



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

Case Reference : **BIR/00CU/HIN/2024/0616**

Property : **26 Dalkeith Street, Walsall WS2 8QA**

Applicant : **Mr Z Iqbal**

Respondent : **Walsall Council**

Tenant : **Mrs B Bhatti**

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

Tribunal Members : **Judge M K Gandham
Mr R Chumley-Roberts MCIEH, JP
Judge C Rhys**

Date and venue of Hearing : **20 March 2025
Centre City Tower, 5-7 Hill Street,
Birmingham, B5 4UU**

Date of Decision : **7 May 2025**

DECISION

Decision

1. The Tribunal hereby orders that Schedule 1 and Schedule 2 in the Improvement Notice dated 22 August 2024 be varied as detailed in the Appendix to this decision.

Reasons for Decision

Introduction

2. On 25 September 2024, the First-tier Tribunal (Property Chamber) received an application from Mr Zafar Iqbal ('the Applicant') for an appeal under Paragraph 10 of Schedule 1 to the Housing Act 2004 ('the Act').
3. The appeal related to an Improvement Notice dated 22 August 2024 ('the Notice'), served upon him by Walsall Borough Council ('the Respondent') relating to the property known as 26 Dalkeith Street, Walsall Ws2 8QA ('the Property'), of which the Applicant is the owner.
4. The Respondent served with the Notice, a statement of reasons as to why the decision to take enforcement action had been taken and a Demand for Payment, which demanded a sum of £310.00 in respect of the Respondent's costs for serving the Notice.
5. Although the application form was received out of time, the Tribunal had received an email on 28 August 2024 on behalf of the Applicant confirming that he wished to appeal the Notice, and associated demand for payment, setting out reasons for the same. After considering representations from the Respondent, the Tribunal accepted the appeal under paragraph 14(3) Schedule 1 to the Housing Act 2004.
6. The Notice detailed, in Schedule 1, various deficiencies at the Property, classified as nine separate hazards. These were described as:
 - Hazard 1 - a category 2 hazard in respect of Dampness and mould growth;
 - Hazard 2 - a category 1 & 2 hazard in respect of Excess cold;
 - Hazard 3 - a category 2 hazard in respect of Electrical hazards;
 - Hazard 4 - a category 2 hazard in respect of Falls on level surfaces;
 - Hazard 5 - a category 2 hazard in respect of Falls on stairs;
 - Hazard 6 - a category 2 hazard in respect of Uncombusted fuel products;
 - Hazard 7 - a category 2 hazard in respect of Fire;
 - Hazard 8 - a category 2 hazard in respect of Personal hygiene, Sanitation and Drainage; and
 - Hazard 9 - a category 2 hazard in respect of Food safety
7. Both parties provided a bundle of documents, and the matter was listed for an inspection to take place on 20 March 2025, with an oral hearing thereafter.

8. Following a request from Mrs Bilquees Bhatti ('the tenant'), she was added as a party to the proceedings.

The Law

9. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards.
10. The Housing Health and Safety Rating System ('the HHSRS') replaced 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.
11. 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'.
12. 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 improvement notice) which may constitute appropriate enforcement action.
13. 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.
14. Section 9 of the Act requires the local housing 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 the 'Housing Health and Safety Rating System – Operating Guidance' ('the Operating Guidance') which deals with the assessment and scoring of the HHSRS hazards. At the same time the Secretary of State also issued the 'Housing Health and Safety Rating System – Enforcement Guidance' ('the 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.
15. The person upon whom an improvement notice is served may appeal to the First-tier Tribunal (Property Chamber) under Part 3 of Schedule 1 to the Act. Under paragraph 15(2) of Schedule 1 –

“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.”*

And, under paragraph 15(3) of Schedule 1, the Tribunal may confirm, quash or vary the notice.

16. Section 49 of the Act confirms that a local housing authority may recover expenses relating to enforcement action and section 49(1) states as follows:

“(1) A local housing authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in –

- (a) serving an improvement notice under section 11 or 12”*

However, under section 49(7) of the Act:

“(7) Where a tribunal allows an appeal against the underlying notice or order mentioned in subsection (1), it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of, any charge under this section made in respect of the notice or order.”

