FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/47UC/HIN/2024/0619**
Property	**:**	**Kings End House, 39 Kings End Road, Powick, Worcestershire WR2 4RE**
Applicant	**:**	**Ms Elizabeth Claire Crossley, who appeared as a litigant in person**
Respondent	**:**	**Malvern Hills District Council**
Representatives	**:**	**Ms Jenny Ager (Senior Lawyer) ~~Ms Jennifer Taylor (Director of Communities and Housing)~~, Ms Lisa Grant (Property Enforcement Officer) and Ms Emily Jones (Private Sector Technical Officer)**
Application	**:**	**Appeal against an Improvement Notice pursuant to Part 3 of Schedule 1 to the Housing Act 2004 (the "2004 Act")**
Hearing	**:**	**Worcester Justice Centre, Castle Street, Worcester WR1 3QZ, 17th February 2025**
Tribunal Members	**:**	**Judge Anthony Verduyn** **Mr D. A. Lavender**

Decision corrected by the Tribunal under the Slip Rule (Rule 50), 28th March 2025

DECISION

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1. The Tribunal hereby quashes the Improvement Notice dated 19th September 2024, and issued by Malvern Hills District Council to Ms Elizabeth Claire Crossley in respect of the "Shaw Wing" of Kings End House, 39 Kings End Road, Powick, Worcestershire (the "**Improvement Notice**" below).

REASONS

2. For the reasons set out below the Improvement Notice is quashed because of procedural defects, but this decision goes on to address the substantive contents of the Improvement Notice. This is because, had procedures been correctly followed, the Improvement Notice would have been varied only. The terms of variation may be relevant to how the parties respond to the quashing of the Improvement Notice, whether by way of appeal to the Upper Tribunal or the reconsideration of matters with a view to the Council issuing a further Improvement Notice, should circumstances then warrant such a step.

BACKGROUND

3. The Applicant is the owner of Kings End House. She has told the Tribunal it was bought by her parents in 1953 and it was her childhood home. She occupies part of it and there are six tenanted residential units also. The "Shaw Wing" is one of them and let to Mr Christian Adshead. Kings End House and its outbuildings is of some historic interest, dating back in part to at least the 19th century or earlier, but it is not a listed building (unlike some nearby properties including Spider Cottage and Kings End Cottage, which are both Grade II listed).[1] An application was made by the Applicant for listing on 27th July 2021, but she confirmed in evidence that it did not lead to any listing. Further, the property is not in a conservation area, unlike the heart of the nearby village of Powick and its church.[2] Nevertheless, it is important to note that the Applicant is not only very attached to Kings End House in all its parts, but considers herself to be a custodian of its heritage character (as her father was before her, when he was careful in renovation

[1] https://historicengland.org.uk/listing/the-list/map-search
[2] https://www.malvernhills.gov.uk/conservation-area-maps-2024/file/Powick.pdf

works in 1986 to seek expert advice). This sentiment lies at the heart of her objection to significant parts of the Improvement Notice.

THE IMPROVEMENT NOTICE AND THIS APPEAL

4. The state of the Shaw Wing was the subject of investigation by the Council following complaint from the tenant, Mr Christian Adshead, as long ago as August 2022. An EPC rating G was found, applying the Minimum Energy Efficiency Standards, but the Applicant had registered an exemption (none of which is a matter for this Tribunal, as set out below). In October 2023 there was an inspection applying the Health and Safety Rating System ("HHSRS"), giving rise to the issue of an Improvement Notice served on 14th February 2024, but this was revoked by notice of 17th September 2024 and it is not a matter before the Tribunal (save as to background). Likewise, an abatement notice under Section 80 of the Environmental Health Act 1990, served in September 2024 and addressed by the installation of a new electric boiler the following month, is not a matter before this Tribunal, although rooted in similar concerns at excess cold. What is before the Tribunal is the Improvement Notice issued by the Council immediately after the former Improvement Notice was revoked, and dated Thursday 19th September 2024.

