FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/HIN/2023/0006**
Property	**:**	**51 Cedar Grove, Liverpool, L8 0SN**
Applicant	**:**	**Ms Iman Saeed**
Representative	**:**	**Mr Ahmed Kassim**
Respondent	**:**	**Liverpool City Council**
Representative	**:**	**Ms Lisa Feng**
Type of Application	**:**	**Appeal against an Improvement Notice – Housing Act 2004 – Schedule 1, Paragraph 10(1)**
Tribunal Members	**:**	**Tribunal Judge L. F. McLean** **Tribunal Member J. Faulkner FRICS**
Date of Hearing	**:**	**2nd November 2023**
Date of Decision	**:**	**28th November 2023**

DECISION

Decisions of the Tribunal

(1) Pursuant to Paragraph 15(3) of Schedule 1 to the Housing Act 2004, the Tribunal varies the Improvement Notice dated 27th January 2023 and served on the Applicant by the Respondent ("the Notice"), in the manner set out below:-

a. In clause 5 of the Notice, the following dates are amended as follows:-

i. Delete "*3 March 2023* *being not less than 28 days from the service of the Notice*" and insert "*1 February 2024*" in its place;

ii. Delete "*1 November 2023*" and insert "*30 September 2024*" in its place.

b. In Schedule 2 to the Notice (entitled "Schedule 2 – Remedies"), in the section headed "PRELIMINARIES", the following paragraph is inserted after paragraph 13 thereof:-

14. Any report or survey to be obtained, procured or prepared in accordance with the requirements of the following section ("REMEDIES") must be prepared by a person who either (a) currently holds a specialist qualification in the subject matter of the report or survey (as the case may be) which was awarded by the Royal Institute of Chartered Surveyors ("RICS"), or the Construction Industry Training Board ("CITB"), or another equivalent industry body; or (b) is currently a professional member of RICS or CITB or another equivalent industry body.

c. In Schedule 2 to the Notice (entitled "Schedule 2 – Remedies"), in the section headed "REMEDIES", Remedy 7 (entitled "Fit Window Restrictor to Front Bedroom Window") is deleted.

(2) Except to the extent that the Notice is varied as set out above, the Tribunal confirms the Notice pursuant to Paragraph 15(3) of Schedule 1 to the Housing Act 2004.

The application

1. The Applicant appeals against the Notice, which was served upon her by the Respondent in respect of certain housing hazards which do or did exist at concerning 51 Cedar Grove, Liverpool, L8 0SN ("the Property").

Background

2. The full facts of this matter are set out in the respective statements of case of the parties, of which the most salient issues are addressed below.

3. The Applicant is the current registered proprietor of the Property, which she has rented out under an assured shorthold tenancy.

4. On 6th December 2022, employees of the Respondent conducted an inspection of the Property. They found it to be in a state of severe disrepair and they discovered a number of housing hazards (within the meaning of Part 1 of the Housing Act 2004). The Respondent's employees subsequently prepared the Notice and served it on the Respondent by post, under a covering letter dated 27th January 2023. Service of the Notice is not disputed. The Notice identified four different categories of hazard, present at various parts of the Property, and set out eight remedies which the Respondent required the Applicant to comply with in order to fulfil the requirements of the Notice. The Notice required the Respondent to commence works by no later than 3rd March 2023 and to complete them no later than 1st November 2023.

5. The Applicant's appeal was made on 16th February 2023 and considered at a hearing on 2nd November 2023 at The Liverpool Civil and Family Court and Employment Tribunal, 35 Vernon Street, Liverpool L2 2BX. Although the appeal was purportedly made under Paragraph 13(1) of Schedule 1 to the Housing Act 2004, the Tribunal had already (in its directions dated 15th May 2023) identified the appeal as in fact being made under Paragraph 10(1) due to the substance of the issues raised. The issues arising under Paragraph 13(1) are materially the same in any event.

6. The members of the Tribunal attempted to inspect the Property in the presence of the parties before the hearing started. There was no answer from the current occupier of the Property and access could not be gained to the interior or the back garden. The members of the Tribunal noted the features and condition of the Property's external front elevation which could be viewed from the public highway.