Inspection

- 17. The Tribunal inspected the Property on 20 March 2025. The Applicant did not attend and was not represented. The Respondent was represented by Mrs Carol Jones, a Housing Standards Officer employed by the Respondent. The Tenant was present, together with Miss Daniyah Latif (her daughter – who was also an occupant of the Property) and Mr Zai Farooqui (her brother).
- 18. The Property is a small, two-storey, end of terrace house, with a right flank wall situated on Dalkeith Street in Walsall, in an area of similar properties. It has solid brick walls and a pitched, tiled roof. The Property is double-glazed and has the benefit of central heating.
- 19. The front door of the house leads directly into the front lounge, which in turn leads to a rear lounge, wing addition kitchen and bathroom. The first floor, which is accessed from stairs in the rear lounge, encompasses two double bedrooms, one to the front and one to the rear of the house.
- 20. A door from the kitchen leads to a small rear yard, from which there is a gate to a fair-sized rear garden and a side passageway which runs alongside the house to a secure gate leading back into Dalkeith Street.
- 21. The house was in a poor state of repair on the day of the inspection. The letterbox cover to the front door was missing and the seals around the door were damaged. The front lounge appeared to be used for storage by the Tenant and the Tribunal

were unable to inspect three of the walls, due to the number of items in the room. The electric meter was also difficult to access but, after items in front of it had been cleared, it was seen to be in general disrepair, with the front cover to the unit missing and tape covering two of the fuse holders.

22. The rear lounge had signs of damp by the window and mould growth at the base of the rear alcove of the flank wall. The carpet between the two lounges had not been properly fixed. Interior doors were also missing between the two lounges and between the rear lounge and the kitchen.
23. The kitchen also had signs of damp in the cupboard underneath the sink, on the flank wall by the washing machine and by the cooking appliance. The door to the garden was difficult to close, although this was not aided by the Tenant having a towel rack hooked over the same. There was no splash back to the back or side of the cooker but the area behind the fridge was tiled.
24. A new, thermostatically controlled boiler had been installed in the kitchen, and both the bathroom and kitchen had running hot water, but the Applicant had failed to carry out any incidental cosmetic repairs following the installation. There was a carbon monoxide monitor attached to the kitchen ceiling.
25. The bathroom was in a very poor state of repair. Although there was a window, there was no extractor fan and all walls had signs of mould and damp with wallpaper peeling, especially in the corner where the toilet was located. Although the washbasin appeared to be in good condition, the bathtub was damaged, the seal around the bathtub was in a poor state of repair and the bath panel was also missing.
26. Both bedrooms (together with a cupboard in the rear bedroom) had signs of damp and mould, with wallpaper peeling away from the walls and some water staining to the ceiling. Although the carpet to the bedrooms was fixed down, the carpet to the stairs was loose.
27. In relation to the exterior of the Property, some brick pavers in the rear yard were damaged, there were cracks and holes to the rendering on the kitchen addition and some of the flashing between the rear main wall and the wing addition roof was detached. The rear gate to the garden was broken and the garden was extremely overgrown, with rubbish thrown into the same. The side passageway was also overgrown, making it difficult to be able to use the same to gain access to the front of the Property.

Hearing

28. Following the inspection, a public hearing was held at the Tribunal's hearing rooms at Centre City Tower, Birmingham. The hearing was attended by the Applicant, who was represented by his daughter, Miss Tanzeela Kauser. Mrs Jones represented the Respondent, and the Tenant, accompanied by her brother and daughter, were also in attendance.

