FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/38UB/HIN/2024/0008 and 009**
HMCTS code	**:**	**P:PAPERREMOTE**
Property	**:**	**Flats B and M, Cotefield House, Bodicote, Banbury OX15 2AQ**
Applicant	**:**	**Tariq Qume Khuja**
Respondent	**:**	**Cherwell District Council**
Type of application	**:**	**Application for permission to appeal**
Tribunal members	**:**	**Judge A. Arul** **Gerard F. Smith MRICS FAAV**
Date of Decision	**:**	**23 June 2025**

DECISION

Decision

1. The Tribunal has considered the Applicant's request for permission to appeal to the Upper Tribunal (Lands Chamber) dated 16 June 2025 and determines that:

    a. It will not review its Decision; and

    b. Permission be refused for appeal to the Upper Tribunal (Lands Chamber).

2. The Applicant may make a further application for permission to appeal directly to the Upper Tribunal (Lands Chamber). Any such application must be made no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

3. Where possible, the Applicant should make any further application for permission to appeal online using the Upper Tribunal's online document filing system, called CE-File. This will enable the Upper Tribunal to deal with it more efficiently and will enable the parties to follow the progress of the application and submit any additional documents quickly and easily.

4. Information about how to register to use CE-File can be found by going to the following web address:

    https://www.judiciary.uk/guidance-and-resources/practice-direction-for-the-lands-chamber-of-the-upper-tribunal-electronic-filing-ce-file/

5. Alternatively, it is possible to submit an application for permission to appeal by email to: Lands@justice.gov.uk.

6. The Upper Tribunal can also be contacted by post or by telephone at: Upper Tribunal (Lands Chamber), 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (Tel: 020 7612 9710).

Reasons

7. The relevant provisions in respect of appeals are set out in the Practice Directions of the Upper Tribunal (Lands Chamber) dated 2 January 2024 ("the Practice Directions").

8. Paragraph 11.14 of the Practice Directions provides that permission to appeal will be granted if the Tribunal considers that the proposed appeal has a realistic prospect of success, unless the sum or issue involved is so modest or unimportant that an appeal would be disproportionate. Permission to appeal may also be granted if the Tribunal considers there is some other good reason for an appeal.

9. There are three principal grounds of appeal, identified as A, B and C, which are addressed in turn below.

Ground A

10. Ground A argues that the Tribunal erred in law in finding that the Respondent was not required to give the Applicant at least 24 hours' notice under section 239(5) of the Housing Act 2004 (the Act) before entering the premises to conduct inspections that led to the issuance of the Improvement Notices. Section 239(3) of the Act states that the authorised person: *"… **may** enter the premises in question at any reasonable time for the purpose of carrying out a survey or examination of the premises."* [emphasis added]. Hence the power is discretionary. Section 239(5) of the Act requires the giving of notice to the owner and occupier: *"Before entering any premises in exercise of the power conferred by subsection (3)."* It follows that the duty to notify is only engaged if the authorised person has elected to exercise the power.

11. The Applicant contends that the requirement for notice applies to: *"… any entry for the purpose of assessing housing conditions under the Housing Health and Safety Rating System (HHSRS)."* He further contends that section 239(5) of the Act: *"… applies to any entry for the purpose of a survey or examination, regardless of whether the entry was consensual or enforced."* That contention is not supported by authority. In any event, it disregards the requirement under section 239(5) of the Act that the authorised person must be exercising their power under section 239(3) of the Act. The evidence of the authorised person, Ms. Arnold was that she was not exercising her statutory powers on the occasions cited in the grounds of appeal. It was open to the Tribunal to accept that evidence. The Applicant is seeking to challenge those factual findings.

12. It is correct that the purpose of the notice requirement is to ensure fairness and transparency, allowing the owner to be present and respond to allegations about the condition of the premises. The allegations were put to the Applicant when the authorised person was ready to do so at later visits; the Applicant's position seems to be that he should be able to respond to allegations before they are put to him.

13. *Metlane Ltd v Amber Valley District Council* [BIR/17UB/HIN/2012/0007] is not binding on the Tribunal. The Applicant did not provide a copy of the judgment to the Tribunal. In any event, as the Applicant concedes, non-compliance with section 239(5) of the Act ***may*** render an Improvement Notice invalid. It does not automatically do so. The Tribunal found that formal inspections, with notice, took place on 15 and 19 September 2023 (paragraph 53 of the Decision). The Applicant had the opportunity to *"be present and respond to allegations"* in advance of the Improvement Notices being issued. Any procedural defect was therefore rectified.