5. It is not disputed that this Improvement Notice was served by post. A Certificate of Service signed by "Claire Maddocks", a clerical assistant, shows that this was by first class post on Thursday 19th September 2024 and addressed to the Applicant at Kings End House. The deemed date of service recorded in that Certificate is 21st September 2024 i.e. the second day after it was posted, pursuant to Section 7 of the Interpretation Act 1978. However, since 21st September 2024 was a Saturday, the next business day for the purposes of service was Monday 23rd September 2024.

6. The Applicant lodged an appeal dated Monday 30th September 2024, but received by the Tribunal on Wednesday 9th October 2024. It is not disputed that this appeal was filed within the 21 day period for an appeal specified in paragraph 14(1) of Schedule 1 to the Housing Act 2004.

7. Two procedural issues arise in respect of the Improvement Notice.

8. Firstly, under "Works Required" it is stated: "Under Section 11 (2) and 12(2) of the Housing Act 2004 the Council requires you to carry out the works specified in Schedule

2 to this Notice and to begin them not later than the Friday 18th October 2024 (being not less than 28 days from the date of this Notice) and to complete them by Friday 24th January 2025." The time frame specified appears to be intended to reflect Section 13(3) of the 2004 Act which states: "The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served." The problem for the Council is that the requirement in the Improvement Notice to begin not later than Friday 18th October 2024 is a requirement for remedial action to be started earlier than "the 28th day after that on which the notice was served", which is Tuesday 22nd October 2024 on the conventional approach and, in terms of the Certificate, no earlier than Monday 21st October 2024 (Sunday clearly not being a business or working day).

9. Whilst Ms Ager ~~Taylor~~ for the Council contended that the next day from posting should be applicable as the date served, this would be contrary to the terms of the Certificate, usual practice and the Civil Procedure Rules (which Ms Ager ~~Taylor~~ mentioned even though they do not apply to the Tribunal and which state at Rule 6.26 that first class post is deemed service the second day after posting or, if that is not a business day, the first business day thereafter). In any event, these submissions would not avail the Council, as the period of 28 days is taken from the day after service and not the day of service itself.

10. It follows that the Improvement Notice is invalid for failure to comply with the statutory requirement in Section 13(3) of the 2004 Act. As has been made clear in the case of Southend-on-Sea Borough Council v Odeniran [2013] EWHC 3888 (Admin); [2014] HLR 11, this is a rule and one entirely consistent with the structure of the 2004 Act, because a failure to comply with a valid Improvement Notice can lead to prosecution as a criminal offence. Indeed, such invalidity does not depend upon an appeal being made, as the Applicant has done, and there can be no question of this Tribunal treating as valid an Improvement Notice which is legally invalid in the criminal courts.

11. Secondly, Section 8 of the 2004 Act addresses the reasons for the decision to issue an Improvement Notice (or take other steps in respect of enforcement of HHSRS). Section 8(2) requires: "The authority must prepare a statement of reasons for their decision to take the relevant action." Section 8(4) continues: " A copy of the statement prepared under subsection (2) must accompany every notice, copy of a notice, or copy of an order which is served in accordance with (a) Part 1 of Schedule 1 to this Act (service of

improvement notices etc) …". Just such a statement appears in the hearing bundle and is dated 19th September 2024 i.e. the same day as the Improvement Notice. The Applicant, however, set out in her statement to the Tribunal (and confirmed in her oral evidence) that the statement of reasons was not provided until she received it with a covering letter dated 21st October 2024. She stated that she was thus prejudiced in her appeal. In response, the Council in a document signed with statement of truth by Ms Emily Jones stated: "[It] would under best practice issue a statement of reason with all notices issued and unless the applicant could prove likewise, we would dispute this point."

12. The Tribunal notes that the Certificate of Service for the Improvement Notice makes no mention of service of the statement of reasons, nor was a copy of the latter appended to the Certificate (in contrast to the appending of the Improvement Notice) or scanned with it. It might be observed that the letter of 21st October 2024 makes no express mention of the statement of reasons, so absence of reference appears to be inconclusive of the point.

13. The Tribunal notes that the Applicant did not append a copy of any statement of reasons to her application to appeal, nor did she refer to such a document in her extensive grounds.