Submissions

The Applicant's submissions

29. The Applicant's submissions, both written and oral, centred around two general arguments. Firstly, that the Applicant was unable to carry out works to the Property due to issues relating to access and, secondly, that some of the hazards referred to in the Notice were, in fact, the responsibility of the Tenant
30. Despite referring, in the written submissions, to a prohibition order as being a more appropriate form of action, Miss Kauser, on behalf of the Applicant, confirmed at the hearing that she had misunderstood the implications of the same and did not wish to pursue this argument.
31. In relation to access, at the hearing Miss Kauser stated that the Tenant had been served with a section 21 notice on 10 February 2023, at the same time a new tenancy of the Property had been granted to her. Miss Kauser submitted that the section 21 notice had been served due to the Applicant being aware that works were required to the Property.
32. Miss Kauser stated that in November 2023, a further informal written notice was provided to the Tenant confirming that the Property should be vacated by 10 February 2024 (a copy of which notice was provided within the Applicant's bundle). Miss Kauser submitted that the Tenant's brother had specifically requested the same, and showed the Tribunal a copy of a telephone message referring to this, as he was trying to obtain alternative accommodation from the local authority for the Tenant due to the high rental figures in the local area.
33. Miss Kauser stated that, instead of vacating the Property in February 2024 as discussed, the Applicant, instead, received a letter from the Respondent regarding items of disrepair at the Property.
34. Miss Kauser denied that the Applicant had ever received the letters from the Tenant dated 29 October 2023 and 14 May 2024, contained within the Respondent's bundle. She stated that, had the Applicant received the same, then he would not have sent the informal written notice in November 2023, to end the tenancy at the Tenant's request, and correspondence between them would have referred to the disrepair.
35. Following receipt of the Respondent's letter dated 21 June 2024 ('the Informal Letter'), Miss Kauser stated that the Applicant was only given limited access to the Property to carry out any works. She confirmed that, when workmen had finally been able to gain access, the Applicant had been informed by them that the house needed to be cleared to be rewired and that it would be easier for a new boiler to be installed if the Property was empty.
36. Miss Kauser stated that she was also denied access to the Property on the day of the Respondent's inspection, 11 July 2024. She stated that, following this, she chased the Respondent several times for an update as to the works required, as

the deadline that was set out in the Informal Letter for completing the works had already passed.

37. Miss Kauser confirmed that issues regarding access continued after the service of the Notice and referred to a statement provided by the electrician referencing the same and various WhatsApp messages between herself and the Tenant's brother contained within the Applicant's bundle.
38. Due to the difficulties, Miss Kauser stated that she contacted the Respondent multiple times and asked for their assistance with access but was informed that this was not their responsibility. Accordingly, Miss Kauser stated that she took legal advice from Helix Law, in September 2024, and provided copies of messages from them which set out their fees. Miss Kauser stated that the Applicant could not afford the fees, so was unable to pursue this route to gain access.
39. As the works set out in the Informal Letter could not be carried out due to the limited access provided by the Tenant and the failure by the Tenant to clear the Property, Miss Kauser submitted that formal action should not have been taken by the Respondent and the Notice should not have been issued.
40. In relation to the responsibility of the works referred to in the Notice, Miss Kauser stated that the carpets in the front and rear lounges (Hazard 4) had been laid by the Tenant and that there were floorboards, which had been properly fitted by the Applicant, underneath the same. She also submitted that the carpet on the stairs had both been installed by, and belonged to, the Tenant (Hazard 5).
41. In relation to Hazard 7, Miss Kauser stated that maintaining the garden and side passageway were the responsibility of the Tenant. She stated that the Tenant had occupied the Property since approximately late 2017, and referred to a letter, purportedly provided by a neighbour, included within the Applicant's bundle dated 5 December 2024. This letter referred to the garden as having become overgrown in the past four to five years.
42. Finally, in relation to the cooker (Hazard 9), Miss Kauser stated that when the Property was first let to the Tenant, the cooker was located on the other side of the kitchen (where the fridge was now located) in an area which was tiled. Miss Kauser stated that, at some point during her occupation, the Tenant had purchased her own cooker and relocated it, without permission, to where it was now located, being the opposite side of the kitchen in an area which was not tiled. Accordingly, Miss Kauser submitted that this deficiency was caused by the Tenant's own actions.
43. In relation to some of the other deficiencies referred to in the Notice, Miss Kauser stated that a new, thermostatically controlled boiler had been installed at the Property and that there was now hot water to both the bathroom and to the kitchen; that the Applicant had not been informed of any issues with the front door, letterbox or bath; and that the issues with damp and mould at the

Property had not been aided by the lack of airflow due to the Tenant's storage of various items at the Property and her accumulation of houseplants.

