FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/47UC/HIN/2025/0014
Property	:	The Shaw Wing, Kings End House, 39 Kings End Rd., Powick
Applicant	:	Malvern Hills District Council
Respondent	:	Elizabeth Claire Crossley
Type of Application	:	Appeal against Improvement Notice under Part 3, Schedule 1 to the Housing Act 2004
Tribunal Members	:	Mr I.D. Humphries B.Sc.(Est.Man.) FRICS Mr A. Lavender B.Sc.(Hons.), Dip.Law, Dip.Surv.
Date and Venue of Hearing	:	None. Determined on paper after site inspection
Date of Decision	:	28 October 2026

DECISION

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REASONS

Introduction

1 The is application is an appeal against an Improvement Notice issued by Malvern Hills District Council ('MHDC') under Sections 11 and 12 of the Housing Act 2004 dated 21 May 2025. This is the second Improvement Notice issued by MHDC in respect of this property. An earlier Notice dated 19 September 2024 had been appealed and quashed by a differently constituted Tribunal.

2 The Notice was served by MHDC on the freeholder, Miss Elizabeth Claire Crossley, who appealed to the Tribunal by application dated 3 June 2025. The Tribunal issued Directions and the case was listed on 26 March 2026.

The Law

3 Under section 11(1) the Housing Act 2004 ('the Act'), a local housing authority has a duty to serve an improvement notice if it considers a category 1 hazard exists in relation to residential property to which the Act applies and no management order is in place. If the authority considers category 2 hazards exist they have 'power' but no 'duty' to serve a Notice under section 12(2) of the Act.

4 The categories of hazard are listed in Schedule 1 to the Housing Health and Safety Rating System (England) Regulations 2005.

5 On receipt of an Appeal, the tribunal is required to reach its Decision by way of re-hearing under section 15(2)(a) of Schedule 1, Part 3 of the Housing Act 2004 and may by order confirm, quash or vary an improvement notice under section 15(3) of the Act.

Facts Found

6 The Tribunal inspected the property with the parties.

7 It comprises a self-contained flat within the first floor wing of a large detached Victorian house at Kings End Road, Powick, a village 3 miles to the west of Worcester. The house is in a rural area, accessed via a privately owned track. There is a gravel drive in front of the house that serves as a communal parking area.

8 A door on the ground floor of the house leads to a hall and staircase up to the flat. It is understood the flat was formed by converting part of the original house in 1988 and the conversion work at the time was supervised by an Architect. Part of the construction is within what would have been roof space.

9 The stairs lead into a living room area with a short flight of stairs up again to a bedroom. Both these areas have high ceilings formed by the undersides of roof joists. There is a kitchen, bedroom and bathroom although these rooms are within the original house.

Submissions

10 The Applicant

Miss Crossley submitted that MHDC's Notice was invalid on 3 grounds:

1 Incorrect Date

The Notice was posted on 16 May 2025 and received by Miss Crossley on 19 May 2025. It had been signed by Jennifer Taylor, Director of Housing and Communities, below which was the date '21 May 2025'.

Miss Crossley submits that it cannot have been signed after posting and was therefore defective and invalid.

2 EPC Exemption

The flat had been entered on the Private Rented Sector ('PRS') Energy Performance Certificate ('EPC') Register on 31 July 2021 as exempt, on the basis that all improvements had been carried out and there was nothing more that could be done to improve its EPC rating. It had failed to reach Band E which would otherwise have been the minimum requirement to enable residential property to be let.

As it was registered EPC exempt, Miss Crossley submitted that MHDC's requirements in the Improvement Notice were irrelevant and not required.

3 Unreasonable

As Miss Crossley had obtained EPC exemption before the flat had been let, she submitted it was unreasonable for MHDC to require work to be undertaken. The following quote was provided, but not the authority:

"Public authorities are constrained in their actions as they are required to act in accordance with their statutory objectives and duties. As Lord Templeman indicated in Hazell v Hammersmith and Fulham LBC: '..a local authority, although democratically elected and representative of the area, is not a sovereign body and can only do such things as are expressly or impliedly authorized by parliament"

As it was unreasonable, the work was not required.

11 The Respondent

MHDC included two schedules within the Notice; Schedule 1 which identified a list of defects together with notes on the potential risks to occupation and Schedule 2, a specification of required work. The numbers before the hazards identified below relate to items in the Housing Health and Safety Rating System (England) Regs 2005, Sch.1.

12 The issues listed in Schedule 1 of the Improvement Notice are:

Hazard	Description
2. Damp and Mould	The top of the bedroom chimney breast, on the side closest to the bedroom door, is displaying visible damp marking. The brickwork around the front door and sidelights frame to the flat, is in a poor state of repair, with damaged bricks and mortar.

1. Excess Cold	The wooden beams and joists, in the ceiling of the living room are poorly seated, which has resulted in gaps being present that cause draughts in the flat and allow heat to escape. Lack of insulation to the roof space, in between the beams of the ceiling which currently provides very little thermal efficiency. The radiators throughout the flat lack Thermostatic Radiator Valves, so room temperatures cannot be controlled. Throughout the flat there are single glazed, wooden framed sash windows which have removable Perspex screens, as secondary glazing. The front door to the flat is worn and in poor condition, with gaps between the panels, as well as being ill-fitting within the frame. The panelling below the large window in the bedroom is in poor condition and is allowing a strong draught into the room.
21. Falling on stairs	The handrail to the stairs from the first floor to the mezzanine floor is missing spindles throughout the entirety of the stairway, with large open gaps present. Lack of a securely fixed handrail on the ground floor to first floor stairwell, at a suitable height.
24. Fire	In the kitchen and bedroom, there are doors that lead directly into the Landlord's accommodation. These are locked with a mortice lock.