14. The Tribunal heard the Applicant's evidence that she had not received a copy of the statement of reasons before receipt of the letter of 21st October 2024, and notes the absence of any positive assertion to the contrary (save on the basis that this is what should have taken place). The Tribunal considers that the Applicant has made out her case on the balance of probabilities that the statement of reasons did not accompany the Improvement Notice when it was served upon her, and that it was only received later with the letter of 21st October 2024.

15. Section 8 of the 2004 Act does not specify the consequences of a failure to serve a statement of reasons with the Improvement Notice. The Tribunal has regard to the case of A1 Properties (Sunderland) Limited v Tudor Studios RTM Company Limited [2024] UKSC 27; [2024] 3 WLR 601, which deals with the rather different issue of a "right to manage" company's failure to serve a claim notice under the Commonhold and Leasehold Reform Act 2002 Pt 2 s.79(6)(a) on an intermediate landlord and similarly without specifying the effect of this defect. The Supreme Court decided that this did not

invalidate the transfer of the right to manage the accommodation in question. The circumstance was one where the failure to comply with a statutory provision had no specified consequence in respect of the validity of a notice and the approach, therefore, to be adopted was to look carefully at the whole of the structure within which the requirement arises and ask what consequence of non-compliance best fits the structure as a whole? On the particular facts of the case, what if any prejudice or injustice might arise to the party if, despite the breach, the validity of the outcome of the process is nonetheless affirmed?

16. In the present circumstances, it has already been noted that breach of an Improvement Notice can give rise to criminal liability. In the case of Southend-on-Sea Borough Council v Odeniran [2013], the failure to provide for the correct period before works must begin was treated as fatal to the validity of the Improvement Notice, no doubt with this criminal liability in mind. Whilst this requirement was part of the specified content of the Improvement Notice under Section 13, it was written in rather less forthright terms ("The notice may not require …") than Section 8 ("A copy … must accompany every notice …"),[3] which is suggestive that Section 8 contains requirements no less stringent than Section 13. Furthermore, notwithstanding that an appeal to this Tribunal is by way of rehearing and can take account of events up to the rehearing itself (paragraph 15(2) of Schedule 1 to the 2004 Act), the reasons for an Improvement Notice being served (or served in preference to some lesser form of enforcement) is plainly pertinent to any informed decision on whether to appeal or not. Such an appeal should be made within 21 days of service of the Improvement Notice, a fairly short period of time, (although there is a provision giving the Tribunal a discretion to extend time, paragraphs 14(1)(3) of Schedule 1 to the 2004 Act, and late service of a statement of reasons could be a good reason for such an extension.

17. At the time that the 2004 Act was coming into effect, along with its Regulations, the Office of the Deputy Prime Minister issued guidance upon it (February 2006). The Council is required to have regard to this guidance, pursuant to Section 9(2) of the 2004 Act. Part 4.6 of the guidance states: "Section 8 of the Act places a duty on local authorities to give a statement of reasons for their decision to take a particular course of enforcement action. This provision is designed to meet concerns that the absence of a

[3] Tribunal's emphasis in each quotation

duty on local authorities to give reasons might fail to comply with Article 6 of the European Convention on Human Rights—the right to a fair hearing." Part 4.7 goes to timing and ancillary documents: "Authorities must prepare a statement of their reasons for their decision and provide a copy of that statement to accompany the notices, copies of notices, and copies of orders which they are required to serve under Part 1 and relevant provisions of the 1985 Act. There is no requirement for authorities to provide a copy of their inspection report with the statement but there is nothing to prevent them from doing so if they consider that it would be helpful."

18. It appears to this Tribunal that the statement of reasons is an important document and that the recipient of an Improvement Notice should know immediately upon service why an Improvement Notice has been issued by the authority: the issue of an Improvement Notice is treated as more than an administrative decision and the authority is required to explain itself under the 2004 Act and the guidance. There are human rights considerations in play and potential for criminal liability if there is default in compliance with a valid Improvement Notice. Consequently, the Tribunal determines that breach of the requirement to serve such a statement of reasons with the Improvement Notice, as required by Section 8(4) invalidates the Improvement Notice. The structure of the 2004 Act in its relevant parts dictates strict compliance on the authority, which might enforce through criminal proceedings for breach in due course, and the fairness of the appeal process depends upon a statement of reasons being provided promptly with the improvement notice

19. Each of these procedural issues has been determined by this Tribunal to be fatal to the Improvement Notice and to require it to be quashed, which is the only appropriate remedy open to this Tribunal.