7. The Applicant did not attend the hearing herself. The Applicant's son, Mr Ahmed Kassim, sought the permission of the Tribunal to make representations on the Applicant's behalf. Permission was granted in the absence of any objection from the Respondent. The Respondent was represented by Counsel, and Mr Rob Cain and Ms Sarah Banks were called as witnesses.

8. The members of the Tribunal considered the parties' oral and written submissions and evidence and documents filed in accordance with the Tribunal's directions.

Grounds of the appeal

9. The Applicant's grounds of her appeal were set out in her application form as supplemented by her statement of case. In summary, these were:-
    a. As the hazards were "Category 2" hazards, it should be acceptable if she reduced or removed the hazards;
    b. The Applicant had already undertaken remedial works to the kitchen and bathroom prior to service of the Notice;

c. For many of the remedies sought by the Respondent, there was no other legal requirement to undertake them (e.g. under Building Regulations);
d. The remedies sought were excessive;
e. The Respondent did not serve a Notice Before Exercising Power of Entry on the Applicant before serving the Notice, as it was addressed to the Property instead of her contact address contained in her application for a selective licence dated 27th July 2022.

10. The appeal was not made under either of the two specified grounds set out in paragraphs 11 and 12 of Schedule 1 to the Housing Act 2004, and was instead made in relation to the Tribunal's broader jurisdiction to re-hear the Respondent's decision to serve the Notice for any other relevant reason.

11. The Respondent had already conceded that Remedy 7 (entitled "Fit Window Restrictor to Front Bedroom Window") was no longer required, as it was satisfied that the Applicant had fully complied with that requirement such that this provision of the Notice could be taken out.

Issues

12. The issues which the Tribunal had to decide were:-
    a. Did the Respondent have power to serve the Notice at the relevant time?
    b. Was the Notice duly served?
    c. Was the Applicant's appeal made within the time limit?
    d. Having regard to all the circumstances of the case, should the Tribunal confirm, quash or vary the Notice?

Relevant Law

13. The relevant sections of the Act read as follows:-

2 Meaning of "category 1 hazard" and "category 2 hazard"

(1) In this Act—

"category 1 hazard" means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;

"category 2 hazard" means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description; and

"hazard" means any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity

(whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).

(2) In subsection (1)—

"prescribed" means prescribed by regulations made by the appropriate national authority (see section 261(1)); and

"prescribed band" means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

(3) Regulations under this section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur.

(4) In this section—

"building" includes part of a building;

"harm" includes temporary harm.

(5) In this Act "health" includes mental health.

5 Category 1 hazards: general duty to take enforcement action

(1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action is indicated by subsection (3) or (4)—

(a) serving an improvement notice under section 11;
(b) making a prohibition order under section 20;
(c) serving a hazard awareness notice under section 28;
(d) taking emergency remedial action under section 40;
(e) making an emergency prohibition order under section 43;
(f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);
(g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

(4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.

(5) The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard—

(a) either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or

(b) another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under section 289(2F) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.

(6) To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is "available" to the authority in relation to the hazard, see the provision mentioned in that paragraph.

(7) Section 6 applies for the purposes of this section.

6 Category 1 hazards: how duty under section 5 operates in certain cases

(1) This section explains the effect of provisions contained in subsection (2) of section 5.

(2) In the case of paragraph (b) or (f) of that subsection, the reference to making an order such as is mentioned in that paragraph is to be read as a reference to making instead a determination under section 300(1) or (2) of the Housing Act 1985 (c. 68) (power to purchase for temporary housing use) in a case where the authority consider the latter course of action to be the better alternative in the circumstances.

(3) In the case of paragraph (d) of that subsection, the authority may regard the taking of emergency remedial action under section 40 followed by the service of an improvement notice under section 11 as a single course of action.

(4) In the case of paragraph (e) of that subsection, the authority may regard the making of an emergency prohibition order under section 43 followed by the service of a prohibition order under section 20 as a single course of action.

(5) In the case of paragraph (g) of that subsection—

(a) any duty to take the course of action mentioned in that paragraph is subject to the operation of subsections (2B) to (4) and (5B) of section 289 of the Housing Act 1985 (procedural and other restrictions relating to slum clearance declarations); and

(b) that paragraph does not apply in a case where the authority have already declared the area in which the premises concerned are situated to be a clearance area in accordance with section 289, but the premises have been excluded by virtue of section 289(2F)(b).

