FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BU/HIN/2025/0627**
Property	**:**	**STRETFORD HOUSE, STRETFORD, MANCHESTER**
Applicant	**:**	**LONDON & QUANDRANT HOUSING TRUST**
Respondent	**:**	**TRAFFORD BOROUGH COUNCIL**
Type of Application	**:**	**Appeal against Improvement Notice: Schedule 1, paragraph 10, Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge A M Davies** **Tribunal Member J Elliott MRICS**
Date of Decision	**:**	**26 March 2026**

DECISION

The Improvement Notice issued by the Respondent to the Applicant on 28 April 2025 is confirmed save for

(a) the following variation which is to be substituted for the remedial action required to be taken in respect of the windows:

To all external windows located on floor levels 1 to 23, take the necessary remedial action to ensure that all windows are securely fitted with window restrictors that are of a type and design that limits the opening of the windows to a maximum of 100mm and cannot be disengaged unless using a special tool or key.

For the avoidance of doubt, the alternative remedial action specified in the improvement notice in relation to the windows is deleted.

(b) a provision that the remedial work shall be begun within 6 weeks of the date of this decision and completed within a period of 6 months thereafter.

REASONS

BACKGROUND

1. Stretford House is a 23 storey residential property owned by the Applicant, containing 132 one and two bedroomed flats. Seven of the flats are let on long leaseholds. The rest are allocated by the Respondent to individuals and families as social housing. The flats are situated on the 1st to 22nd floors. The ground floor contains a secure entrance hall, a caretaker's office, utility areas and stairwell, as well as two lifts, one serving the odd-numbered floors and the other the even-numbered floors. On the 23rd floor are communal areas including a lounge, laundry and roof-space, accessed via the lift and alternatively via a narrow landing at the head of the staircase.

2. On 26 August 2023 a resident, Mr Erskine, tragically fell to his death from his flat on the 16th storey of the building. In the circumstances of his death it was unclear whether the fall was accidental, and a verdict of "death by misadventure" was returned by the coroner on 22 March 2024. The coroner reported to the Secretary of State for Levelling Up, Housing and Communities his concerns regarding the building's window design, which is standard across all windows on the 1st to 22nd floors and, unless restricted, allows for full rotation within the frame. A copy of the report was sent to the Applicant and the Respondent.

3. Meanwhile on 4 September 2023 the Respondent received a communication from the occupant of flat 155 advising that in her opinion the windows were a hazard. Responding to this report, on 26 September 2023 Mr Firth, an Environmental Health Officer employed by the Respondent, visited flat 155 with his colleague Mr Naylor, Housing Enforcement Officer, and representatives of the Applicant. The Applicant's representatives, however, were not allowed entry to the flat. During this visit the common parts of the building were also inspected.

4. Mr Firth and his colleague identified hazards in the stairwell and in the position and design of the windows. The defects they discussed with the Applicant's representatives during the inspection included defects in the permanent limiter blocks on four windows in the common parts of the building at levels 2, 7, 8, and 19, which as a result could be opened beyond 100mm. The Applicant's representatives arranged for these defects to be remedied immediately, preventing the windows – in line with the other windows in the common parts from floors 1 to 22 – from being opened so as to allow a gap exceeding 100mm, ie sufficiently widely for anyone to fall out of them.

5. The defects noted on this inspection were outlined to the Applicant by letter dated 18 October 2023. At that time, the Respondent's concerns related to the kitchen windows, and not the other flat windows. The Applicant did not supply a risk assessment, as they were asked to do.

6. Correspondence continued, with the Respondent seeking assurances that the hazards in the building would be identified by the Applicant and addressed within a reasonable timeframe. On 14 November 2024 Mr Firth inspected the building again, this time with two senior colleagues and two managers employed by the Applicant. Also present was a building consultant from the Applicant's building surveyor, Anderton Gables. On this occasion the inspection included the common parts at level 23, the whole of the staircase, and the interior of flats 26, 64, 102, 121 and 152. The hazards noted by the Respondent on this visit were in broad terms the same as those noted in September 2023, the window designs and stair railings being identical throughout the building.

