that on 20th July 2023 the Respondent served on the Applicant, an Improvement Notice 021577 in respect of various deficiencies noted at the property.
48. The Tribunal also accepts that the Improvement Notice 021577 was subsequently revoked on 16th November 2023 and that a further Improvement Notice 022196 was served on the

Respondent on 24th November 2023. It is this Improvement Notice which is the subject of this application and determination.

49. The Tribunal acknowledges that there is considerable animosity between the parties in this case. Whereas the Tribunal does not accept that the Applicant has been 'victimised', it does have some sympathy with the Applicant who is seeking to let out a property which he considers has not been materially altered (at least as far as the garden is concerned), since it was built.
50. Therefore, if it was acceptable and compliant with Building Regulations when built, the Tribunal understands why the Applicant resists the Improvement Notice which will result in alterations to the rear garden which will not be in keeping with other properties in the immediate vicinity.
51. The Tribunal also accepts that if the property was purchased as a family house for occupation, the local authority would have no jurisdiction to impose the alterations as detailed in the Improvement Notice.
52. The Tribunal is disappointed that the Applicant did not consider it appropriate to attend either the inspection or hearing or be represented at either, and can only observe that had he, or his agent attended any of the property inspections carried out by the Respondent, it may have assisted his understanding of the matters under discussion.
53. The Tribunal agrees with the Respondent that the service of an Improvement Notice is the appropriate course of action in this case.
54. However, the Tribunal does not accept that as described by the Respondent, the Hazard of "*Falling between Levels*" is a Category 1 hazard.
55. The Tribunal has carried out its own assessment and determines that the hazard is a Band E - Category 2 hazard.
56. The Tribunal considered the submissions of both parties and agrees, in principle with the Respondent that additional provisions are required to prevent the possibility of falls from the higher lawned area onto the patio which is a hard, unforgiving surface. At the same time, provisions need to be made to prevent falls into the area to the left of the decking at the top of the steps which is only prevented at present by the tenant's garden furniture. However, this is not a satisfactory long-term solution.
57. The Tribunal confirmed the presence of the hazard as set out on page 5 of the Improvement Notice but determined as noted in paragraph 55 above, it considers that this is a Category 2 hazard and not a Category 1 hazard. The Tribunal considers that the remedial action contained in paragraph 1 is overly prescriptive and affords the Applicant no opportunity to explore a range of solutions with the advice of contractors.
58. As such, the Tribunal determines that in respect of Schedule 1(b) to the Notice, paragraph 1 be removed from the Improvement Notice and be amended to read:

In respect of the raised bed area immediately to the left of the decking area at the top of the steps:

- a) *Provide a suitable locking gate at the bottom of the steps to prevent access by children to the steps leading up to the raised garden area without adult supervision or;*
- b) *Fill the bed with soil or other suitable planting material and plant with shrubs. This will deter anyone from going onto the area by accident and risk falling off the wall onto the patio or;*
- c) *Provide suitable edge protection (e.g. railings, balustrade or similar) of suitable design and construction to the unguarded area running from the left-hand side top of the steps to the left-hand side boundary fence. This should be securely fixed in position and be at least 1,100mm high and designed and constructed so as to discourage children climbing and strong enough to support the weight of people leaning against it. There should be no openings to the fence which would allow a 100mm sphere to pass through.*

In respect of the wall running the width of the garden, clad in boarding to the right of the steps and retaining the raised grassed area:

- d) *Provide a suitable locking gate at the bottom of the steps to prevent access by children to the steps leading up to the raised garden area without adult supervision; or*
- e) *Provide suitable edge protection (e.g. railings, balustrade or similar) of suitable design and construction to the unguarded area running from the right-hand side top of the steps to the right-hand side boundary fence. This should be securely fixed in position and be at least 1,100mm high and designed and constructed so as to discourage children climbing and strong enough to support the weight of people leaning against it. There should be no openings to the fence which would allow a 100mm sphere to pass through.*

Any works agreement must be obtained from the Respondent as to the type, design and fixing of any gate or edge protection (railing, balustrade or similar) proposed to be fitted.

The work shall commence no later than 1st December 2024 and be completed no later than 31st December 2024.

59. The Tribunal is of the opinion that this time scale will give the Applicant ample opportunity to agree the work with the Respondent and complete it satisfactorily.

APPEAL

60. Any appeal against this Decision must be made to the Upper Tribunal and (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal and for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Graham Freckelton FRICS
Chairman
First-Tier Tribunal and Property Chamber (Residential Property)