20. Notwithstanding these procedural failures being fatal to the Improvement Notice, the Tribunal will go on to deal with the findings it would have made had the Improvement Notice been valid. In short, whilst the terms of the Improvement Notice require some variation, the appeal would otherwise have failed.

THE SHAW WING, KINGS END HOUSE

21. The Shaw Wing is a self-contained residential unit, comprising the most southerly part of Kings End House. It has ground floor access from a yard to a hallway, with stairs up

to living accommodation on the first floor. That accommodation comprises a living room, one bedroom, a kitchen, a bathroom and a mezzanine floor (with open stairs to the living room).

22. The Council inspected on 3rd September 2024, prior to the issue of the Improvement Notice (the previous inspection having taken place on 27th October 2023 and leading to the Improvement Notice that had been revoked). The events of the inspection have been dealt with in Council's Statement of Case, with the Applicant attending for exterior inspection only, and Mr Adshead as tenant providing internal access. The central issue is the terms of the resulting Improvement Notice.

23. The Tribunal conducted its own inspection, but it was noted that no-one was contending for any significant change or remediation in the Shaw Wing (save for the repair of a cracked window pane and the provision of an electric boiler; the latter not being a matter within the terms of the Improvement Notice).

24. For convenience the Tribunal will deal with the hazards identified in Schedule 1 to the Improvement Notice and then the Specification of the Works to be carried out in Schedule 2. The Tribunal has taken account of its observations when inspecting the Shaw Wing; the contents of the hearing bundle (which contained the documents required under the directions); the oral evidence and submissions of the Applicant; the witness statement and oral evidence of Mr Adshead; oral evidence and submissions of the representatives of the Council; and, additional documents supplied at the hearing (being the full appendices to witness statement of the Applicant, and the full copy provided of the Powick Village Appraisal and Management Plan, dated February 2010).

EXCESS COLD

25. This was the only category 1 (Band A) hazard (the others were category D) and fundamental, therefore, to the issue of the Improvement Notice.

26. Description from Improvement Notice: "Front door to the flat, is in poor condition and ill-fitting within the frame, allowing draughts throughout the open plan flat. Lack of insulation to the roof space, in between the beams of the ceiling which currently provides very little thermal efficiency. The radiators throughout the flat lack Thermostatic Radiator Valves, so room temperatures cannot be controlled. Throughout

the flat there are single glazed, wooden framed sash windows which have removable Perspex screens, as secondary glazing. Window in the bedroom has a cracked pane, which causes further ingress of cold air."

27. Likelihood justification from Improvement Notice: "Design and layout of flat is open plan, with high ceilings, which being of traditional construction requires additional insulation and temperature controlled elements to increase thermal value of the flat. This will reduce the likelihood of an occupant suffering from respiratory and cardiovascular conditions."

28. The physical evidence of the Shaw Wing fully vindicated this assessment in each of its elements. The poor state of the door, its sidelights and adjacent brickwork, was very apparent at inspection and supported by the documents in the bundle and the witness evidence for the Council. The door and its frame are in substantial disrepair and not wind and weather tight. Draughts were obvious and serious, notwithstanding some taping up of gaps. Save for the mezzanine, there was no insulation between the roof beams exposed to living room and kitchen. Heat escape was obvious and serious (especially given the high ceilings). The radiators lacked thermostatic radiator valves, but it is unlikely that the temperature in the Shaw Wing could be raised by them sufficiently for a thermostat to switch off the heating. This was the evidence of Mr Adshead who confirmed that the Shaw Wing could not be heated effectively and the heat from the radiators was simply dissipated and wasted: he chose not to bother with expensive electrical heating in these circumstances and suffered from the cold. The windows in the main were single glazed and draughty. The Perspex secondary glazing was ineffective to retain heat in the rooms or to prevent draughts. A cracked pane to the bedroom was fixed by the time of the Tribunal inspection but, in reality, inconsequential given the other defects. The Shaw Wing was plainly subject to excess cold and the Tribunal has no hesitation in accepting the evidence of the Council and Mr Adshead to that effect. Whatever the effect of renovation works in 1986, referred to by the Applicant, there was no sufficient method for addressing cold in the Shaw Wing. Likewise any heat rising from the central heating of the Garden Wing below (for which there was no evidence in fact, save the suggestion from the Applicant) would not ameliorate the issue of rampant heat escape.

