



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

**Case reference** : **BIR/OOCN/HIN/2024/0016**

**Property** : **8 Narrow Lane  
Halesowen  
B62 9ND**

**Applicant** : **Anita Watton**

**Representative** : **None**

**Respondent** : **Dudley Metropolitan Borough Council**

**Representative** : **Ian Bowen  
Senior Environmental Health Officer and  
Sian Murphy  
Private Sector Housing Manager**

**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 A McMurdo MSc, MCIEH**

**Venue** : **The property was inspected on 28<sup>th</sup> November  
2024. There was no hearing and the matter  
was dealt with by a paper determination**

**Date of decision** : **12<sup>th</sup> December 2024**

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**DECISION**

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## **BACKGROUND**

1. This is an Application by Anita Watton (“the Applicant”) under the Housing Act 2004 (“the Act”) against an Improvement Notice (“the Notice”) served by Dudley Metropolitan Borough Council (“the Respondent”) in respect of 8 Narrow Lane, Halesowen, B62 9ND (“the Property”).
2. On 18<sup>th</sup> April 2023 the tenant of the property contacted the Respondent with regard to the Applicant not carrying out repairs. An initial triage pack was sent to the tenant on the same day advising the tenant to place the Applicant on 21 days’ notice of the repairs.
3. On 25<sup>th</sup> August 2023 the tenant advised the Respondent that the repairs had not been completed.
4. On 21<sup>st</sup> September 2023 the Respondent carried out a land registry check. This was completed on 22<sup>nd</sup> September 2023 and confirmed that the Applicant was the owner of the property.
5. A message was left on the Applicant’s answerphone on 27<sup>th</sup> September 2023 confirming that the Respondent intended to carry out an inspection on 28<sup>th</sup> September 2024. This inspection was carried out.
6. A further inspection was carried out by the Respondent and on 10<sup>th</sup> November 2023 a Hazard Awareness Notice was sent to the Applicant.
7. On 2<sup>nd</sup> December 2023, the Applicant sent an email to the Respondent confirming that she was trying to liaise with the tenant and a contractor to carry out works to the heating system and electrics.
8. On 7<sup>th</sup> December 2023 the Respondent spoke to the Applicant who confirmed she had asked her agent to liaise with the tenant and contractor. Subsequently an email was sent by the Applicant to the Respondent on 11<sup>th</sup> December 2023 confirming that a plumber had attended and recommended a new boiler be installed.
9. On 21<sup>st</sup> December 2023 the Applicant advised the Respondent that she had received a quotation but could not afford the cost of the work. On 22<sup>nd</sup> December the Respondent spoke to the boiler engineer who the Applicant had engaged. During this telephone call the engineer confirmed that the boiler needed to be replaced but that he had no availability until January 2024.
10. On 11<sup>th</sup> January 2023 the Applicant advised that she would proceed with the work to replace the boiler. Subsequently, a new boiler was installed on 3<sup>rd</sup> March 2024 and work carried out to unblock heating pipework but not all the work identified had been completed.
11. On 13<sup>th</sup> March 2024 the Applicant advised the Respondent that the tenant was not allowing access to her electrician and on 22<sup>nd</sup> March 2024, the Respondent emailed the Applicant advising that works should be completed in 28 days and that a further inspection would be arranged. This was arranged for 24<sup>th</sup> April 2024.
12. The further inspection was carried out on 24<sup>th</sup> April 2024 by the Respondent and category 1 and category 2 hazards were determined to exist at the property.

13. An Improvement Notice dated 29<sup>th</sup> May 2024 was posted by First Class Post on 31<sup>st</sup> May 2024 and following a request from the Applicant, a further copy was sent by email on 13<sup>th</sup> June 2024.
14. On 29<sup>th</sup> May 2024, the First-tier Tribunal (Property Chamber) (“the Tribunal”) received an application from the Applicant appealing against the Notice dated 29<sup>th</sup> May 2024 and the demand for payment in the sum of £425.00.
15. Directions were issued by the Tribunal and on 5<sup>th</sup> July 2024 following which submissions were made by both parties.