7. At this second meeting the Applicant was asked to supply a programme for rectification of the defects in the property within the following 14 days. It did not do so.

8. After warnings as to the enforcement action being contemplated by the Respondent, an improvement notice was served on the Applicant on 28 April 2025, citing one Category 1 hazard: falling on stairs, and two Category 2 hazards: falling between levels from windows in the flats and from the landing on the 23rd floor.

THE LAW

9. Section 5 of the Housing Act 2004 ("the Act") requires a local housing authority, on identifying a Category 1 hazard on residential premises, to take enforcement action. Section 11 provides that the enforcement action may take the form of an improvement notice requiring the person on whom it is served to take specified remedial action. Section 12 of the Act enables, but does not require, a local housing authority, to take enforcement action where a Category 2 hazard has been identified. In addition to an improvement notice, Part 1 of the Act creates other enforcement options available to the housing authority, namely making a prohibition order (section 20), serving a hazard awareness notice (section 28), or making an emergency prohibition order (section 43).

10. Hazards in residential premises are to be classified in accordance with the HHSRS assessment system. This involves making a value judgement as to the likelihood of harm occurring, and the seriousness of any such harm. "Worked examples" and statistical averages are provided, with a view to achieving a level of consistency in the application of the HHSRS system. Once levels of likelihood and harm have been assessed and the resulting figures have been input into the system, potential outcomes are given a score which places the hazard in one of bands A to J. Scores in bands A to C are Category 1 hazards, and bands D to J are Category 2 hazards.

11. Section 13 of the Act provides that an improvement notice must specify the nature of the hazard, the deficiency in the property giving rise to the hazard, the required remedial action, and the date by which the remedial action is to be completed.

12. Schedule 1 to the Act contains provisions relating to appeals against improvement notices. Paragraph 15 provides that the appeal is to be by way of a re-hearing and that the tribunal may have regard to matters of which the housing authority was unaware when the improvement notice was issued. The tribunal may confirm, quash or vary the improvement notice.

13. In making its decision to serve an improvement notice, the local authority is required to have regard to the Housing Health and Rating System Operating

Guidance (2006). Although the Operating Guidance is not binding on it, the tribunal is also expected to take it into consideration.

14. Guidance regarding determination of improvement notice appeals by the tribunal has been given by the Court of Appeal in *Hussain (Nasim) v Waltham Forest LBC* [2023] EWCA Civ 733. Firstly, the tribunal, while making its own decision, is required to treat the views of the local authority with respect, and to give special weight to the evaluations of the officers which led them to serve an improvement notice. Secondly, the tribunal may only take into account, in making its determination, matters which were in existence at the time the improvement notice was made and which could have been taken into account by the local authority if it had been made aware of them.

THE LEASES

15. The form of tenancy agreement under which the majority of flats in Stretford House are occupied provide at paragraph 4.k.1 "*You must allow our staff, agents and contractors to enter your home to inspect or carry out repairs or improvement works at reasonable hours of the day. We will normally give you at least 24 hours' notice that we will be calling, unless it is an emergency repair*".

16. The Tribunal was provided with a sample of the 125 year lease under which 7 of the flats are occupied pursuant to Right to Buy legislation. No similar covenant to allow access for repairs has been identified by the tribunal in this document, which does however provide at clause 4.1 that the Landlord is obliged to keep in repair and make good any defect in the structure and exterior of the building, which includes the window frames.

BUILDING SAFETY REGULATIONS

17. It was common ground that the staircase and landing in the building complied with building regulations in force at the time of construction and that the windows, thought to have been added in the 1990s, also complied with building regulations at the time. The current regulations are set out in Approved Documents K – relating to falls, and O – relating to overheating. Approved Document K requires the height of a window sill to be not less than 900mm from the floor. Approved Document O requires a window sill on an upper floor to be not less than 11000mm from the floor

in any location where the window may be opened to avoid overheating. Further, it requires (a) a lock or guarding on any window which can be opened more than 100mm, and (b) that handles to be reached to close the window to be not more than 650mm from the interior.

18. In assessing premises for hazards local housing authority officers have regard to the relevant building regulations but are obliged neither to impose or enforce them directly nor to limit any required remedial work to building regulation safety standards.