DAMP AND MOULD GROWTH

29. Description from Improvement Notice: "The brickwork around the front door and sidelights frame to the flat, is in a poor state of repair, with damaged bricks and mortar. The brickwork around bedroom on the external east and south facing walls, has areas of damaged bricks and mortar (especially at the base of the guttering hopper on the south facing wall). The wooden beams and joists, in the ceiling of the living room are poorly sealed, which has resulted in gaps being present that cause draughts in the flat and allow heat to escape. It is clear that water ingress occurs, as water stains are visible on the ceiling beams and joists. A damp survey of the flat has been completed by Steven Edwards CSRT, CSSW of 'Envirotec Preservation' on 15th March 2024, report dated 19th March 2024. This survey identified 'works to improve the thermal qualities of the affected walls'. None of these works have been completed."

30. Likelihood justification from Improvement Notice: "The current conditions put the occupants of this flat at increased risk of respiratory and mental health illnesses, along with allergies."

31. This description really encompasses three related issues.

32. (i) The poor state of the door, its sidelights and adjacent brickwork, was vindicated by physical inspection and supported by the documents in the bundle, as set out above. Whereas the Applicant has objected that changing the door would affect the character of the Shaw Wing and Kings End House in general, the continued state of the doorway cannot be countenanced and is a substantial factor in heat loss.

33. (ii) There was visible evidence at inspection for poor sealing of beams and joists, which gives rise to draughts at high level. This problem required addressing, but was not extensive.

34. (iii) Water ingress was apparent to the bedroom, but the principal problem apparent on inspection was the effect of excess cold as a source of condensation.

ENTRY BY INTRUDERS

35. Description from Improvement Notice: "The front door to the flat is worn and in poor condition. Gapping in wooden panels and a defective lock mean that it cannot be fully secured, and little force would be required to open it."

36. Likelihood justification from Improvement Notice: "The lack of a fully secure entry to their home, can cause an occupant to live in fear of crime, attempted burglary, and unprovoked attacks. Living in stress and anguish can contribute to cardiovascular and mental health conditions"

37. The condition of the door has been addressed above and the Tribunal inspection showed that it would be readily capable of being forced.

FALLING ON STAIRS

38. Description from Improvement Notice: "Lack of a securely fixed handrail on the stairwell at a suitable height."

39. Likelihood justification from Improvement Notice: "Stairwell lacks floor covering, so impact injuries could be severe, if an occupant cannot steady themselves on a properly secured and cited handrail."

40. The stair from the ground to the first floor lacked a handrail. There was a rope to the wall side, but this was low and unlikely to be much assistance to prevent harm in a fall. The observations about floor coverings were correct. The criticism was vindicated. The Tribunal notes that there was a handrail from first floor to mezzanine, but no spindles to prevent a fall through the gap, for example, by a child.

41. For the reasons set out above the Schedule was fully justified to the Tribunal at the inspection and in the hearing. By far the most important issue is excess cold caused by lack of insulation, draughty and insufficient windows and front door, and an inadequate heating system to make good these deficiencies (although the latter would potentially be sufficient were the other deficiencies remediated). The Tribunal accepts the essentially uncontradicted evidence of Mr Adshead that the condition of the property, especially as to cold, negatively impacted his health and well-being. Understandably, his son was unwilling to stay at the Shaw Wing in these conditions.

42. Turning to the Schedule of works to be carried out, these comprised 11 items, the first six addressing excess cold, the next three Damp and Mould Growth and the remainder security and stairs.