7 Category 2 hazards: powers to take enforcement action

(1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.

(2) The provisions are—

(a) section 12 (power to serve an improvement notice),
(b) section 21 (power to make a prohibition order),
(c) section 29 (power to serve a hazard awareness notice),
(d) section 265(3) and (4) of the Housing Act 1985 (power to make a demolition order), and
(e) section 289(2ZB) of that Act (power to make a slum clearance declaration).

(3) The taking by the authority of one of those kinds of enforcement action in relation to a particular category 2 hazard does not prevent them from taking either—

(a) the same kind of action again, or
(b) a different kind of enforcement action,in relation to the hazard, where they consider that the action taken by them so far has not proved satisfactory.

11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(1) If—

(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

(a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;
(b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;
(c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the

building (or any part of the building) or any external common parts.Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a) that the deficiency from which the hazard arises is situated there, and

(b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) The remedial action required to be taken by the notice —

(a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but

(b) may extend beyond such action.

(6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(7) The operation of an improvement notice under this section may be suspended in accordance with section 14.

(8) In this Part "remedial action", in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

12 Improvement notices relating to category 2 hazards: power of authority to serve notice

(1) If—

(a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.

(3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

(4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

13 Contents of improvement notices

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—

(a) whether the notice is served under section 11 or 12,
(b) the nature of the hazard and the residential premises on which it exists,
(c) the deficiency giving rise to the hazard,
(d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,
(e) the date when the remedial action is to be started (see subsection (3)), and
(f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.

(3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.

(4) The notice must contain information about—

(a) the right of appeal against the decision under Part 3 of Schedule 1, and
(b) the period within which an appeal may be made.

(5) In this Part of this Act "specified premises", in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.

18 Service of improvement notices etc. and related appeals

Schedule 1 (which deals with the service of improvement notices, and notices relating to their revocation or variation, and with related appeals) has effect.

SCHEDULE 1

PROCEDURE AND APPEALS RELATING TO IMPROVEMENT NOTICES

PART 1

SERVICE OF IMPROVEMENT NOTICES

Service of improvement notices: premises licensed under Part 2 or 3

1(1) This paragraph applies where the specified premises in the case of an improvement notice are—

(a) a dwelling which is licensed under Part 3 of this Act, or

(b) an HMO which is licensed under Part 2 or 3 of this Act.

(2) The local housing authority must serve the notice on the holder of the licence under that Part.

Service of improvement notices: premises which are neither licensed under Part 2 or 3 nor flats

2(1) This paragraph applies where the specified premises in the case of an improvement notice are—

(a) a dwelling which is not licensed under Part 3 of this Act, or

(b) an HMO which is not licensed under Part 2 or 3 of this Act,

and which (in either case) is not a flat.

(2) The local housing authority must serve the notice—

(a) (in the case of a dwelling) on the person having control of the dwelling;

(b) (in the case of an HMO) either on the person having control of the HMO or on the person managing it.

PART 3

APPEALS RELATING TO IMPROVEMENT NOTICES

Appeal against improvement notice

10(1) The person on whom an improvement notice is served may appeal to the appropriate tribunal against the notice.

(2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

11(1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—

(a) take the action concerned, or

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

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

12(1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.

(2) The courses of action are—

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

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

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

Appeal against decision relating to variation or revocation of improvement notice

13(1) The relevant person may appeal to the appropriate tribunal against—

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

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

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

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

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

Time limit for appeal

14(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

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

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

Powers of tribunal on appeal under paragraph 10

15(1) This paragraph applies to an appeal to the appropriate tribunal under paragraph 10.

(2) The appeal—

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order confirm, quash or vary the improvement notice.

(4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

Evidence

14. The Applicant, through her representative, relied on the written submissions set out in her application and her statement of case.