19. In 2021 the Building Safety Regulator (BSR) was established, and was given powers under Building Safety Act 2022. It is required to oversee construction projects involving high rise buildings such as Stretford House. Currently this is done by requiring contractors to submit proposals at "Gateway" stages of a project. Proposals are scrutinized for appropriate safety measures and will be returned for review if such measures are deemed inadequate.

THE INSPECTION AND HEARING

20. The Respondent supplied the tribunal with a large number of photographs of the interior and exterior of the building, the common parts, the staircase and flats (occupied and unoccupied) taken during the inspections in September 2023 and November 2024.

21. The tribunal was also given the opportunity to inspect Stretford House on the first morning of the hearing. The inspection was carried out on behalf of the tribunal by the surveyor member. He was accompanied by counsel for each party, their instructing solicitors and other interested persons including the expert witnesses.

22. At the hearing the Applicant was represented by Ms Salmon of counsel, and Mr Whatley of counsel represented the Respondent. Evidence was given for the Applicant by Mr Newstead, Director of Major Programmes Property and Investment, and by their expert witnesses Mr Lawrence, MSc, MCIEH an Environmental Health Surveyor, and Mr Halliwell BSc (Hons), MCIOB, AssocRICS, MEWI, ACIEH, Cert CII (claims), Building Consultant. For the Respondent, the Tribunal heard the evidence of Mr Fisher, Mr Firth and Ms Lees.

23. The Applicant applied for the improvement notice to be quashed. The following issues fell to be determined:

    (1) Whether, as a question of fact, there are Category 1 hazards at Stretford House

    (2) Whether the decision to issue an improvement notice was a reasonable, proportionate and appropriate response to the hazards in the building given the Applicant's plans for major works to Stretford House, including replacement of the windows

    (3) Whether all appropriate investigations were made by the Respondent prior to issuing an improvement notice, including analyses as to use of the staircase, the number of children living in the building, and whether the planned major work will remedy the Category 2 hazard posed by the windows

    (4) Whether a hazard awareness notice was adequately considered as an alternative form of enforcement

    (5) Whether suspension of the improvement notice was adequately considered

    (6) Whether the Respondent followed its own policy of enforcing the law in a fair, equitable and consistent manner, enabling businesses to meet their legal obligations without unnecessary expense.

STAIR GUARD – DISPUTED CATEGORY 1 HAZARD

24. Mr Halliwell and Mr Lawrence disputed the Respondent's assessment that the risk resulting from the height of the lower guard rail on the staircase amounted to a Category 1 hazard. If they were right, the hazards in the building were properly assessed as Category 2 hazards, and the Respondent was not required to take any enforcement action, although it could choose to do so.

25. Further measurements having been taken during the tribunal's inspection, it was agreed that the gap between the lower guard rail and the step below it varied slightly from bottom to top of the staircase, but was at a maximum about 190mm at the nose of the step and about 350mm at the back of the step. To avoid falls and entrapment,

the ideal is a gap not exceeding 100mm. The HHSRS average likelihood of a fall in premises such as Stretford House is 1:410, whereas the Respondent assessed likelihood at 1:56. There was general agreement as to the severity of the harm that would be caused by a fall under the guard rail. The Respondent's score for the hazard was 1123, which is in band C.

26. The Respondent defended its Category 1 assessment on the grounds firstly that the gap significantly exceeds the ideal and secondly that the staircase "*is accessible to all occupiers and visitors of the premises and other than the lift, is the primary means of access and egress for the flats. There will therefore be a high frequency of users, which also increases the likelihood of a fall, especially in relation to young children.*"

27. Mr Lawrence took the view that the staircase was unlikely to be used "*if the lifts are in working order, in my opinion it is a fire escape and a secondary access route. Upper floor tenants may use the staircase to catch a lift on the adjacent lower or upper floor but above the second floor few will climb more than one level. Given that the staircase is also isolated from the landings by fire doors I would not expect unaccompanied children to use the staircase.*" He also noted that the statistics used in the HHSRS calculation for falls on stairs related to people over 60, and not children. He assessed the likelihood of a fall at 1:100 and obtained a hazard rating score of 420, which is band E.