44. At the hearing, Miss Kauser accepted that the Applicant had never provided a formal letter to the Tenant requesting access to the Property and that, following the issuing of the Informal Letter, the previous boiler at the Property had been switched off between 26 June 2024 and 2 October 2024 (at which time the boiler was replaced), during which period the occupants had no access to hot water or heating.
45. Miss Kauser also accepted that, although the Applicant stated that he had been awaiting a date on which the new boiler could be installed from the Tenant's brother, the Applicant did consider that it would have been easier, and more cost-effective, to carry out all of the works to the Property at the same time once the Property became vacant, as referred to in her email to the Respondent of 1 July 2024.
46. Miss Kauser provided to the Tribunal, at the hearing, a copy of a new Gas Safety Certificate for the Property which had been issued on 2 October 2024. She confirmed that this had already been forwarded to the Respondent. She also provided, following the hearing, an Electrical Installation Condition Report (EICR) dated 24 November 2024, which referred to the state of the installation as being unsatisfactory.
47. Miss Kauser stated that any gas and electrical certificates that had been issued to the Tenant at the start of her tenancy had been mislaid and that the Applicant also did not possess any photographs of the condition of the Property before it had been let to her.
48. The Applicant had provided within his bundle a log of various missed telephone calls, a quote from an electrician dated 21 October 2024 for a rewire of the Property (which referred to the Property as being cluttered and needing to be empty for the works to be carried out), a quote for damp works dated 27 October 2024 (again referring to the Property needing to be vacant), a copy of the tenancy agreement dated 10 February 2023 and various photographs of the front and rear lounge at the Property.
49. Miss Kauser accepted that the majority of the photographs of messages and missed calls for the Tenant submitted by the Applicant in his bundle, were from September 2024 onwards, not between 21 June 2024 and 22 August 2024 (the dates upon which the Informal Letter and the Notice were issued).

The Respondent's submissions

50. The Respondent provided a bundle of documents which included a Response to Applicant's written statement and a witness statement dated 22 November 2024 from Ms Sibongile Masuku, a Housing Standards Officer employed by the Respondent, with various documents (including copies of correspondence, photographs and the HHSRS calculations) exhibited to the same.

51. At the hearing, Mrs Jones confirmed that she had prepared the Notice together with Ms Masuku, and that Ms Masuku's witness statement detailed the events leading up to the issuing of the same.
52. Miss Masuku's witness statement confirmed that, on 26 February 2024, she received a telephone call from the Tenant referring to disrepair at the Property. She stated that she emailed a template that the Tenant could utilise to notify the Applicant of the disrepair, but that on 28 February 2024 she was provided with a letter, dated 29 October 2023 which purportedly had already been sent to the Applicant.
53. Miss Masuku stated that she contacted the Applicant on 28 February 2024 and, on 1 March 2024, requested, under section 235 of the Act, a copy of the EICR, Gas Safety Certificate and Energy Performance Certificate (EPC) for the Property. She stated that she was advised that these documents had been misplaced.
54. On 7 May 2024, Miss Masuku stated that she contacted the Tenant again to request progress and provided a further letter template for the Tenant to chase the Applicant and, on 3 June 2024, received a copy of a letter the Tenant reported had been sent to the Applicant on 14 May 2024.
55. Miss Masuku confirmed that the Informal Letter was sent on 21 June 2024, requiring works to the boiler be completed within 7 days, with the remainder of the works to be completed by 9 July 2024.
56. Miss Masuku stated that she tried to contact the Applicant on 1 July 2024, as she had been informed by the Tenant that the boiler had be disconnected on 26 June 2024. In reply, she stated that she received an email from Miss Kauser stating that the repairs needed to be carried out once the Property was empty.
57. Miss Masuku confirmed that a notice of a formal inspection of the Property was given on 8 July 2024 and that the Property was inspected on 11 July 2024. Miss Masuku stated that neither she, nor a colleague who attended the inspection with her, had heard Miss Kauser knocking on the door.
58. Miss Masuku confirmed that Miss Kauser had chased for a list of works following the inspection but stated that she informed her on 12 August 2024 that she could utilise the list of works detailed in the Informal Letter until the Notice had been prepared.
59. Miss Kauser stated that the Notice was issued on 22 August 2024 and a formal reinspection of the Property was carried out on 8 November 2024. Although a new boiler had been installed, and Miss Kauser stated roof repairs had been carried out, none of the other works set out in the Notice had been completed.
60. In their formal Response, the Respondent stated that it was for the Applicant to work with the Tenant to arrange access and that the Tenant had refuted that any access had been denied to the Respondent.