15. During the course of the hearing, it became apparent that the day-to-day management of the Property had been carried out by the Applicant's representative, who stated the following to supplement their written submissions:-

    a. They had not been made aware of the water leak in the bathroom;
    b. The Applicant's representative had not been able to identify any laws which required them to take the steps set out in the Notice – the Property is over 100 years old and so they would not make any difference, and actions such as installing extractor fans seem extreme and more suited to a large commercial building;
    c. The current tenant of the Property has not complained of any further disrepair and always used to inform the Applicant or her representative of any problems in the past;
    d. The mould shown in the photographs of the bedrooms had resulted from nailing duvets in front of the windows and this was a lifestyle choice which neither the Applicant nor her representative could prevent;
    e. Trickle vents had been added to external windows and the only further steps would be to install more trickle vents or air conditioning, or for the occupiers to open the windows to let moisture out;
    f. There was an air hole in the kitchen which the occupier had blocked up with clothing – they had told the Applicant's representative that they didn't want this ventilation, so he filled it up with insulation material;
    g. The Respondent has not been reasonable;
    h. The Respondent had sent their previous communications to the Applicant's old lettings agents and so they were not made aware until after the inspection took place, whereas the Applicant and her representative have resolved problems when informed of them.

16. When questioned by Counsel for the Respondent, the Applicant's representative made the following admissions:-

    a. The wooden joists between the ground floor kitchen and the first floor bathroom above it have not been replaced;
    b. No survey of the wooden joists has been carried out;
    c. The only remedial works to the kitchen ceiling were (i) to replace the plasterboard and re-decorate it, and (ii) the application of Cillit Bang Mould spray;

d. There is still a significant damp problem in the kitchen;
e. At the time of the Respondent's further inspection none of the mortar on the rear elevation of the Property had been re-pointed – although he asserted that this was in fact done later, around 2 months before the hearing.

17. Rob Cain and Sarah Banks were both called as witnesses, having already provided written witness statements. They both confirmed their written statements before the Tribunal.

18. When questioned, Mr Cain provided the following further evidence:-

a. In the bedroom and living rooms of the Property, what he had seen was mould rather than running water, and he did not see any catastrophic leaks;
b. He considered that the mould in those rooms would have been caused by a lack of ventilation, although he later accepted that he was not an expert in the area and that the Respondent had not commissioned its own expert report;
c. Mould growth was not the landlord's responsibility if there was adequate ventilation but the occupier was deliberately obstructing it, but he considered that if there was still inadequate ventilation then mould growth was the landlord's responsibility even if the occupier was deliberately obstructing it;
d. There was no longer a requirement to prevent the hazard of "falling between levels";
e. He had not seen sufficient documents etc. to be satisfied that there was now adequate ventilation in the areas previously identified;
f. The front elevation of the Property was colder and therefore more prone to mould, but other areas of the Property which suffered mould growth included the rear external walls, ceilings near to party walls and where there was cold bridging;
g. Although he accepted that different occupiers of the same premises can lead different lifestyles which can increase the risk of mould growth, in this case he disagreed with the characterisation of mould arising from the occupier's lifestyle as he considered that the ventilation had been inadequate anyway;
h. Ventilation, cold properties and mould growth were commonplace problems in similar properties in the locality, but the Respondent deals with such issues on a case-by-case basis;
i. Improved loft insulation would also normally reduce the risk of mould growth;
j. Houses such as the Property tended to have poor insulation and be prone to condensation because they were built in a particular era and to a particular construction technique, but intervening changes in the way that such homes are heated, insulated and ventilated (e.g. replacement of coal fires and chimneys with central heating) had rendered them more vulnerable to higher moisture levels.

19. Sarah Banks was not questioned on any of her evidence.

Determination

Did the Respondent have power to serve the Notice at the relevant time?

20. Given that the Applicant has admitted that Category 2 hazards existed in the Property at the relevant time, the Respondent was empowered to serve the Notice under Section 12 of the Act.

21. The Applicant has complained that she was not given prior notification of the defects or hazards by her tenants. However, that is not a necessary requirement before the Respondent exercises its powers.

Was the Notice duly served?

22. The Notice was served by post on the Applicant at the address she had given in her application for a selective licence.

23. It is of no relevance that the Respondent did not post the Notice Before Exercising Power of Entry to the Applicant's home address before serving the Notice – this is not a procedural requirement of a local housing authority exercising its powers under Section 12, nor is it a requirement of Schedule 1 to the Act. A Notice Before Exercising Power of Entry is an optional step that the Respondent could take at its own discretion, purely in order to make sure it could gain entry to the Property at the designated inspection time.

Was the Applicant's appeal made within the time limit?