28. Mr Halliwell noted that no accidents involving the gap below the guard rail had been reported since the property was built in the 1960s. He agreed with Mr Lawrence that "*most persons are likely to use the lifts…. Only a minor could feasibly pass through this* [gap] *and it is likely that most minors using the stairs will be accompanied by an adult, again further reducing the likelihood of event…. The likelihood… it could be argued,* [is] *negligible.*" However he added at paragraph 6.13 of his report: "*The landlord may wish to consider closure of the gap beneath the balustrade by the retro installation of a further weld fixed string mirroring the fall of the current string and closing off the gap.*" This is essentially the same as the remedial action required by the improvement notice.

29. The Tribunal finds as fact that the hazard on the staircase is a Category 1 hazard for the following reasons:

(a) Although there is some doubt about the extent to which the staircase may be used by children for whom the wide gap below the railing is a hazard, the tribunal is neither required nor qualified to carry out an HHSRS assessment. The guidance in *Hussain v Waltham Forest LBC* is that the opinion of the local authority's officers is to be respected, and the tribunal has seen no compelling evidence from the Applicant's expert witnesses to discount it.

(b) The Applicant's expert witnesses rightly acknowledged that an element of discretion is involved in an HHSRS assessment, and that slightly differing views can result in a difference in the score which changes a band C assessment (Category 1) to band D or lower (Category 2). In this case the Respondent's score was low Category 1, but in the opinion of the tribunal represents a genuine and acceptable exercise of the Respondent's officers' discretion.

(c) Although the baseline statistics used in the HHSRS procedure relate to falls among adults over 60, the Operating Guidance at paragraph 4.11 advises that in appropriate circumstances the housing authority is justified in taking into account the use of premises by other groups of vulnerable people.

23RD FLOOR LANDING GUARD

30. The height of the gap below the railing on the landing at the top of the staircase is 120mm, whereas the ideal maximum is 100mm.

31. There was general acceptance that this gap should be reduced, the remaining issue being whether the remedial work should properly be delayed until the Applicant carried out Stage 2 of the planned major work on the building.

DELAYING WORK TO THE GUARD RAILS

32. For the Applicant, Mr Newstead explained that prior to receipt of the improvement notice, the Applicant based its approach to the Respondent's concerns about the staircase on a report from its building consultants Anderton Gables. That report concluded that BS 6180 "*effectively permits openings of more than 100mm between the bottom of the guarding and the stairs providing that the distance between the bottom of the guarding and the pitch line is less than 50mm… The*

distance… at Stretford House varies between 65 and 70mm. Having regard to the relatively minor deviation from the recommendations of BS 6180, nature of occupancy and potential risks, it is our opinion that this situation does not constitute a Category 1 or 2 hazard under the HHSRS." However during cross examination Mr Newstead accepted that this is a misrepresentation of the permission referred to, which does not apply to staircases in blocks of flats.

33. Following receipt of the improvement notice, the Applicant obtained expert reports from Mr Halliwell and Mr Lawrence who advised that the stair and landing railings constitute a Category 2 hazard. As a result, Mr Newstead said, the Applicant decided to include, in the planned refurbishment of the building, replacement of the whole staircase to ensure compliance with current Building Regulations. The Applicant will include the redesigned staircase at Stage 2 of the refurbishment. This will require Gateway permission from BSR which will ensure compliance with all safety standards. Stage 2 of the refurbishment will start after completion of the Stage 1 work to the exterior fabric of the building. Given that Stage 1 proposals will not be submitted to BSR for approval until, at earliest, October 2026 and that Stage 1 work might take approximately 12 to 18 months to complete, Mr Newstead was unable to say when Stage 2 will start, but in any event it will not be earlier than 2028.

34. In view of their experts' advice that the risk in relation to the staircase and landing guard rails was low based on sparse use of the stairs and the access hindrances for children posed by heavy fire doors, the Applicant did not consider that any remedial work on the staircase or landing was necessary prior to the Stage 2 refurbishment.