### **THE PROPERTY INSPECTION**

16. The Tribunal inspected the property on 28<sup>th</sup> November 2024 by courtesy of the tenant. The inspection was attended by the Applicant, together with Mr Ian Bowen and Ms Sian Murphy from Dudley Metropolitan Borough Council.
17. The property was found to comprise a semi-detached house of rendered brick construction surmounted by a predominantly pitched tiled roof with a flat felt roof to the rear ground floor kitchen extension. It is located in an area of predominantly similar type residential properties.
18. The accommodation comprises of an entrance hall with stairs off to the first floor. A door from the hallway leads to the lounge and this in turn leads to the dining room. An open archway from the dining room leads to the rear fitted kitchen which is a single storey extension.
19. On the first floor, the landing leads to two double bedrooms, one single bedroom and bathroom being fitted with a three-piece sanitary suite. The gas fired combination boiler is located in a cupboard in the bathroom. The property has UPVC double glazing although the front door is of timber construction with a small single glazed pane.
20. Outside there are gardens to the front and rear. The front garden is lawned with a car standing area. The rear garden is also lawned with a slabbed patio and large concrete shed base having a smaller shed built on it.

### **THE APPLICABLE LAW**

21. 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’.

22. 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.
23. 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.
24. 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.
25. 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**

26. The items identified in the Notice dated 29<sup>th</sup> May 2024 were:

### Category One Hazards

- 1) Excess Cold
- 2) Electrical Hazards
- 3) Fire Hazards
- 4) Falls on the Level

### Deficiencies Resulting in the Category One Hazards:

- 1) There is an unsatisfactory Electrical Report.
- 2) There is no insulation in the loft space.
- 3) The ground floor entrance door is ill fitting.
- 4) The gas boiler is leaking water leading to a loss of pressure.
- 5) There is a concrete edging upstand in the rear garden and there are loose bricks around a concrete slab.

### Category Two Hazards

- 1) Damp and Mould.
- 2) Entry by Intruders.
- 3) Falls on Stairs.
- 4) Falls between levels.
- 5) Carbon monoxide.
- 6) Personal Hygiene, Sanitation and Drainage.

## Deficiencies Resulting in Category Two Hazards

- 1) The entrance door is ill fitting allowing water to penetrate into the property during heavy rainfall.
- 2) The guttering to the main house above the first-floor rear right room is bowed and a water leak to the kitchen ceiling has been reported.
- 3) There is no handrail to the winders at the top of the stairs and the existing handrail to the right of the main flight of stairs cannot be adequately grasped to allow support for anyone using it.
- 4) The steps outside the front and rear entrance doors have an uneven riser height and do not have a handrail.
- 5) The window openings in the first-floor rear right room and first-floor front right room are below 1100mm and no restricting device is fitted to the opening lights.
- 6) The connection of the WC waste water pipe has an inadequate gradient/fall to allow the effective flushing of the WC. The waste pipe rises above the waste connection to the WC pan.
- 7) The wooden side gate entrance to the rear garden cannot be effectively closed and secured shut.
- 8) There is an open fireplace in the ground floor rear room and no CO monitor is present. The flue is also reported to cause smoke to enter the neighbouring property.
- 9) There is damp affected plaster in the understairs cupboard adjacent to the gas meter and electric consumer unit.