43. “1. Replace the front door entrance of the flat, with a UPVC door and sidelights. This must be installed by a FENSA registered installer, to meet current Building Regulations. Upon completion, provide Malvern Hills District Council with a copy of the certification.”

44. The Tribunal heard considerable argument on the specific requirement for a uPVC door. The Applicant has objected that uPVC would contravene “conservation planning legislation”. These submissions, however, are based on the demonstrably false premise that Kings End House is in a conservation area, when the overwhelming evidence of the Council is that it is not. Nor is the proximity of listed buildings a legitimate objection; not least because they are not visible from the Shaw Wing, nor it from them. Whereas the Tribunal considers that a modern uPVC door could be sourced that would not significantly diminish the character of the property and accepts that this would probably be the cheapest option, in light of the objections and the availability of wooden doors and surrounds, the Tribunal (had the Improvement Notice not been quashed) would have varied the Specification to have required: “Replace the front door entrance of the flat with a uPVC door and sidelights or similar in durable and wind and weather tight materials.”

45. “2. Seal the gaps around the beams and joists of the kitchen and living room ceilings, to prevent water ingress.”

46. Save that there was no evidence of water ingress, but rather support for the presence of draughts and cold arising from the gaps, this requirement is unobjectionable and consistent with (3) below. The Tribunal (had the Improvement Notice not been quashed) would have varied the Specification to delete the last 4 words.

47. “3. Insulate the vaulted ceilings of the living room and kitchen to achieve a 'U' value of 0.20 W/m2 K, using rigid urethane foam (Celotex, Kingspan, etc.) at least 100mm thick between the rafters, and 40mm thick under the rafters.”

48. Again this was the focus of considerable debate and submissions at the hearing. The Applicant was insistent that this would destroy the character of the living room and kitchen by encasing the open beams in the ceiling. During exchanges it became clear that this was not the intention of the Council and that sufficient insulation between the beams would be acceptable. Indeed, the appearance of the roof to the mezzanine had

been decoratively maintained with appropriate insulation between rafters. The Tribunal (had the Improvement Notice not been quashed) would have varied the Specification to delete the words after "rafters".

49. The Applicant also suggested that the specification would affect the "breathability" of the structure, but the Tribunal considers that competent installation would not have this effect. The historic specification referred to be the Applicant, and dating back to the 1980s, does not support her supposition and, in any event, technology has considerably moved on in the last 40 years.

50. "4. Power flush all radiators throughout the flat. Ensure all of them are in good working order and if not, replace with new. 5. Fit thermostatic radiator valves (TRVs) to each radiator in the flat, so that they are fully controllable."

51. The Tribunal consider that, once other works addressing the excess cold are remediated, the recommissioning of the radiators and the introduction of heat control is appropriate and necessary (particularly to mitigate the cost of heating).

52. "6. Replace the window units throughout the flat, with UPVC double glazed units. These must be installed by a FENSA registered installer, to meet current Building Regulations. Upon completion, provide Malvern Hills District Council with a copy of the certification."

53. Inspection and the evidence received by the Tribunal fully vindicated the need to replace and upgrade the current windows: they are inadequate to retain the heat within the Shaw Wing. The core objection of the Applicant was the requirement for uPVC units and their impact on the character of the building in general. In light of this objection, and the availability of wooden double-glazed sash windows, the Tribunal (had the Improvement Notice not been quashed) would have varied the Specification to have required: "Replace the window units throughout the flat, with uPVC double glazed units or double glazed windows of other materials but similar thermal qualities. These must be installed by a FENSA registered installer, to meet current Building Regulations. Upon completion, provide Malvern Hills District Council with a copy of the certification." The Tribunal accepts the Council's contention that employment of a FENSA registered installer would obviate the need for a Building Regulations application. Further, there was no evidence that a planning application was needed.

54. In respect of damp and mould growth, the specification required repair of "damaged / missing bricks and mortar" to the front door surround, and like work to east and south facing walls of the Shaw Wing, with guttering cleans. Finally, "Complete the works as specified in the Envirotec Preservation report, dated 19th March 2024, survey completed on 15th March 2024 by Steven Edwards CSRT, CSSW."