35. Having accepted the Respondent's view that the gap below the guard rails on the staircase amounts to a Category 1 hazard, the tribunal finds that it is not appropriate to delay remedial work on the stairs for a period of at least 2 years to the implementation of Stage 2 of the major work. Mr Newstead confirmed to the Tribunal that it is by no means certain that Stage 1 proposals will pass Gateway 1 tests in October 2026. If the proposals are returned for review, there will be additional indeterminate delays in starting work on the project. The tribunal finds that the requirement in the improvement notice to install an additional guardrail

meanwhile is an appropriate and proportionate safeguard to remedy the Category 1 hazard on the staircase and the Category 2 defect on the landing at level 23.

THE WINDOWS

36. The improvement notice sets out the deficiencies in relation to the windows and includes the following:

    (a) The sill heights are below 1100mm and the windows are not equipped with safety catches that …permanently limit the opening…to 100mm… The window openings are very large…. The existing restrictor can be easily disengaged by depressing a button…

    (b) The windows installed in the kitchens…are situated directly adjacent to work surfaces, therefore allowing easy access to an open window and reducing the sill height even further….some of the windows are behind kitchen sinks, …increasing the likelihood of someone climbing on the work surface to operate the windows.

37. The improvement notice requires the Applicant to "*ensure that all windows are fitted with window restrictors that are of a type and design that limits the opening of the windows to a maximum of 100mm and cannot be disengaged unless using a special tool or key;*

    OR provide a fixed safety rail to all external windows, located on floor levels 1 to 23, to a height which is at least 1100mm from the floor level."

38. The tribunal's observations following the inspection and after examination of the photographs are as follows:

    (a) The kitchen windows open over work surfaces or shelves, either of which a young child could climb.

    (b) The distance between the floor and the lower edge of the windows is approximately 980mm at most.

    (c) An unknown but probably substantial number of windows in the flats have, between the floor and the lower edge of the window, furniture, radiators or horizontal heating pipes, any of which would (in addition to items which might be dragged to the window) assist a child to climb up to the sill.

(d) The windows are opened by the operation of two cockspur handles which are lockable with a key. The tribunal was told that the tenants commonly report having lost (or otherwise not having) their window keys.

(e) The opening of the windows is restricted by a mechanism in one side of the frame, which allows the initial opening of about 100mm to be extended, by the push of a button, to about 300mm, and again at the push of a button, to open unrestrictedly so that the window can rotate 360°. The tribunal's observation on inspection was that the button was relatively easily depressed, and would be within the capability of a young observant child.

(f) Photographs taken from nearby roads by the Respondent show that it is by no means uncommon for windows in the building to be opened to their maximum, horizontal, extent, or to the intermediate, 300mm, extent. These photographs are variously date-marked from the end of April to the end of October 2025.

(g) An unknown number of tenants with children have fitted permanent window restrictors or have insisted on having them fitted.

(h) An unknown number of tenants have fitted sliding secondary glazing panels. So far as is known, these are not lockable.

39. Additional evidence regarding the windows was as follows:

(a) At least one tenant uses a hook to bring an open window back for closure, in view of her belief that to lean out in order to reach the window by hand would be dangerous.

(b) Mr Firth for the Respondent noted that window sills in the flats he inspected were measured at between 938 and 968mm from the floor.

(c) All the windows in the common areas of the property have safeguards, namely either a permanent block restrictor limiting opening to 100mm, or fixed glazed panels in the lower part of the window bringing the height from the floor to at least 1100mm.

(d) There is no knowledge of falls from the windows other than the death of Mr Erskine in 2023, but the tribunal was told that records of any such incidents were likely to be available only for the last 20 years or so.

(e) Mr Newstead said that the original purpose of the rotational windows would have been to allow tenants to clean the outside of the panes, but that this was no

longer a consideration. He confirmed that the purpose of opening the windows is now limited to ventilation.

(f) The overall cost of providing new window restrictors was assessed at between £20,000 and £25,000, which sum Mr Newstead said the Applicant regarded as negligible and by no means a reason for not carrying out the work.

(g) The Applicant's local property managers undertook an inspection of window frames and restrictors under a maintenance works programme in 2023/24, and carried out any repairs then found to be necessary. Metal "L – brackets" were added to the corners of some frames to strengthen them.