Briefly the specification of works to be carried out was:

- 1) All defective items identified in the Electrical Installation Condition Report dated 8<sup>th</sup> September 2023 as requiring further investigation without delay and items where improvement is recommended are to be repaired. Provide and install a new consumer unit in accordance with the current edition of IEE regulations. All works to be carried out by a competent electrical engineer registered with an approved Government accreditation scheme.
- 2) Engage a specialist damp proofing contractor or building surveyor to carry out a detailed damp survey of the premises and specifically the left external wall to the ground floor under stairs meter cupboard area. Carry out all such works as may be required and leave the structure free from damp.
- 3) Provide and properly fix a handrail to the winders to the stairs and leave sound and secure. The handrail must in part cross the window to the stairs area and form a protective barrier to the glazed area.
- 4) Thoroughly overhaul the front entrance door and ensure that it is watertight, close-fitting and capable of being opened and closed effectively and adequately locked shut. Alternatively replace the door with a suitable new external door. Renew all missing or defective door furniture as necessary.
- 5) Take up and renew or alter as necessary the steps outside the front and rear entrance doors to ensure that the steps have even treads and risers with a minimum width of 1000mm and provide a suitable handrail and barrier as necessary in compliance with Building Regulations.
- 6) Provide and fix a suitable restricting device to the window opening lights to the windows in the first-floor rear right room and first-floor front right room to restrict the opening to 100 mm. The restricting device must be capable of being removed by an adult in an emergency.

- 7) Take out the WC pan in the first-floor bathroom and carry out all work necessary to ensure that the WC flushes effectively and that the connection to the drainage allows waste to flush adequately and enter the drainage system.
- 8) Carry out all repairs necessary to the wooden side gate entrance to the rear garden to the left of the property. Provide new furniture and fittings to allow the gate to be effectively secured and replace all rotten and damaged timber as necessary. Upon completion ensure that the gate can be effectively opened and closed and securely locked.
- 9) Carry out an inspection of the flue and suitably test it to ensure that the smoke and fumes are satisfactorily removed from the property by the flue. Provide and fix a carbon monoxide detector in ground floor rear room. Alternatively, the open fireplace may be taken out of use by removing the fire basket and constructing a suitable plasterboard stud partition within the fireplace opening.
- 10) Provide and install a minimum 270mm of insulation in the loft space to the main house.
- 11) Overhaul/repair/replace the bowed rainwater guttering serving the rear elevation and roof above the first-floor rear right room. Leave secure, watertight and self-draining on completion.
- 12) Carry out all work necessary to the boiler to repair the water leak to ensure that there is no pressure loss. Leave the boiler in a sound and safe working condition.
- 13) Remove the concrete edging upstand to the rear garden or remove it and reset it so that it is level with the surrounding area of the garden. Take up all loose brickwork from around the concrete slab to the rear garden and remove perished cement mortar and reset the brickwork in sound cement mortar and finish level with the surface of the concrete slab so that there is no tripping hazard.

## **THE APPLICANT'S SUBMISSIONS**

27. The Applicants submissions were contained in the application to the Tribunal and received on 5<sup>th</sup> July 2024 and in the further submissions dated 17<sup>th</sup> August 2024.

28. In summary, the Applicant submitted:

- 1) There is no merit in the Respondent serving the Improvement Notice as it is the Applicant's intention to sell the property with vacant possession.
- 2) That she had made every effort to comply with the Hazard Awareness Notice but her attempts had been hampered and delayed by the tenant not allowing access for the workmen. Rather than issuing an Improvement Notice the Respondent had the option to allow additional time for her to comply with the Hazard Awareness Notice.
- 3) Following the Hazard Awareness Notice a new boiler was fitted at a cost of £2,500.00. Before paying the invoice, she had obtained confirmation from the tenant that he was satisfied with the heating system. A leak was subsequently reported but there was difficulty with the tenant in obtaining access.
- 4) That the cost of the works to the electrical system following the EICR inspection was £524.00. Again, there were problems in obtaining access.
- 5) On 18<sup>th</sup> June 2024 she arranged to meet a tradesman at the property to look at the carpentry items. The carpenter did not understand why a handrail was required to the landing window or for boarding over the cast-iron fireplace.
- 6) On 27<sup>th</sup> June 2024, new window restrictors were ordered and on 12<sup>th</sup> July 2024 a new side gate was fitted.
- 7) Although the Improvement Notice stated there was no insulation to the loft there is in fact 75mm present. The Applicant had been advised that a government grant was

available to cover the cost of increasing the insulation to 270mm but in order to obtain the grant a copy of the tenant's Council Tax Bill and utility bill will be required. This was refused by the tenant so a grant would not be available. As such the cost of the work would be £2,450.00. At this point the Applicant felt that the tenant was being deliberately obstructive.