13 Schedule 2 of the Improvement Notice listed work required by MHDC to remedy the hazards:

Hazard	Specification of Works
2. Damp and Mould	1. Investigate internally, and externally, the cause of the damp patches to the chimney breast in the bedroom. Undertake appropriate works to remedy the situation. Leaving the area in a watertight, durable condition, to match existing. 2. Repair all damaged / missing bricks and mortar to the brickwork surrounding the front door entrance to the flat. Leave the area in a durable, sound condition.
1. Excess Cold	1. Insulate the vaulted ceilings of the living room and kitchen to achieve a 'U' value of 0.20 W/m^{2}K, using rigid urethane foam (Celotex, Kingspan, etc.) at least 100mm thick between the rafters. 2. Power flush all radiators throughout the flat. Ensure all of them are in good working order and if not, replace with new.

	3. Fit thermostatic radiator valves (TRVs) to each radiator in the flat, so that they are fully controllable. 4. Replace the window units throughout the flat, with UPVC double glazed units. These must be installed by a FENSA registered installer, to meet current Building Regulations. Upon completion, provide Malvern Hills District Council with a copy of the certification. 5. Replace the front door entrance of the flat, with a UPVC door and sidelights. This must be installed by a FENSA registered installer, to meet current Building Regulations. Upon completion, provide Malvern Hills District Council with a copy of the certification. 6. Repair the panelling in the bedroom. Ensure this is left in a draught-proof condition.
21. Falling on stairs	1. Securely install spindles or guarding to the first floor to mezzanine stairway handrail. This shall allow no more than 100mm sphere to pass between each gap. 2. Securely fix a rigid handrail along the ground floor to first floor stairwell, at between 90cm and 100cm from the level of each step.
24. Fire	1. Ensure a minimum of 30 minutes fire protection between the Landlords and Tenants accommodation.

Tribunal Decision

14 The Tribunal considered carefully the 5 Bundles of evidence comprising 241 pages of evidence together with site notes from our inspection. We have considered the points raised by the parties against the statutory requirements and find as follows:

1 Validity of Notice

Although the Notice was dated after the Notice had been posted, there was a weekend immediately following the date of posting. It had been signed by the Director of Housing and Communities prior to posting and the fact that the date under the signature was incorrect had not prejudiced the Applicant. The date of signature must have been incorrect but is not a material breach that would have invalidated the Notice. Accordingly, we find the Notice validly served.

2 EPC Exemption

An EPC rating of at least Band E is necessary to let property under the Minimum Energy Efficiency Standards, ('MEES Regulations'), unless property has been registered for exemption on the PRS Register, as in this case. However, MEES Regulations are entirely separate from safety requirements under the Housing Act 2004, they relate to different aspects of a property and the two requirements are not inter-dependant.

The fact that property is included on the PRS Exemption Register is not relevant to consideration of the requirements for compliance with an Improvement Order served under the Housing Act 2004.

We therefore dismiss this ground of appeal.

3 Unreasonable

Again, consideration of EPC requirements and whether an EPC exemption had been registered prior to the current letting is irrelevant for the purposes of the Housing Act 2004.

4. Specification of Works

The Tribunal's findings on each item are set out below in bold print under each item of the MHDC Schedule.

Hazard	Specification of Works
2. Damp and Mould	1. Investigate internally, and externally, the cause of the damp patches to the chimney breast in the bedroom. Undertake appropriate works to remedy the situation. Leaving the area in a watertight, durable condition, to match existing. Confirmed. 2. Repair all damaged / missing bricks and mortar to the brickwork surrounding the front door entrance to the flat. Leave the area in a durable, sound condition. This has been completed. Delete.
1. Excess Cold	1. Insulate the vaulted ceilings of the living room and kitchen to achieve a 'U' value of 0.20 W/m2K. using rigid urethane foam (Celotex, Kingspan, etc.) at least 100mm thick between the rafters. There is mould visible on internal surfaces that needs to be remedied. Confirmed. 2. Power flush all radiators throughout the flat. Ensure all of them are in good working order and if not, replace with new. Confirmed. 3. Fit thermostatic radiator valves (TRVs) to each radiator in the flat, so that they are fully controllable. Confirmed. Two radiators already have TRVs. 4. Replace the window units throughout the flat, with UPVC double glazed units. These must be installed by a FENSA registered installer, to current Building Regulations. Upon completion, provide Malvern Hills District Council with a copy of the certification. Confirmed. 5. Replace the front door entrance of the flat with a UPVC door and sidelights. This must be installed by a FENSA registered installer, to meet current Building Regulations. Upon completion, provide Malvern Hills District Council with a copy of the certification. The front door is warped and contains single glazing. Confirmed.

	6. Repair the panelling in the bedroom. Ensure this is left in a draught-proof condition. This has been completed. Delete.
21. Falling on stairs	1. Securely install spindles or guarding to the first floor to mezzanine stairway handrail. This shall allow no more than 100mm sphere to pass between each gap. Confirmed. 2. Securely fix a rigid handrail along the ground floor to first floor stairwell, at between 90cm and 100cm from the level of each step. There is no hand rail at present, only rope which is flexible and fails to provide adequate support. Confirmed.
24. Fire	1. Ensure a minimum of 30 minutes fire protection between the Landlord's and Tenant's accommodation. Confirmed.

Timetable for Compliance

15 The Tribunal alters the date for commencement of works to 28 days from the date of this Decision with completion of works within 5 months of the date of this Decision.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).