40. The reason given by the Applicant for its reluctance to apply new restrictors to the windows prior to Stage 1 of the major works, is that the tenants are understood not to want them. In support of this contention, Mr Newstead explained that on 4 September 2024 the Applicant wrote to all residents offering to fix permanent restrictions on their kitchen windows. Subsequently the Applicant wrote to all residents offering permanent restrictors (such as are in place in the common parts of the building) to all the flat windows. Mr Newstead said that no replies had been received and that the Applicant concluded that the residents had no appetite for interim adjustments to their windows pending replacement during Stage 1 of the major refurbishment. He said that the Applicant was unwilling to insist on gaining entry to the flats in order to comply with an improvement notice, and he anticipated that it might be necessary to obtain county court orders in some cases. He told the tribunal "*We do not wish to enforce works that are not wanted…we have* [as a social housing provider] *to attach a lot of significance to tenants' views…we should not have to force work on people.*"

41. Mr Newstead also told the tribunal that having to take interim safeguarding measures prior to the planned refurbishment was disproportionate in relation to Stretford House and would set a precedent for the Applicant's other buildings. He added that the Applicant did not consider any hazard relating to the windows so imminent as to require emergency rectification.

42. The Applicant's expert witnesses took a similar approach. Mr Halliwell considered the risk to be negligible given that there had been one known fatality in some 60

years despite the number of residents in the building. He disagreed with the Respondent's calculation that the likelihood of a fall occurring was 1:56 and said that having read about the circumstances of Mr Erskine's death he had formed the view that it was not accidental.

43. Mr Lawrence said that he had come to approximately the same hazard score as that of the Respondent, although he had input different figures. He said that he was not convinced that the cost and disruption of adding new restrictors "*was justified in the case of every flat*", but he also confirmed that if he was living in the building with young children he would want to have them fitted.

44. The tribunal finds, in connection with the windows, that
    (a) it is likely on a balance of probabilities that an unknown number of the window handles cannot be locked by the tenants because keys are missing.
    (b) the present override button on the window restrictors is capable of being operated by young children.
    (c) young children have access to the windows to an extent that is potentially dangerous because of the height of the sills and the presence of furniture and other items that facilitate climbing.
    (d) the hazard presented by the windows would not be sufficiently avoided by adding a barrier to bring the height of the sill from the floor to 1100mm, in view of (c) above.
    (e) although at least some parents seem to be adding their own safeguards, there is a real possibility that other parents may not do so, or that childless residents may be visited by children, or that windows may be left unrestricted by accident.
    (f) leaning out of the window in order to recover and close it when it is fully horizontal is potentially dangerous particularly if undertaken by anyone suffering from an impairment.
    (g) the Applicant twice offered to fit permanent restrictors on the flat windows and had no response. While permanent restrictors may have been unacceptable to the residents, the type of restrictor described in the improvement notice might have been acceptable had it been offered, ie a restrictor that was not permanent but could be disengaged using a special tool or key.

(h) the lack of responses to the Applicant's written offer is not necessarily an indication that an unknown number of residents would not have agreed to a temporary additional safeguard to the windows. The Applicant has not held any meeting of the residents at which the issues could be properly presented.

(i) local property managers obtained access to survey the windows in 2023/4 and to carry out repairs as needed. This suggests that access may not be a problem if new restrictors are to be put in place, although the tribunal notes Mr Newstead's claim that the survey in 2023/4 was just a compliance check which "*didn't make a difference to the windows*." The witnesses heard by the tribunal agreed that a new childproof restrictor could be added to each window quickly and without a great deal of disruption.

45. The issues listed at paragraph 23 above have been considered by the tribunal in the light of the evidence heard and a careful reading of the documents produced by each of the parties.

46. <u>Whether the decision to issue an improvement notice was a reasonable, proportionate and appropriate response to the hazards in the building given the Applicant's plans for major works to Stretford House, including replacement of the windows</u>

In September 2023 following the Applicant's first inspection of the building, the Applicant was informed of the hazards on the staircase and on the landing at the 23rd floor.