- 8) That she had tried to prioritise the category 1 hazards but as the tenant had been uncooperative in arranging appointments for the work to be carried out, she had only been able to achieve three of the necessary items.
- 9) That the assessment of hazards under HHSRS is based on the risk to the potential occupant who is most vulnerable to that hazard. However, as far as the Applicant is aware the current tenant is not in any way vulnerable. Many of the hazards referred to such as the steps to the front and back doors having an uneven riser height and no handrail or raised concrete up stands in the rear garden would not be significant to an able-bodied person who has lived without incident at the premises for the last five years.
- 10) That she could not sell the property with an Improvement Notice in Place.
- 11) That an application had been submitted to the First-tier Tribunal in respect of the proposed rental increase.

### **THE RESPONDENT'S SUBMISSIONS**

29. The sequence of events and details of the Improvement Notice are detailed in this decision and the Tribunal does not intend to repeat them here. However, the Respondent submitted various photographs in support of its submission that an Improvement Notice was the appropriate action and confirmed that section 1.01 of the HHSRS Operating Guidance provides guidance on the technical aspects of HHSRS assessment.
30. In particular the respondent submitted that the underlying principle of HHSRS is that:  
  
*'Any residential premises should provide a safe and healthy environment for any potential occupier or visitor'.*
31. In the submission of the Respondent, it had taken into account consideration of the guidance in carrying out the HHSRS assessment at the property. This was included in detail at pages 91–93 of bundle 1 and pages 1–4 in bundle 2 of its submissions. It also submitted the HHSRS Rating System Scores in respect of all the various items detailed in the Improvement Notice.
32. The Respondent submitted that it had served a Statement of Reasons on the Applicant at the same time as it had served the Improvement Notice. The Tribunal does not intend to reiterate them here except to say that a copy is included at pages 5–7 of bundle 3 of the Respondent's submissions.
33. The Statement of Reasons does however contain the following statement:  
  
*'The local authority are required to take appropriate action as there is a category 1 hazard at the property. Therefore, the decision is to serve an **Improvement Notice** which is considered to be the most effective and appropriate course of action for dealing with the category 1 and category 2 hazards identified in the premises as work can be completed at reasonable cost whilst the Tenant remains in occupation'.*

34. In response to the Applicants submissions the Respondent submitted:

- 1) The property can be sold if it is subject to an Improvement Notice.
- 2) The appeal in respect of the rental increase was not a matter for the Respondent.
- 3) The cost of the repair work required is such that the Respondent would not consider an alternative enforcement action as being suitable.
- 4) It is acknowledged that the Applicant has had issues in arranging for contractors to gain access due to the tenant's work.
- 5) In the opinion of the Respondent there are issues with the existing handrail in that it is difficult to grasp at the top of the straight flight of stairs and there is no handrail to the winders at the top of the staircase.
- 6) With regard to the proposed replacement of the consumer unit there was some disagreement between the parties but the NICEIC consider that if there is no sign of thermal damage it would be a matter for the landlord to take advice from the electrician who has inspected the installation. However, the electrician also identified that there was no RCD protection to the lighting and that protection was also required to ground floor sockets that may be used for external equipment. Therefore, replacing the consumer unit was included as part of the work required.
- 7) The Respondent conceded that examination of the loft space was difficult but that there was little or no insulation in some areas of the loft. Photographs were provided to confirm this. However, where there was insulation it was inadequate and therefore the requirement to increase the level was included.
- 8) The Respondent understood that work has been carried out to replace the 50 Amp circuit breaker although the certificate had not been provided.
- 9) With regard to the steps at the front and rear entrances these are less than 1000mm wide and have differing tread and riser sizes. No handrail is provided to either set of steps and there is no handrail to the winders at the top of the internal staircase.