61. The Respondent also submitted that they had, prior to issuing the Notice, tried to resolve the disrepair issues informally, as per the Respondent's Enforcement Policy, and noted that formal action had not been taken until 22 August 2024. In addition, as the inspection revealed a category 1 hazard, in respect of Excess cold, the Respondent had been under a duty to act and considered that an improvement notice was the most appropriate course of action to take, for which they were entitled to recover their expenses.
62. At the hearing, Mrs Jones noted that any eviction notices served by the Applicant would not have been valid, as the Property did not have the relevant certificates, and was still without a valid EPC.
63. Mrs Jones also queried the Applicant's submissions relating to a lack of access to the Property, noting that the Applicant appeared to have managed to obtain access to disconnect the boiler and obtain various quotes for works required to be carried out.
64. In relation to the Notice, Mrs Jones accepted that the wording "*it is alleged*" was not appropriate in points 3 and 4 of Hazard 1. She also confirmed that she could not say for certain that the rear wall to the Property was 'damp' and confirmed that the roof space would not have been inspected by the local authority.
65. Regarding Hazard 2, Mrs Jones noted that a boiler had now been installed and that, when issuing the Notice, the category description of this hazard should simply have referred to a category 1 hazard, rather than a "*Category 1 & Category 2*" hazard.
66. With regard to the carpets in the lounges and on the stairs, Mrs Jones confirmed that, had the Applicant not installed the same, Hazards 4 and 5 would not have been included on the Notice. She also stated that the inclusion of Hazard 7 was because they understood that the Applicant was responsible for the maintenance of the garden.
67. In relation to Hazard 6, Mrs Jones accepted that the deficiencies referred to related to the wrong hazard profile, and in relation to Hazard 8, accepted that the replacement of a bath panel was not responsibility of a landlord under section 11 of the Landlord and Tenant Act 1985.
68. Mrs Jones also accepted that the Tenant had provided no proof that the two letters purported to have been sent to the Applicant on 29 October 2023 and 14 May 2024 had actually been sent to him.
69. Mr Farooqui, on behalf of the Tenant, accepted that there had been no carpet on the ground floor at the beginning of the tenancy but maintained that the carpet on the stairs had been installed by the Applicant. Mr Farooqui also disputed that access had been denied to the Applicant, or any workmen, and stated that the garden had always been the responsibility of the Applicant.
70. The Tenant confirmed that the gas cooker belonged to her.

The Tribunal's Deliberations

71. The Tribunal considered all of the evidence submitted by the parties, both written and oral, briefly summarised above.
72. The Tribunal noted that the Applicant had alleged, and reported to the Respondent, difficulties with gaining access to the Property to carry out works, so firstly considered whether the Respondent should have taken formal action in light of the same.
73. The Tribunal, in answering this question, considered the difficulties the Applicant submitted he had encountered following the issuing of the Informal Letter but prior to the issuing of the Notice, although accepted that difficulties in gaining access after the issuing of the Notice might have indicated a pattern of behaviour by the Tenant.
74. The Tribunal noted that access had clearly been granted on at least one occasion following the issuing of the Informal Letter, as the boiler had been disconnected on 26 June 2024. The history of telephone calls provided by the Applicant in the bundle detailed no calls were made between 26 June 2024 and 22 August 2024 and the WhatsApp messages provided also only detailed one message between these dates, which related to the Tenant's failure to have paid the rent in December rather than difficulties with access.
75. The Tribunal accepted that the Applicant may have used a different telephone number or attended the Property in person, and that difficulties with access had been reported by the Applicant in Miss Kauser's email to the Respondent on 1 July 2024. Miss Kauser, in that email, however, referred to the kitchen requiring replastering and the delay in installing the new boiler appeared to be a reluctance to have to remove, then reinstall, any new boiler following plastering due to the associated costs rather than an access issue.
76. The Tribunal did note that the messages provided by the Applicant appeared to indicate that there were some difficulties with access after the issuing of the Notice, and the photographs provided by both parties showed that the front lounge was being used for storage by the Tenant making it impossible to gain access to the entire room, which was still the case at the time of the Tribunal's inspection.
77. As to whether these issues should have impacted on the decision to take enforcement action, the Tribunal noted that by 1 July 2024, the Respondent was aware that fairly substantial works were required to the Property (as referenced by both the Tenant and by Miss Kauser in her email) and that the boiler had been disconnected. Prior to this, the Respondent's Informal Letter (which was based on the Tenant's account of the works required) stated that if the boiler repairs had not been completed by 28 June 2024, the Respondent would arrange an inspection of the Property, which could result in a formal notice for which there would be a charge of not less than £305.00.