From the inspection attended by its representatives in September 2023 and in any event from April 2024 when the Coroner sent his report the Applicant was aware that there were concerns about the risk of falls from the windows in the building.

In August 2024 the Applicant informed the Respondent that replacement of the windows was due to start in March 2025 and to take between 6 and 12 months to complete. By mid October 2024 it was clear to the Respondent that this had been an unrealistic expectation.

The Respondent maintained correspondence with the Applicant, seeking assurances as to how and when the hazards were to be addressed. On 14 October 2024 the Applicant replied by email that

- the planning application was behind schedule
- no timescale for completion of the Stage 1 work to the exterior of the building (roof, cladding, windows) was available but the installation once started was likely to take a minimum of 18 months
- a technical design for Stage 1 had yet to be prepared.

A meeting took place at the property on 14 November 2024 at which the Respondent made it plain that a timescale and proposal for safeguarding work was required from the Applicant within the following 14 days. In view of previous correspondence, this was a reasonable request. The Applicant did not produce the requested information but reiterated on 17 December 2024 that no work would be carried out on the windows until they were replaced. On 23 December 2024 the Respondent warned the Applicant in the following terms: "*We recognise L&Q are due to replace the windows, however we feel the proposed timescales are not acceptable. No adequate progress has been made to mitigate the risks on site and your response does not give us confidence that the risks will be mitigated in a reasonable timeframe. Therefore, in the New Year we will be issuing an Improvement Notice under the Housing Act 2004*". On 24 February 2025, the Applicant repeated that work on the windows would not take place prior to the Stage 1 refurbishment, and also stated that no work would be done to the staircase guarding.

Although the Applicant obtained planning permission on 2 April 2025, the permission did not include any detail as to the design of new windows or staircase railings.

Prior to issue of the improvement notice the Applicant indicated that work on the windows could start later in 2025, but was unable to confirm this specifically. In the event, that work is now very unlikely to start before early 2027. At the date of the improvement notice the Respondent had, despite correspondence with the Applicant over the previous 18 months, no assurance that any remedial work would be undertaken within a known timescale. The Applicant specifically refused to

countenance interim safeguarding measures ahead of the planned major works. Mr Fisher told the tribunal "*Measures were known to be in train to replace the windows, the difficulty was getting a timeline. We did not know that the time would be subject to BSR, so I sent emails asking for a timescale. I'd expect a reply even "subject to regulator", but we got no timeline and the longer it went on the more ambiguous L & Q's response appeared.*"

The Applicant has confirmed that the cost of the work is not an issue. The tribunal finds that safeguarding work to the windows in each of the flats can be undertaken quickly and with a minimum of disruption to the occupants.

The tribunal finds that the issue of an improvement notice was reasonable, proportionate and appropriate, given (a) that a Category 1 hazard was identified at the property and the Applicant failed to accept this, and (b) that the Applicant failed to propose any safeguarding measures to mitigate the Category 2 hazards within a reasonable time.

47. Whether all appropriate investigations were made by the Respondent prior to issuing an improvement notice, including analyses as to use of the staircase, the number of children living in the building, and whether the planned major work will remedy the Category 2 hazard posed by the windows

The tribunal is satisfied that an HHSRS assessment was properly carried out by the Respondent's officers. Mr Firth's evidence showed him to be a careful and knowledgeable HHSRS assessor. He and his colleagues were entitled to make their own estimate of the extent to which the hazards – large gaps on the staircase and low window levels – represented likelihood of harm to children actually and potentially in the building at any given time. The tribunal accepts as reasonable the Respondent's decision not to inspect all the flats in the building, given the standard design of the stair railings and windows throughout. The tribunal has carefully considered Ms Salmon's representations on this point but finds that there are no obligatory investigations or analyses to be made prior to an HHSRS assessment, other than those which the housing authority's officers consider appropriate.

The Respondent acknowledges that the planned major refurbishment will adequately safeguard the windows and staircase once approved by BSR to the Decent Homes Standard, but is justified in objecting to the open-ended delay before such major work can be carried out.