35. In conclusion the Respondent submitted that HHSRS guidance states that:

*'Action can be taken whether or not a person at most risk to the hazards is living in the dwelling or is a regular visitor to it. The authority should consider the turnover of tenancies. Where they consider that a wide range of occupants might potentially occupy the premises in future they may take the view that action in respect of the current condition of the premises is justified'.*

36. In the opinion of the Respondent the property may be visited by members of a vulnerable group at any time and that as the landlord (Applicant) has indicated that the property is to be sold therefore it may be occupied at any time by a member of a vulnerable group. It was necessary for the inspector to consider the likelihood of harm and the probability of an occurrence during the 12 months following the assessment.

37. The Respondent has tried to resolve the issues informally but faced a lack of progress regarding the repairs and therefore considered the service of an Improvement Notice was the appropriate course of action to deal with the hazards identified.

## **DETERMINATION**

38. As described by the Respondent, the Tribunal accepts that the Hazards of "Excess Cold and Electrical Hazards, Fire Hazards and Falls on the Level" are Category 1 hazards.



39. As described by the Respondent, the Tribunal accepts that the Hazards of “*Damp and Mould, Entry by Intruders, Falls on Stairs, Falls between Levels, Carbon Monoxide and Personal Hygiene, Sanitation and Drainage*” are Category 2 hazards.
40. The Tribunal accepts that the Respondent entered dialogue with the Applicant both verbally and by email to confirm the position regarding works required and the intention of the Respondent to inspect the property.
41. The Tribunal accepts that a formal Improvement Notice was served by the Respondent on the Applicant dated 29<sup>th</sup> May 2024.
42. The Tribunal carried out an inspection of the various items referred to in the Improvement Notice and determined as follows:

#### EXCESS COLD

- 1) It is agreed by the parties and confirmed at the inspection that no additional loft insulation has been provided. It is acknowledged that there is 75mm of insulation over areas of the loft. The Tribunal confirms item 10 of the Respondent’s Specification of Works for additional loft insulation to be provided to a depth of 270mm.
- 2) The Tribunal inspected the boiler which has been recently fitted. It noted a slight weep on what appeared to be the cold-water feed. There is no evidence that this would affect the pressure of the system or its efficiency. The Tribunal determined that this did not merit inclusion in an Improvement Notice and it is therefore removed together with item 12 of the Respondent’s Specification of Works.
- 3) The entrance door is referred to in the Improvement Notice as being ill fitting and allowing the ingress of water during heavy rainfall. There was no evidence of any damp staining to the walls or floor covering at the time of the Tribunal’s inspection which would have indicated a serious problem with water penetration. As previously noted, the door is timber with a small single glazed pane. At the time of the Tribunal’s inspection there was no significant evidence of the door not fitting adequately and certainly no evidence of any defective door furniture. There is a draught proofing strip fitted round the door frame and this would benefit from renewal.
- 4) The Tribunal therefore varies item 4 on the Respondent’s Specification of Works to read:

*Renew the draught proofing strip fitted to the front door frame to ensure the door is adequately watertight and draught proofed. Alternatively, fit a new front door of UPVC or similar construction.*

#### FIRE HAZARDS

- 5) Although noted by the Respondent as a category 1 hazard in the Improvement Notice there were no items included in the specification of works referring to this hazard and the Tribunal infers that it was included as fire could be a consequence of other hazards such as Electrical Safety. The Tribunal determined that there was no other specific potential fire hazard and as all the other hazards noted by the Respondent are covered by this decision, the Tribunal removes the item ‘Fire Hazard’ from the Improvement Notice.