78. As the Respondent had not previously carried out an inspection (having relied on the Tenant's assertions as to what works were required) and noting that both parties accepted works were needed, that the boiler had been disconnected, that the deadline for repairing the boiler as set out in the Informal Letter had passed and that the Applicant had been notified of a potential inspection and possible enforcement action thereafter, the Tribunal is satisfied that it was more than reasonable for the Respondent to inspect the Property. Whether or not the Applicant had or had not received any letters purportedly sent by the Tenant regarding repairs in October 2023 and May 2024 did not, in the Tribunal's view, affect the reasonableness of this action.
79. Following the inspection, as a category 1 hazard at the Property for Excess cold had been identified (as the boiler was still disconnected at that time) the Respondent was *required* to take appropriate enforcement action in relation to the hazard under section 5(1) of the Act. Accordingly, the Tribunal finds that the decision to take formal action was correct and that any issues with access, or clutter at the Property, were no longer relevant considerations in making that decision.
80. As to whether an improvement notice was the appropriate form of enforcement action, the Statement of Reasons in the Notice detailed the Respondent's reasons for considering that an improvement notice was appropriate. Noting that the boiler had been disconnected but that the Applicant had been in correspondence with the Respondent regarding the works and that an engineer had already attended the Property once, the Tribunal accepts that an improvement notice was the appropriate form of action to be taken.
81. Turning to the hazards detailed on the Notice and specification of works required, the Tribunal comments as follows:

Hazard 1 – Dampness and mould growth

As accepted by Mrs Jones at the hearing, the Tribunal did not consider the wording of all the deficiencies to be appropriate.

Hazard 2 – Excess cold

The Tribunal acknowledged that the disconnected boiler would have been a category 1 hazard, as stated in the Notice. Since the issuing of the Notice a new thermostatically controlled boiler had been installed.

Hazard 3 – Electrical hazards

The Tribunal considered that the correct specification of works would have been a requirement for an EICR to be commissioned, and that any required works revealed by the same to be completed.

Hazard 4 – Falls on level surfaces

Based on the evidence given at the hearing, the Tribunal found that the front and rear lounge carpets were installed by the Tenant, not the Applicant. As the Operating Guidance (at paragraph 2.33) states that the HHSRS is “*concerned only with those deficiencies that can be attributable solely or partly to the design, construction and/or maintenance of the dwelling*”, deficiencies solely attributable to the behaviour of the occupants should be disregarded. Accordingly, the Tribunal did not consider that this item should have been included on the Notice.

Hazard 5 – Falls on stairs

Although there was a dispute between the Applicant and Tenant as to who would have installed the carpet on the stairs, the Tribunal noted that the carpets to the first floor, which had been installed by the Applicant, had been fixed down whereas the carpets in the front and rear lounge, installed by the Tenant, had not. The Tribunal also noted that the carpet on the stairs did not appear as if it had sustained seven years wear and tear, which the Tribunal would have expected had it been installed prior to the Tenant’s occupation. Accordingly, the Tribunal found that it was more likely than not that the carpet had been installed by the Tenant and should, therefore, have been disregarded and not included on the Notice.

Hazard 6 - Uncombusted fuel products

The Tribunal noted that the hazard profile description was incorrect since the two deficiencies mentioned on the Notice were not appropriate items to have been included within a hazard profile of ‘*Uncombusted fuel gas*’. Accordingly, the Tribunal found that this hazard should not have been included on the Notice.

In relation to the two items mentioned, the Tribunal noted that a new Gas Safety Certificate had been issued for the Property and that a carbon monoxide detector had been installed in the kitchen.

Hazard 7 - Fire

The Tribunal noted that the only form of escape from the rear of the house appeared to be through the side passageway. This escape route would not have necessitated the clearance of the entire rear garden. In addition, as the maintenance of any garden does not fall within a landlord’s repairing obligations under section 11 of the Landlord and Tenant Act 1985, and without an express covenant confirming that the Applicant was responsible for the garden or passageway under the terms of the tenancy agreement, based on the evidence before it, the Tribunal was not satisfied that the Applicant was responsible for the maintenance of the garden or side passageway. Accordingly, the Tribunal found that this hazard should not have been included in the Notice.