24. Yes, the appeal was made within 21 days of service of the Notice.

Having regard to all the circumstances of the case, should the Tribunal confirm, quash or vary the Notice?

25. Under Paragraph 15 of Schedule 1 to the Act, the Tribunal is required to make its own decision as to whether the Respondent acted appropriately in serving the Notice, and whether the matters set out in the Notice were a correct use of its powers.

Existence of the hazards identified

i. Hazard 1 – Damp and Mould Growth

26. There was clear photographic evidence of mould growth in the front reception room, the rear reception room, the front bedroom, the rear bedroom, the bathroom and the landing, as at 6th December 2022.

27. There was also clear and unchallenged evidence as at 6th December 2022 of dampness and water ingress in the kitchen from the upstairs bathroom (leading to wet rot of the wooden floor/ceiling joists), in the bathroom itself, and on the external rear wall leading to perished and missing mortar.

28. In relation to the mould growth, the Tribunal considers that this is likely to have arisen primarily from a combination of excess cold and inadequate ventilation. The Property has an overall EPC rating of E and the current requirements of the Building Regulations 2010 (Requirement F1 / Regulations 39, 42 and 44) include at least five background ventilators with a minimum equivalent area of 8000mm^2 in habitable rooms and kitchens or 4000mm^2 in bathrooms. This level of ventilation does not appear to have been in place in December 2022. The occupier's practice of nailing duvets in front of the windows may well have exacerbated the problem, but the Tribunal considers that mould growth is likely to have arisen anyway. In reaching this conclusion, the Tribunal has relied on the specialist professional knowledge and expertise of its members.

29. The Tribunal appreciates that mould growth has become an increasingly problematic phenomenon in recent years, typified by the widely reported and tragic death of Awaab Ishak in December 2020. Undoubtedly, such older properties have required new and more intensive measures to prevent damp, persistent condensation and mould growth over time, as their original ventilation measures such as coal fire chimneys have been decommissioned and as properties have become vastly more expensive to keep warm. Historical methods of ventilation, such as opening windows, might now be viewed with hindsight as inappropriate now that they have become unaffordable and potentially counterproductive. As expectations on landlords evolve regarding appropriate standards of housing, landlords are required to update their practices accordingly.

30. In that regard, the Tribunal also appreciates that buildings such as the Property may well have been built in compliance with applicable laws and regulations at the time, and that the Building Regulations do not generally have retrospective effect. However, the Housing Act 2004 was brought into force in part precisely to resolve the problem of how to ensure that older residential buildings could remain fit for purpose in the modern era of housing. To that end, it does not assist the Applicant to complain that the Property is not in breach of the Building Regulations – the Housing Health and Safety Rating System under the Housing Act 2004 is a freestanding legal standard for residential properties which must be met irrespective of when a dwelling was first constructed. That does not mean that all such properties always need to be subjected to a complete renovation to bring them into line with current Building Regulations – since each dwelling will have a different history of repairs and improvements, it is a matter of evaluating each one on a case-by-case basis to establish if it needs further work.

ii. Hazard 2 – Excess Cold

31. As noted above, the Property has an EPC rating of E. Although that is in compliance with the Minimum Energy Efficiency Standards, that is just one measure of whether a given dwelling suffers from "excess cold" and is also the very lowest minimum standard permissible across all dwellings in England. It does not of itself determine whether a given property can be adequately heated.

32. The Excess Cold Enforcement Guidance prepared by the Chartered Institute of Environmental Health in December 2019 lists various factors which can cause excess cold, including the presence of cold bridging, dampness (which reduces the effectiveness of space heating), the inadequacy of installation / maintenance / controls for central heating systems, and inadequate or inappropriate provision for thorough or controlled ventilation. To that extent, hazards such as dampness/mould, inadequate ventilation and excess cold can all become mutually exacerbating.

