



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

Case Reference : **MAN/00CG/HIN/2025/0633**

Property : **81, 81a, 89 and 89a Charnock Dale Road, Sheffield**

Applicants : **STEPHEN ANTONY THORPE and
SHAUN ADRIAN THORPE**

Respondent : **SHEFFIELD CITY COUNCIL**

Type of Application : **Appeal against Improvement Notice, paragraph 11
of Schedule 1 to the Housing Act 2004**

Tribunal : **Tribunal Judge A Davies
Tribunal Member J Gittus, MRICS**

Date of Decision : **1 April 2026**

DECISION

The improvement notice relating to the Property dated 19 June 2025 is varied as follows:

In relation to hazards existing on and remedial work required to premises falling within title number SYK378576, the improvement notice shall be complied with by the registered owner of the long leasehold interest in that property; and

In relation to hazards existing on and remedial work required to premises falling within title number SYK168830, the improvement notice shall be complied with by the registered owner of the long leasehold interest in that property.

REASONS

1. On 11 April 2025 a visitor to flats at 81 – 89 Charnock Dale Road reported to the Respondent that the two external stone staircases leading up to a walkway giving access to the flats were in a potentially dangerous condition. The railings alongside the steps were also reported to be unstable.
2. Ms Ison, a Senior Private Housing Standards Officer employed by the Respondent, visited the site on 15 April and 5 June 2025 and noted a number of hazards. She took photographs which have been provided to the tribunal. On carrying out a HHSRS assessment, she found that there were two Category 1 hazards, namely
 - (a) falling on level surfaces, the hazard being damaged surfaces near the entrance to the site. This was scored at 1451.3 in the HHSRS system, which is band C, Category 1, and
 - (b) falling on stairs, which was scored at 11996.4, band A, Category 1.
3. In line with the Respondent's published Intervention and Enforcement Policy an improvement notice was served on 19 June 2025. The recipients were the Applicants, who are registered as owners of the freehold property 81 and 89 Charnock Dale Road under Land Registry title number SYK457152. The Applicants objected that they were not the correct recipients of the improvement notice and in due course applied to this tribunal pursuant to paragraph 11 of Schedule 1 to the Housing Act 2004. The Applicants did not raise any other objection to the improvement notice, and acknowledge both the existence of the hazards and the need for remedial work as set out in the notice.

THE LAW

4. 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 11(3)(c) provides
"if [the] premises are the common parts of a building containing one or more flats, [the notice] may require such action to be taken in relation to the building (or any part of the building) or any external common parts."

5. Section 1(5) of the Act defines “external common parts” in relation to a building containing one or more flats as “*common parts of the building which are outside it*”, and section 1(6) provides

“In this Part any reference to a ...building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, thebuilding (or any part of it).”

6. Part 1 of Schedule 1 to the Act deals with service of improvement notices and provides at paragraph 4

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

- (a) common parts of a building containing one or more flats, or*
- (b) any part of such a building which does not consist of residential premises.*

(2) The local housing authority must serve the notice on a person who –

- (a) is an owner of the specified premises concerned, and*
- (b) in the authority’s opinion ought to take the action specified in the notice.*

(3) For the purposes of this paragraph a person is an owner of any common parts of a building if he is an owner of the building or part of the building concerned, or (in the case of external common parts) of the particular premises in which the common parts are comprised.”

Paragraph 5 of the Schedule provides for copies of an improvement notice to be served on every other person who has a property interest in the premises or is an occupier of the premises.

7. A definition of the word “owner” as used in the Act is contained at section 262(7) which reads:

“In this Act “owner”, in relation to premises –

- (a) means a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion; and*

(b) includes also a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds 3 years.”

8. Part 3 of Schedule 1 to the Act contains provisions relating to appeals against improvement notices. Paragraph 10 of the Schedule refers to two specific grounds on which an appeal may be made and these are set out in paragraphs 11 and 12. The relevant provision is at paragraph 11 which states:

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

(a) take the action concerned, or

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

9. Schedule 1, 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.

10. By paragraph 16(2) of Schedule 1 to the Act

“On the hearing of the appeal [under paragraph 11] the tribunal may –

(a) vary the improvement notice so as to require the action to be taken by any owner mentioned in the notice of appeal ...