Hazard 8 – Personal hygiene, Sanitation and Drainage

The Tribunal found that the replacement of a bath panel did not fall within a landlord's repairing obligations under section 11 of the Landlord and Tenant Act 1985, so should not have been included as a deficiency under this hazard.

The Tribunal also noted that hot water was now available to both the wash hand basin and the bath.

Hazard 9 – Food safety

The Tribunal noted that the Tenant had confirmed that the gas cooker belonged to her and, based on the evidence given at the hearing and the Tribunal's inspection of the Property, accepted the Applicant's submission that a cooker had originally been positioned on the other side of the kitchen, which was tiled and would have provided a splashback to the same.

Again, the Tribunal noted that hot water was now available to the kitchen sink.

82. Under paragraph 15(2) of Schedule 1 to the Act, an appeal to the Tribunal is by way of a re-hearing but may be determined having regard to matters of which the local authority was unaware.
83. Based on all the evidence before the Tribunal, and for the reasons stated in the paragraphs above, the Tribunal determines that the Notice should be varied as, firstly, the Tribunal had found that certain items should not have been included on the original Notice and, secondly, it was apparent that at the time of the Tribunal's inspection some work had been carried out at the Property and it would be inappropriate to include those items on any variation.
84. Although the Tribunal determines that the Notice should be varied, it accepts, as previously stated, that the Respondent was correct in taking formal action in the form of an improvement notice and also finds that any improvement notice issued at that time would have included several of the hazards detailed in the Notice.
85. Accordingly, although the Tribunal orders that the Notice should be varied, it makes no order in respect of the Demand for Payment and the sum demanded of £310.00 is still payable by the Applicant.

Appeal

86. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM

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Judge M K Gandham

SCHEDULE 1

In the opinion of the Council, the property known as **26 Dalkeith Street, Walsall, WS2 8QA** has the following hazards:

| Hazard 1 | |
|---|--|
| NATURE OF HAZARD | Dampness and mould growth |
| CATEGORY OF HAZARD | Category 2 |
| LOCATION | Kitchen, Rear Lounge, Front Bedroom, Rear Bedroom, Bathroom, |
| DEFICIENCY GIVING RISE TO HAZARD | <ol style="list-style-type: none"> 1. There is mould growth on the surface of the right flank wall at the side of the washing machine in the kitchen. 2. There is evidence of dampness affecting the plaster on the wall next to the cooking appliance. 3. There is evidence of mould growth and mould spotting at the base of the right flank wall and dampness to the plaster by the window in the rear wall, in the rear lounge. 4. There is evidence of penetrating dampness having affected the surface of the ceiling (damaged artex finish and bulged and cracked ceiling plasterwork) in the centre of the front bedroom. 5. There is evidence of penetrating dampness having affected the surface of the access hatch to the roof space and the adjacent ceiling and wall plasterwork (mould growth and damaged/uneven plaster) in the built-in cupboard over the stairway, in the rear bedroom. 6. The wallpaper is peeling from the walls in the rear bedroom and there is some mould growth present on wall surfaces. 7. The floor of the bathroom was damp/wet under the bath. There is evidence of dampness and mould growth affecting all accessible walls in the bathroom. Apart from the leaking bath this may also be affected by the presence of vegetation covering the external surfaces of the bathroom addition. |
| DATE THE REMEDIAL WORKS MUST START | 17 June 2025 |
| DATE THE REMEDIAL WORKS MUST BE COMPLETED | 15 July 2025 |

| Hazard 2 | |
|---|---|
| NATURE OF HAZARD | Excess cold |
| CATEGORY OF HAZARD | Category 2 |
| LOCATION | Whole property |
| DEFICIENCY GIVING RISE TO HAZARD | <ol style="list-style-type: none"> 1. The seals to the front entrance door have been damaged/are part missing allowing excess draughts into the property. 2. The letter box cover is missing from the front entrance door. 3. The rear exit door in the kitchen is misaligned and difficult to close. The seals to this door have been damaged/are part missing. These defects permit excess draughts to enter the property. |
| DATE THE REMEDIAL WORKS MUST START | 17 June 2025 |
| DATE THE REMEDIAL WORKS MUST BE COMPLETED | 15 July 2025 |