55. Whereas the work to the doorway and its brickwork is important, other brickwork and guttering clearing, though justified, are relatively minor matters. The contention by the Applicant that the brickwork was handmade and dating back to 1680, whilst improbable as to the date asserted, is no reason for allowing it to be in a state of considerable disrepair. In respect of the specified report, the Applicant has asserted in her grounds of appeal an intention to do the work, but blames a labour shortage. It is hard to see how, given the time since the report and taken up awaiting the appeal, this work remains outstanding. The requirement was not the subject of serious contention between the parties and the Tribunal would have seen no reason to interfere with it.

56. As to security, the Specification states: "Ensure that the locking mechanism of the new UPVC front door, has a thumb-turn lock i.e. can be unlocked from the inside without the use of a key."

57. This requirement was based on the Entry By Intruder hazard and was explained by the Council as intended to prevent anyone following a tenant into the Property. The Tribunal considers this work was perhaps more relating to a Fire Hazard, to facilitate ease of egress from the property in the case of a fire. Any replacement door can be expected to have adequate locking as a feature of it, including if necessary a thumb turn lock. Had the Improvement notice not been quashed, this requirement would have been deleted.

58. As to the stairs, the specification requires: "Securely fix a rigid handrail along the stairwell, at between 90cm and 100cm from the level of each step."

59. Whereas the Applicant has stated that the rope makes for one of the features of the Shaw Wing, the Tribunal considers that this specification was vindicated. The stairs were not sufficiently safe without a fixed solid handrail, a handrail already exists in the Shaw Wing between first floor and mezzanine (an area visible as one ascends the stairs from

the ground floor), and the character of the Shaw Wing is unlikely to be negative effected by a rigid handrail. No variation would have been made, accordingly.

THE GROUNDS OF APPEAL

60. Whereas the decision thus far has addressed the legal and technical issues arising in the appeal, it is necessary to observe that they do not entirely reflect the approach to the appeal taken by the Applicant. She set out a number of grounds and adduced a good deal of evidence that related to matters outside the strict scope of the 2004 Act and HHSRS. These should be addressed in fairness to the Applicant.

61. The Applicant contends that having applied for an exemption in respect of regulations regarding thermal quality of rent accommodation (Minimum Energy Efficiency Standards); a so-called "PRS Exemption" she could not be subject to an Improvement Notice. This is simply wrong and the exemption is irrelevant to the appeal of the Improvement Notice. The state may allow landlords to self-certify exemption from the requirement to let properties only of efficiency above EPC F, so long as the landlord has expended monies on energy improvements, but that does not absolve a landlord from fulfilling the duties imposed under the Housing Act 2004. They are simply unconnected matters: an energy inefficient property need not be an excessively cold property, but an excessively cold property can at any time be made subject of an Improvement Notice.

62. The Applicant contends that proposals by her for the installation of photovoltaic panels and batteries to provide electricity for the heating of the Shaw Wing rendered the Improvement Notice or its terms unwarranted. To support these works, the Applicant referred to £900 spent on a fuse board upgrade and £2,232 spent on the electric boiler. This, also, is of no assistance to her. It is not the form of energy generation (cost) that is in issue, but the actual capacity to heat and maintain the Shaw Wing to a sufficient warmth for occupation. The latter would still be lacking, even had solar energy been installed (which it conspicuously has not been to date, notwithstanding being a project apparently in progress since 2023).

SUMMARY

63. The Improvement Notice is invalid for essentially technical reasons and is quashed accordingly. Had the technical issues not intervened, then the Improvement Notice was

vindicated as to its complaints and would only have required variation. The Shaw Wing can be, and should be, improved. The current situation should not continue. Either the historic character of the property can be preserved by use of (more expensive) bespoke materials and design, or money can be saved by use of uPVC and similar materials. The current situation is not being endorsed by this Tribunal, although the appeal necessarily has to be allowed for technical reasons.

64. It follows that the invoice dated 30th September 2024 and issued by the Council in relation to the recovery of expenses in respect of the Improvement Notice cannot be pursued, as the Improvement Notice was not valid.

Tribunal Judge Verduyn

20th March 2025