And paragraph 16(3) states –

“In the exercise of its powers under sub-paragraph (2), the tribunal must take into account, as between the appellant and any such owner –

(a) their relative interests in the premises concerned (considering both the nature of the interest and the rights and obligations arising under or by virtue of them);

(b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned; and

(c) the relative degree of benefit to be derived from the taking of the action concerned.

Paragraph 16(5) adds

“So long as that other person remains an owner of the premises to which the notice relates, he is to be regarded for the purposes of this Part as the person on whom the [improvement] notice was served...”

THE PREMISES

11. The staircases are the only means of access to five two-storey first floor flats above commercial units numbered 81 – 89 (odd numbers only). The flats are numbered 81a to 89a. Each staircase leads from one end of the rear of the building to join the first floor walkway behind the flats. The walkway is built over the extended rear part of the 5 commercial units. The staircases are situated over the yard beyond the footprint of the building.

12. The whole building is set back from Charnock Dale Road behind a wide pavement and parking area. There is a narrow pedestrian access at the side of number 89, and the vehicular access is at the other end, alongside number 81. To the rear of the building is a yard or driveway containing a separate row of garages or stores which are variously included in the titles of the leaseholders of flats or commercial premises in the main block. Commercial waste bins are located in the driveway alongside number 81. The driveway has a stoned surface, but the part nearest the road has been tarmacked. The hazard “falls on level surface” related to potholes near the waste bins, and to a wide area of old tarmac, near to but not immediately adjacent to the highway, which was worn away to a depth of up to 2 inches. Between them these defects in the road surface created a trip hazard for pedestrians walking either to the rear of the building to access the flats or from the public highway to the commercial units.

THE HEARING

13. The application was listed for a hearing by video link. The Applicants were represented by their friend Mrs Stevenson. Ms Saad, solicitor for the Respondent, appeared for the Council. Ms Ison attended to give evidence in line with her witness statement.

14. The tribunal was provided with a bundle of documents by each party. The Respondent had provided location maps of the area downloaded from the Land

Registry's website, but had not provided complete office copies of the relevant freehold and leasehold properties. Further, the photographs taken by Ms Ison did not clearly indicate where the damaged road surface was or how far it extended towards the road. Although the remedial work required by the Respondent included lighting the stairs, there was no clear evidence before the tribunal as to whether there were lights on the stairs, and if so whether they adequately lighted the steps at night.

15. Mrs Stevenson presented the Applicant's case on the basis that the Applicants were "ground landlords" and were not responsible for maintenance of the defective areas. She relied on a covenant contained in the leases granted by the Applicants which reads, at the latter part of clause 4(2):

"the surface of the said piece of land coloured blue purple and brown on the said plan and the steps coloured grey on the said plan shall be repaired maintained cleansed and renewed by and at the expense of the Owners from time to time of such premises [ie the demised premises and the adjoining or neighbouring premises] proportionately according to the extent of their respective user thereof such proportion in the event of dispute or difference to be determined by the Lessors Surveyor whose decision shall be final and binding on all parties and when determined as aforesaid shall be recoverable forthwith by action."

This extract is taken from the lease of the flat 89a, but the tribunal was told that a similar covenant – referring to different coloured areas on the lease plan according to the extent of the demise – was included in the lease of number 89.

16. The Respondent defended its decision to serve the improvement notice on the Applicants on three grounds. Firstly, it claimed that as the Applicant were responsible for repairs because they were in receipt of the ground rent: "*An inherent assumption in the payment of ground rent is that it will be used to finance repairs to shared areas for the benefit of the leaseholders and those expected to access the premises.*" Secondly the Respondent relied on the power given to the freeholder to settle, through its surveyor, any dispute which arose as to liability to pay for such repairs. Ms Saad said that this indicated that the Applicants as freeholders had the primary responsibility for repairs to the

property. Finally, it was thought that the staircases and that part of the driveway which was in disrepair fell outside any demise granted by the Applicants. Ms Ison's statement concluded "*It would also not be evident which leaseholder owners would be considered responsible for the common areas identified as presenting a hazard.*"