### FALLS ON THE LEVEL

- 6) With regard to 'Falls on the Level' the Improvement Notice specifies at Item 13 of the Respondent's Specification of Works, that work is required to remove and level concrete edging and the upstand to the rear garden. There is a concrete kerb being approximately 70mm high and a similar upstand to the concrete shed base which has some loose bricks to its surround.
- 7) The Tribunal determined that it should be readily apparent to anyone walking across the rear yard area that there is a kerb/raised slab and that some of the bricks (which are at the same level as the slab) may be loose. The loose bricks at such a low level are not considered by the Tribunal to be a 'hazard'. The Tribunal therefore determined that this item should be removed from the Improvement Notice together with Item 13 of the Respondent's Specification of Works.

### DAMP AND MOULD

- 8) The Tribunal has already made a determination in respect of the draft proofing to the front entrance door in paragraphs 42(3)(4) above.
- 9) The Tribunal inspected the rear guttering externally and noted that it bowed and there was grass growing in it. In the determination of the Tribunal this requires attention as noted in Item 11 of the Respondents Specification of Works. However, the Tribunal varies the specification to include the evident water leak through the flat roof to the kitchen extension in the area where the roof abuts the rear house wall as follows:

*Clean out and overhaul/replace/repair as necessary the bowed rainwater gutter to the rear elevation above the right-hand room to ensure it is watertight and free flowing. As an alternative, the defect may be rectified (subject to inspection) by cleaning the gutter and providing an additional gutter support where it is bowed.*

*Examine the upstand between the flat roof over the ground floor rear kitchen extension and repair as necessary to prevent water ingress in to the kitchen area.*

- 10) The Tribunal inspected the understairs store cupboard where paragraph 9 of the Deficiencies Resulting in a category 2 hazard notes damp to the plasterwork. Item 2 of the Respondent's Specification of Works specifies that a 'detailed damp survey' is required.
- 11) Following its inspection the Tribunal disagrees with the Respondent. The area exhibited no evidence of significant damp and was certainly no more than the Tribunal would expect in a small understairs store which was not heated, had limited ventilation and where there were stored items up against the external wall.
- 12) The Tribunal therefore determined that paragraph 9 of the category 2 'Deficiencies' should be removed from the Improvement Notice together with Item 2 of the Respondent's Specification of Works.

### PERSONAL HYGEINE SANITATION AND DRAINAGE

- 13) The Tribunal inspected the W.C. to the bathroom and confirmed that the waste outlet pipe rises above the connection to the W.C. pan.

- 14) The Tribunal therefore confirms paragraph 6 in the Category 2 'Deficiencies' and Item 7 in the Respondents Specification of Works.

#### ENTRY BY INTRUDERS

- 15) At the time of the Tribunal's inspection the side entry gate had been replaced with a secure locking timber gate. Therefore paragraph 2 of the category 2 'Deficiencies' is removed from the Improvement Notice together with Item 8 of the Respondent's Specification of Works.

#### FALLS BETWEEN LEVELS

- 16) The Tribunal inspected the windows to the front and rear double bedrooms and confirmed that the height of the windows was less than 1100mm above the floor level and that restrictors had not been fitted. The Tribunal confirms paragraph 5 of the category 2 'Deficiencies' and Item 6 of the Respondent's Specification of Works.
- 17) It is worth noting at this point that the Applicant confirms that the restrictors had been delivered to the property but that the tenant had not fitted them.

#### FALLS ON STAIRS

- 18) The Tribunal inspected the internal staircase and determined that the staircase was well lit with a window adjacent to the return. The Tribunal disagrees with the Respondent's Improvement Notice that the handrail cannot be adequately grasped to allow support. The handrail is as fitted when the property was built and the Tribunal members were able to grasp it easily. In any event the purpose of a handrail in this situation is not to give support but to give guidance. If the house was occupied by someone with a disability, a further rail to the other side may be required but that it not the case now.
- 19) The Tribunal accepts that a short length of handrail is required to the wall between the staircase and bathroom to give some guidance on this short return flight of stairs but does not agree that the hand rail should extend to the side wall and cross over the window. The Tribunal therefore varies Item 3 of the Respondent's Specification of Works to read:

*Fix a handrail between 900mm and 1000mm from the pitch line of the stairs on the right-hand side wall (when viewed from the landing) between the staircase and bathroom.*

- 20) The Tribunal inspected the steps leading up to the front and rear doors. The steps to the front door are approximately 890mm wide. The bottom riser is approximately 190mm high and the top riser approximately 110mm high. The Improvement Notice specifies the riser heights should be even and have a minimum width of 1000mm.
- 21) The steps to the rear door are approximately 800mm wide. The bottom riser is approximately 200mm and the top riser approximately 150mm. The Improvement Notice specifies the riser heights should be even and have a minimum width of 1000mm. The Improvement Notice also specifies that hand rails are required to both steps.