33. As noted above, in December 2022 the Property was suffering from inadequate ventilation except by resorting to the opening of windows, and dampness through water ingress and leaks. The Respondent has also provided unchallenged evidence that there is no room thermostat in the Property. The Applicant's representative accepted that the only means of controlling the heating in the Property was to turn the boiler off or on manually/via timer, or to adjust the manual settings on the boiler (e.g. circulating temperature). This is incontrovertibly inappropriate and inadequate in the modern era. The Applicant's representative challenged whether they were being expected to install a thermostat in every room, but that is not what the Respondent is suggesting. Most modern (or modernised) average-sized dwellings will have a single adjustable thermostatic control in an appropriate and accessible location such as a hallway or living room, depending on the layout. Multiple controls would only be necessary in a larger dwelling. Counsel for the Respondent agreed with the Tribunal's view on that matter.

iii. Hazard 3 – Falling Between Levels

34. This hazard existed in December 2022 through the absence of an upstairs window restrictor, but has been resolved by the Applicant subsequently.

iv. Hazard 29 – Structural Collapse and Falling Elements

35. The Respondent exhibited photographs of the kitchen ceiling in a state of structural collapse due to sustained water ingress from the upstairs bathroom. The plasterboard had fallen in and the joists were so rotten that mushrooms were growing from them and had also protruded outwards through the rear brick wall. The condition of the kitchen ceiling was so poor that the photographs speak for themselves, and there is little point in trying to add any commentary to them. With wet rot having set in, and dry rot being a realistic possibility, it is undoubtable that there is a serious risk of the structural integrity of the joists having been permanently and irretrievably damaged and that they may disintegrate altogether at some point in the not-too-distant future.

Suitability of the proposed remedies

i. Replace Defective Kitchen Ceiling and Bathroom Floor

36. The evidence from the Applicant and her representative is that they are unaware of exactly what remedial works were undertaken to the joists, other

than the replacement of the plasterboard and application of consumer-grade mould spray. They admit that the joists have not been replaced and that no structural report has been obtained. The Tribunal is utterly appalled that the Applicant thought that this was in any way an acceptable solution, given the severity of the problem. The mitigation offered that Cillit Bang was applied is quite frankly risible.

37. The Applicant's representative suggested that it would now be inconvenient for the occupiers if the bathroom floor / kitchen ceiling were to be taken out and replaced. The Tribunal observes that it would be vastly more inconvenient for them – and indeed for the Applicant – if the floor/ceiling were to disintegrate altogether, as might conceivably happen if nothing more is done.

38. The only concern which the Tribunal voiced during the course of the hearing was what was meant by engaging "an appropriately qualified timber preservation contractor" and that this might be too uncertain for either the Applicant to understand or, correspondingly, for the Respondent to enforce. The Respondent conceded that the Tribunal might be content to vary the specific requirements. The Tribunal does consider that it would benefit both parties if there were a clearer statement of the nature of such qualifications. The Tribunal considers that the simplest means of achieving that is to insert an additional proviso in the "Preliminaries" section to state that any report or survey to be obtained, procured or prepared must be prepared by a person who either (a) currently holds a specialist qualification in the subject matter of the report or survey (as the case may be) which was awarded by the Royal Institute of Chartered Surveyors ("RICS"), or the Construction Industry Training Board ("CITB"), or another equivalent industry body; or (b) is currently a professional member of RICS or CITB or another equivalent industry body.

ii. Ensure Whole Dwelling Ventilation

39. The Applicant has taken some measures to improve the ventilation in the Property through the installation of trickle vents in the windows. Several of these were visible at the front of the Property from the public highway.

40. However, the Applicant has not demonstrated that she has taken appropriate overall measures to prevent the mould from coming back. The requirement is to design and implement a complete system of ventilation, not just to take a few isolated measures to improve it. This has not been done. Once it has been done, if the occupiers choose to frustrate or obstruct an appropriate ventilation system then that would be a matter purely between them and the Applicant to resolve without requiring the Respondent's involvement.

41. The remedy proposed by the Respondent at the time of service of the Notice was in any event a generally appropriate one, and so the Tribunal agrees with that approach. It is for the Applicant to demonstrate, to the Respondent's satisfaction, that the hazard has been abated or reduced.