14. There is no realistic prospect of the Tribunal's findings of fact as to the authorised person not exercising a statutory power of entry being in error. Even if the Applicant is correct in contending that every visit which involves an examination is a *de facto* exercise of statutory powers, there is no realistic prospect of a finding that the Improvement Notices were defective given that notice was given, and an accompanied visit took place, prior to them being issued.

Ground B

15. Ground B argues that the Tribunal erred in law in finding, without evidence (it is argued), that Ms. Arnold had the necessary delegated authority to sign the Improvement Notices. The ground argues that: *"The point is that the notices should have been signed by Nicola Riley, not Carolyn Arnold."* Further, that: *"Nicola Riley is the Proper officer."* The Tribunal was provided with a certificate signed by Ms. Riley dated 8 November 2023. It stated: *"This is to certify that Carolyn Arnold whose photograph and signature are shown is duly appointed and authorised by me to exercise powers delegated by the Assistant Director Wellbeing and Housing Services. This includes powers to enter premises in accordance with the specified legislation."* Ms. Riley signed as the Assistant Director Wellbeing and Housing Services. The Applicant produced a scheme of delegation referring to the Head of Regeneration and Housing but provided no evidence as to what the reporting line into the Head of Regeneration and Housing is or was (paragraph 57 of the Decision).

16. The Applicant contends that Ms. Riley was the appropriate person to sign, thus the finding of fact that Ms. Riley did, and does, have the relevant authority to delegate to Ms Arnold was open to the Tribunal (paragraph 58 of the Decision). This is because of the express power within the scheme of delegation that: *"Officers with delegated powers may in writing authorise another officer or officers to exercise those powers."* (paragraph 56 of the Decision). The grounds of appeal do not address this passage. There is no realistic prospect of the Applicant demonstrating that Ms. Riley was not able to, and/or did not, delegate her powers to Ms. Arnold.

17. As the grounds of appeal themselves note, in *Fitzpatrick v Secretary of State for the Environment* [1990] 1 PLR 8, the court held that a document purporting to be signed by a proper officer is presumed valid unless proven otherwise, but this presumption can be rebutted with evidence challenging the officer's authority. The Applicant produced no evidence rebutting the passage in the scheme of delegation quoted above and the certificate signed by Ms. Riley on 8 November 2023 delegating her powers to Ms. Arnold.

Ground C

18. Ground C argues that the Tribunal erred in law by upholding the requirement in the Improvement Notices to upgrade basement insulation for Flat B because, it is argued, such a requirement is unlawful under the Housing Act 2004.

19. The Tribunal did not conclude that there were deficiencies regarding insulation. The Improvement Notices did not require the Applicant to upgrade basement insulation. The Tribunal concluded that it was reasonable for the Respondent to require the Applicant to make proposals with technical detail of method and materials to be used. It was open to the Tribunal, following its own inspection, to find that there was no evidence of works undertaken to install or upgrade insulation. It follows that it was open to it to uphold the Improvement Notice insofar as the remedial action required was to make proposals as to the existing excess cold hazard.

20. The Applicant contends that provision of a report does not constitute *"remedial action"* under sections 11(8) and 12 of the Act. Section 11(8) defines remedial action as: *"… 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."* [emphasis added]. It is clear on a plain reading of the legislation that remedial action is not limited to the carrying out of works. There is no reasonable prospect of the Applicant successfully establishing that the requirement to provide a report falls outside of the definition of remedial action.

21. *Curd v Liverpool City Council* [2024] UKUT 218 (LC) is distinguished because the report required in the present case, insofar as it was pertinent to presence and adequacy of insulation, relates to an identified hazard (excess cold). In *Curd*, the Upper Tribunal made clear that hazards must be identified, and the remedial actions must relate to the hazard. Rather than actions which required the landlord to take steps or carry out tests to ascertain whether a hazard existed in the first place. That is not the situation here and the downgrading from category 1 to category 2 means the hazard was still in existence and identified. There is no realistic prospect of the Applicant succeeding in demonstrating that the provision of a report to identify the remedial works required to address an identified hazard (excess cold) was improper or that the Tribunal erred in upholding it.

Summary

22. None of the grounds have a realistic prospect of success and they are largely seeking to re-run the factual enquiry which the Tribunal undertook in reaching its decision.

23. In the circumstances the Tribunal does not consider that there is any realistic prospect of a successful appeal in this case. The Tribunal also does not consider that there is any other good reason for an appeal and therefore permission to appeal is refused.

Name: Judge A. Arul **Date: 23 June 2025**