The tribunal has also considered the question of whether the views of the tenants should have been taken into account prior to issue of the improvement notice. Ms Salmon directed the tribunal to *Bristol City Council v Aldford Two LLP* [2011] UKUT 130 (LC) in which the President of the Upper Tribunal said at paragraph 50 of his judgement "*The needs and preferences of the actual occupiers, as well as those of the vulnerable group considered for the purpose of the assessment, are in my judgement material to the choice of the enforcement action to be taken*". The case related to an improvement notice which required the installation of a heating system in a house, which the occupants did not want, having alternative means of heating the property which they found to be adequate. This may be distinguished from the present case in that far from being forcefully expressed, as in the Bristol City case, the views of none of the Stretford House residents are actually known. They are only surmised from their silence in response to an offer of window restrictors which are different to those now required by the improvement notice. The Applicant has not itself carried out a survey of the views of the flat occupants whereas the Respondent liaised – it is not known how or with what result – with ward councillors prior to issue of the improvement notice.

48. <u>Whether a hazard awareness notice was adequately considered as an alternative form of enforcement</u>

The improvement notice states that a hazard awareness notice was not considered appropriate because "*remedial action is necessary to reduce the hazards present, within a managed timescale. A hazard awareness notice does not compel the Landlord to act*". Since the Applicant had been aware of the hazards for a long period prior to the date of the improvement notice and had resisted all requests for voluntary rectification, a hazard awareness notice would have achieved nothing in terms of safeguarding the occupants of the building.

The tribunal finds that this alternative means of enforcement was adequately considered by the Respondent.

49. Whether suspension of the improvement notice was adequately considered

The possibility of suspending the improvement notice was considered and referred to in the improvement notice as follows: "*There are no good reasons known to the Authority that would warrant deferring these remedial works by suspending the Improvement Notice. This is because remedial works are necessary now to address deficiencies in the Property and reduce the level of risk arising from the hazards; deferring the works would result in the occupants and/or visitors continuing to be exposed to the hazards.*"

This statement sufficiently indicates that suspension of the improvement notice was considered and rejected for the reasons given, with which the tribunal agrees.

50. Whether the Respondent followed its own policy of enforcing the law in a fair, equitable and consistent manner, enabling businesses to meet their legal obligations without unnecessary expense.

The Respondent's published Enforcement Policy sets out the Council's purpose as follows:

- *Ensure that we enforce the law in a fair, equitable and consistent manner*
- *Assist business and others in meeting their legal obligation without unnecessary expense*
- *Focus on prevention rather than cure*
- *Take firm action against those who flout the law or act irresponsibly*
- *Respect individuals' Human Rights.*

Mr Newstead confirmed that the expense of adding temporary window restrictors is not an issue for the Applicant. The tribunal does not consider that having to undertake litigation in the event that a tenant refuses access for this work to be carried out would amount to an unreasonable difficulty or expense for the Applicant. The tribunal has regard to the fact that if additional time for compliance with the improvement notice is required in relation to any one or more of the flats for this purpose, an application for an extension of time can be made to the Respondent.

Mr Newstead suggested at the hearing (but not in his witness statement) that the Applicant would not be able to add a rail along the pitch line of the staircase or under the guard rail of the top landing without first obtaining BSR approval, which would take many months. This was denied by the Respondent at the hearing. Neither party produced documentation to support its position on this point.

The Tribunal finds it inconceivable and has seen no evidence to suggest that a simple rail added as a temporary safeguard pending the Stage 2 major works could require formal BSR approval or meet with any objection, especially when undertaken in response to a Category 1 hazard where the existing guard rail does not comply with current Building Regulations.

The tribunal's assessment of the correspondence between the parties from September 2023 to April 2025 is that the Respondent has been patient and reasonable in the face of some prevarication on the part of the Applicant. This is in accordance with its policy under the heading "What you can expect from us": "*We will enter into discussion and offer advice to anyone to try to ensure that they do not unnecessarily expose themselves to the possibility of formal action through a lack of understanding, or information.*"

51. The tribunal accordingly confirms the improvement notice subject to variation of the safeguarding work which is to be carried out to the flat windows. A period of 6 months has been allowed for completion of the remedial work, no objection to such a timescale having been raised by the Applicant.