17. Having heard the representations of the parties, and considering the documents supplied, the tribunal agreed that there was insufficient evidence provided to enable it to identify on whom the improvement notice should have been served. The parties confirmed that their cases were closed, and the tribunal gave directions for the production, by the Respondent, of "*a paginated electronic bundle containing copies (coloured where the originals are coloured) of -*
- a) *The Land Registry title of the Applicants at the Property.*
 - b) *The Land Registry title for each of 81, 81a, 89 and 89a Charnock Drive Road.*
 - c) *An additional copy of the title plan for 81a Charnock Drive Road on which the Respondent shall mark its representation as to the position of the surface damage referred to in the Improvement Notice.*
 - d) *Photographs of the entrance to the Property showing the damaged and undamaged surface areas in relation to the adjacent premises.*
 - e) *A statement as to whether the external lights lighting the three flights of stairs are or are not in working order."*

Following receipt of these documents, the tribunal directed that it would make a determination on the papers without a further hearing.

18. The Respondent duly produced such a bundle, but included in it a witness statement from Ms Ison dealing with matters other than whether the external lights were in working order, notice of entry documents dated after the date of the hearing, and correspondence between the Respondent and third parties. As none of these documents were included in the tribunal's directions, they have not been read or considered by the tribunal when reaching its determination.

THE TITLES

19. The Applicants' freehold title number SYK457152 comprises
- (a) the whole of number 81, the area of yard immediately behind number 81, the most westerly of the garages or stores, the driveway alongside number 81, and the forecourt and parking area in front of it, up to the line of the pavement which is a public highway,
 - (b) the whole of number 89 including the area up to the pavement in front of number 89, the pedestrian access alongside it, the area of the yard immediately behind it and the easternmost of the garages or stores, and
 - (c) two more of the garages or stores.

This title is believed to include each of the two staircases.

20. The leasehold title SYK378576 is flat 81a. It comprises the whole of the property described at paragraph 19(a) above except the ground floor commercial unit, the forecourt and parking area in front of number 81 and a small part of the driveway immediately adjacent to the highway. The demised premises therefore include the western external staircase and the driveway to the side and most of the driveway to the front of number 81. The demise creates an 800 year term from 29 September 1964 at an annual rent of £25.
21. Leasehold title SYK168830 is 89 Charnock Dale Road. The title extends to the same property as is described at paragraph 19(b) above except the premises above ground floor level (the flat), the easternmost garage or store, and a small part of the area in front of number 89 which is designated for parking. It includes one of the other garages or stores. The demised premises therefore include the eastern external staircase. This demise also creates an 800 year term from 29 September 1964, the annual ground rent being £75.
22. Neither of these leasehold titles includes reference to the positive covenant in the lease requiring the registered owner to maintain or contribute towards maintenance of the staircase or common parts, presumably because that covenant does not run with the title. There is a reference to the legal easements and reservations in the lease, which apply to the premises "*so far as they exist and benefit or affect the registered land.*"

CONCLUSIONS

23. The hazards at the Property are as identified by the Respondent and require (or at the time required) the remedial work specified in the improvement notice.
24. The improvement notice relates to external common parts of the building 81 – 89 Charnock Dale Road as defined in the Act.
25. The Respondent offered no authority for the proposition that either receipt of ground rent or the right to determine disputes gives rise to an obligation to carry out repairs. The tribunal rejects both suggestions.
26. The definition of “owner” at section 262 of the Act includes the Applicants and the long leaseholders of flat 81a and commercial unit 89 respectively. The Applicants’ interest in the property is vestigial whereas the leaseholders have a right to the rack rents of those parts of the property of which they are respectively the registered leasehold owners.
27. The appropriate recipients of the improvement notice are the leaseholders of 81a and 89 because
 - their respective interests in the property are substantially greater than that of the Applicants;
 - they will benefit from compliance with the improvement notice whereas there is no appreciable benefit to the Applicants; and
 - the defects giving rise to the hazards have arisen by wear and tear since the demise in 1964.The tribunal received no indication that in deciding on whom to serve the improvement notice the Respondent had considered paragraphs 11 and 16 of Schedule 1 to the Act.
28. Pursuant to paragraph 16(5) of Schedule 1 the leaseholders of numbers 81a and 89 respectively are deemed to have been served with the improvement notice.

29. The Respondent has not proved to the tribunal's satisfaction that any part of the defective road surface at the entrance to the driveway fell outside the demise of flat 81a.