| Hazard 3 | |
|---|--|
| NATURE OF HAZARD | Electrical hazards |
| CATEGORY OF HAZARD | Category 2 |
| LOCATION | Front Lounge |
| DEFICIENCY GIVING RISE TO HAZARD | <ol style="list-style-type: none"> 1. The consumer unit appears to be unsafe as there is tape covering 2 of the fuse holders, there is no fuse cover to the unit. |
| DATE THE REMEDIAL WORKS MUST START | 17 June 2025 |
| DATE THE REMEDIAL WORKS MUST BE COMPLETED | 15 July 2025 |

| Hazard 4 | |
|---|---|
| NATURE OF HAZARD | Personal hygiene, sanitation and drainage |
| CATEGORY OF HAZARD | Category 2 |
| LOCATION | Bathroom |
| DEFICIENCY GIVING RISE TO HAZARD | <ol style="list-style-type: none"> 1. The floor of the bath is cracked and broken, allowing water to leak over the bathroom floor when in use. 2. The seal around the bath is inadequate. |
| DATE THE REMEDIAL WORKS MUST START | 17 June 2025 |
| DATE THE REMEDIAL WORKS MUST BE COMPLETED | 15 July 2025 |

SCHEDULE 2

Specification of works to be carried out

These are the remedial action to be carried out at **26 Dalkeith Street, Walsall, WS2 8QA** which the Council considers practical and appropriate to take in relation to the hazards in Schedule 1 above:

Hazard 1: Damp and mould growth

1. Investigate the cause of the mould growth to the walls of the kitchen. Carry out all such works as may be necessary to remedy the mould growth within the kitchen and on completion make good all works and surfaces disturbed.
2. Investigate the cause of the dampness affecting the wall plaster by the cooking appliance. Carry out all such works as may be necessary to remedy the dampness and on completion make good all disturbed surfaces.
3. Investigate the cause of the mould growth affecting the right flank wall and the dampness affecting the plaster on the rear wall in the rear lounge. Carry out all such works as may be necessary to remedy the mould growth and damp plasterwork and on completion make good all works and surfaces disturbed.
4. Inspect the main roof of the house and its associated roof space to determine the cause of the penetrating dampness which has affected the surfaces of the ceilings in the front bedroom and built in cupboard in the rear bedroom. Carry out all such works as may be necessary to the main roof to remedy any ongoing rainwater penetration. Renew the damaged ceiling plasterwork in the front bedroom and the plasterwork in the built-in cupboard in the rear bedroom. Sterilise any remaining mould growth within the built-in cupboard in the rear bedroom and on completion make good all works and surfaces disturbed.
5. Investigate the cause of the mould growth affecting the walls of the rear bedroom. Carry out all such works as may be necessary to remedy the mould growth within the room and on completion make good all works and surfaces disturbed.
6. Investigate the cause of the dampness and mould growth affecting the walls of the bathroom. Carry out all such works as may be necessary to remedy the mould growth and damp plasterwork and on completion make good all works and surfaces disturbed. Note. This will include the removal of all the vegetation from the external surfaces of the bathroom to examine the condition of the rear external wall and adjacent section of roof.

Hazard 2: Excess cold

1. Repair or replace the seals to the front entrance door to ensure that they are wind and weatherproof.
2. Overhaul, ease and adjust as necessary, the rear exit door (in the kitchen) and its associated frame, to ensure it opens and closes freely. Repair or replace the seals to the door and ensure on completion that the door is wind and weatherproof.
3. Provide and fit a letter box cover to the front door to prevent draughts into the property.

Hazard 3: Electrical hazards

1. Engage the services of a suitably qualified electrician to provide an Electrical Installation Condition Report (EICR) in respect of the property. Undertake all required works (category 1 and 2 defects) noted on the report and any relating to the consumer unit.

Hazard 4: Personal hygiene, sanitation and drainage

1. Replace the broken bath complete with new taps, waste pipework, chain stay and plug and connect to the existing water services. Form a new sanitary/waterproof seal around the bath perimeter and make good all works disturbed, upon completion.