42. Again, the only concern which the Tribunal voiced during the course of the hearing was what was meant by engaging "a competent damp specialist" and that this might be too uncertain for either the Applicant to understand or, correspondingly, for the Respondent to enforce. For the same reasons, the Tribunal considers that the additional proviso to the Preliminaries is the best means to resolve any uncertainty.

iii. Fit Extract Ventilation to the Kitchen

43. The Tribunal notes that the previous ventilation to the Kitchen was through a small gap in the wall. This was neither adequate nor appropriate. The Tribunal agrees with the remedy originally proposed by the Respondent as being appropriate and necessary so as to provide appropriate ventilation in a room which is prone to high levels of moisture. The evidence of the Applicant's representative was that this gap has since been blocked up at the occupier's request. The Tribunal considers that this was the wrong approach by the Applicant, who should have installed a powered extractor fan as directed. The Applicant's representative complained that this would involve additional works. The Tribunal considers that it is nonetheless necessary.

iv. Fit Extract Ventilation to the Bathroom

44. Again, the Tribunal agrees with the remedy originally proposed by the Respondent as being appropriate and necessary so as to provide appropriate ventilation in a room which is prone to high levels of moisture. Although the presence of a powered extractor fan is a starting point in the right direction, it does not have an over-run function as directed. It is now generally accepted as being necessary for such extractor fans in bathrooms either to have a tick-over function or an over-run function in order to ensure that moisture is extracted from the internal atmosphere at a sufficient rate – having it on only when the light switch is turned on is generally insufficient. It is also no longer sufficient, for reasons mentioned earlier in this Decision, to rely upon opening bathroom windows to provide adequate ventilation.

v. Insulation

45. The only material challenge to this remedy which was brought by the Applicant was to state that loft insulation is not a "legal requirement or building regulation requirement" at the time of construction, and that the EPC rating of E meets the minimum requirements. For reasons already discussed earlier in this Decision, these are not solid grounds for contesting the need to remediate excess cold. It is likely that improving the current levels of insulation would also assist in preventing mould growth. The Respondent's requirement under this remedy was appropriate and the Tribunal agrees with this approach. The Tribunal is concerned at the level of churlishness demonstrated by the Applicant and her representative, in their reluctance to engage in a relatively inexpensive but usually effective measure, in circumstances where grant funding is often available to assist with the costs.

vi. Overhaul the Brickwork of the Rear Elevation Wall

46. The initial need for this remedy was not contested by the Applicant. Although the Applicant had undertaken partial remediation works by the time of the Respondent's further inspection, and the Applicant's representative said the works had since been fully completed, no evidence was presented of this having been finished. The Applicant's representative said that this was because he had assumed that no further evidence would be allowed. Again however, the remedy proposed by the Respondent at the time of service of the Notice was in any event a generally appropriate one, and it is for the Applicant to demonstrate, to the Respondent's satisfaction, that the hazard has been abated or reduced.

vii. Fit Window Restrictor to Front Bedroom Window

47. This remedy has now been complied with and can be removed from the Notice by agreement between the parties.

viii. Thermostatic Control of Central Heating

48. Again, the only material challenge to this remedy which was brought by the Applicant was to state that thermostatic controls of gas boilers was not a building regulation requirement at the time of installation. For reasons already discussed earlier in this Decision, this is not a solid ground for contesting the need to remediate excess cold. The Tribunal agrees with the Respondent that installation of a thermostatic control is necessary so that the central heating system can operate efficiently and affordably.

Decision to Confirm, Quash or Vary; and Time for Compliance

49. The Tribunal agrees that it was appropriate to serve an improvement notice on the Applicant. Given the general antipathy towards modern housing standards demonstrated in the Applicant's written submissions, which was further echoed in the demeanour of the oral submissions, and combined with their total lack of remorse and singular failure to address the overwhelming majority of the hazards identified in an appropriate way, it is clear that formal measures are necessary for the Applicant to take this matter seriously.

50. Given that the Tribunal had decided to vary some of the requirements of the Notice, and that the time for compliance had already passed, the Tribunal considered it an inherent requirement of fairness that the Applicant be afforded additional time to comply with the Notice's requirements. Given the generally acknowledged shortage of skilled labourers and trades professionals, and the upcoming Christmas and New Year holidays, the Tribunal concluded that a reasonable timescale to expect the Applicant to have to started works was not before 1st February 2024, and similarly to have completed them by 30th September 2024. The Tribunal therefore directs that the Notice be further varied in that manner.

51. In all other respects, except for the modifications set out above, the Tribunal confirms the Notice.

Name: **Date: 28th November 2023**
Tribunal Judge L. F. McLean
Tribunal Member J. Faulkner FRICS

Rights of appeal

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

2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

4. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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