- 22)The Tribunal disagrees with the Respondent. It will be obvious to anyone using the steps to both doors that the steps are of slightly varying height. If there was a long flight of steps the Tribunal accepts that there would be an expectation on anyone using them that they would be uniform but with only two steps this is evidently not the case.
- 23)The Tribunal also determines that handrails are not required. There are only two steps and in the unlikely event that anyone was to fall, any fall would be extremely limited. The Tribunal was surprised by the HHSRS rating calculated for this hazard as there was no reduction in Class 1 and 2 Harm Outcomes despite the limited nature of a fall which would occur on the steps observed. The Tribunal therefore removes paragraph 4 from the Category 2 ‘Deficiencies’ and removes Item 5 from the Respondent’s Specification of Works.

### CARBON MONOXIDE

- 24)The Tribunal inspected the flue in the rear dining room and noted that it was open. However, there was no grate to the original tiled fireplace and no evidence it had recently been used. Reports of a possible leak of smoke into the adjoining property could not be confirmed.
- 25)The Tribunal agrees the use of the fireplace could result in a category 2 hazard but varies Item 9 of the Respondent’s Specification of Works:

*Block up the fireplace or insert a block into the flue to prevent it being used.*

- 26)It follows that a Carbon Monoxide alarm will not be required when the flue is blocked. The 2022 CO Regulations amendment made it a requirement to have a CO detector in any room used as living accommodation which contains a fixed combustion appliance (including boilers), S1 2022/707. In this property, the combination boiler is in the bathroom which is not ‘living accommodation’.

### ELECTRICAL HAZARDS

- 27)The Improvement Notice of 29<sup>th</sup> May 2024 refers to an unsatisfactory Electrical Installation Condition Report dated 8<sup>th</sup> September 2023 as requiring further investigation without delay and items where improvement is recommended are to be repaired. A copy of this report was not submitted to the Tribunal. Item 1 of the Respondent’s Specification of Works provides for defective items to be repaired and a new consumer unit to be fitted.

However, an email dated 25<sup>th</sup> January 2024 from the Applicants letting agent to the tenant and the Respondent confirms the following items are to be attended to:

- a) Install a fused connection for the outside light.
- b) Install a correct size 32A MCB for the oven/hob
- c) Replace the shower isolator switch
- d) Install a fused connection for the oven supply
- e) Re-route cable currently sitting on top of the carpet

The Tribunal therefore assumes that these are the items noted a requiring attention in the report of 8<sup>th</sup> September 2023.

- 28) It should be noted that the Applicant submits she experienced difficulty in obtaining access from the tenant to carry out the necessary works.
- 29) Based on the submissions of the parties the Tribunal understands that the tenant thinks that the consumer unit should be replaced as some of the fittings in it are not made by the same manufacturer as the unit itself. This matter was queried with the NICEIC and an email dated 24<sup>th</sup> March 2024 from the Respondent confirmed to the Applicant that the opinion of the NICEIC was that replacement of the consumer unit was not required. It was confirmed that C3 was the proper coding for this fault meaning that improvement is recommended. This should be considered against the context of other faults provided for in BS 7671; C1 meaning “Danger Present. Risk of injury. Immediate remedial action required” and C2 meaning “Potentially Dangerous. Urgent remedial action required”.
- 30) The Tribunal has received a copy of four further NICEIC Certificates dated 14<sup>th</sup> May 2024 in respect of Minor Works. These confirm that the following items have been attended to:
- a) Re-route cables to lounge socket
  - b) Remove 20A switch and install FCU for outside light
  - c) Replace 50A MCB with 32A and install 13A FCU
  - d) Replace shower isolator switch
- 31) The Tribunal assumes that this covers the items referred to in the NICEIC report of 8<sup>th</sup> September 2023 and the Applicant states in her submission that she has a satisfactory EICR Certificate (although a copy is not provided beyond those individual Certificates referred to in paragraph 42(30) above. It therefore appears to the Tribunal that the necessary works may already have been completed (although no proof is provided).
- 32) The Tribunal therefore amends ‘Electrical Hazards’ and varies Paragraph 1 of the Respondent’s Specification of Works:

*The Applicant must provide to the Respondent an EICR Certificate confirming the property is free from any C1/C2 or non-conformities requiring further investigation within 28 days from the date of this Decision.*

## **TIME SCALE**

43. The Tribunal determines that the remaining outstanding works should be completed within five months following the appeal period to the Upper Tribunal which is 28 days from the date of this Decision. The only exception being the EICR Certificate detailed in paragraph 42(32) above which should be completed within 28 days from the date of this Decision.
44. The reason for this time frame is that there are no other items remaining which, in the opinion of the Tribunal, and based on the submissions provided, pose a significant hazard or a danger to life and although the provision of loft insulation remains a category 1 hazard (Excess Cold), it does not present a risk to life and if the tenant is content to pay more for heating costs than otherwise would be if the loft insulation was provided it is not for the Tribunal to impose lifestyle choices on him.
45. However, it is a continuing theme throughout the Applicant’s submissions that there have been difficulties in obtaining access for contractors to carry out works to the property and

this is acknowledged by the Respondent (paragraph 34(4) above) and the Tribunal agrees with the parties on this point. For example, the tenant did not make prompt contact with the electrical contractor and the Applicant submits that the window restrictors were delivered to the property (as evidenced by the delivery company) but not fitted by the tenant. It could therefore be argued that the tenant is being un-necessarily obstructive.

46. The Tribunal is of the opinion that the Applicant should not be penalised for not completing works when she has tried unsuccessfully to arrange access for contractors to attend to them. It also appears to the Tribunal that the tenant expects works to be undertaken outside of contractors normal working hours and this is unreasonable and unacceptable.
47. Therefore, the Tribunal determines that the Applicant should make her best endeavours to arrange for works to be carried out within a contractor's normal working hours and should retain proof accordingly. It will then be for the Applicant to argue the difficulty in obtaining access as being a 'Reasonable Ground' as provided for in section 30 of the Act, for not complying with the Improvement Notice if this becomes necessary.

### **GENERAL REMARKS AND DETERMINATION**

48. The Tribunal has considerable sympathy with the Applicant who, in the opinion of the Tribunal has generally tried to deal with the items of repair detailed in the Improvement Notice as well as she was able.
49. However, it is worth noting that the Tribunal has removed several items from the Improvement Notice, some because they have been completed since the Notice was issued and some because the Tribunal disagrees that they are serious enough to be included in an Improvement Notice. Indeed, it appears to the Tribunal that the Respondent has included some items which would not usually merit inclusion in an Improvement Notice. It is also the Opinion of the Tribunal that the Respondent did not take enough consideration of the difficulties the Applicant was experiencing in arranging access for the works to be completed.
50. Therefore, although the defects as described by the Respondent in paragraphs 38 and 39 above are category 1 and category 2 hazards the Tribunal does not accept that they were all properly described. On balance however, the Tribunal accepts that an Improvement Notice was pragmatically the most appropriate action for the Respondent to take as the works had not been completed following service of the Hazard Awareness Notice.
51. As the Tribunal has determined that the Improvement Notice was the appropriate action for the Respondent to take it confirms that the fee of £425.00 is reasonable and allowable under section 49 of the Act and payable by the Applicant.

### **APPEAL**

52. 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)