FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UH/HIN/2021/0001
Property	:	133 Church Street, Staines TW18 4XZ
Applicant	:	Suzanne Cartwright
Representative	:	---
Respondent	:	Spelthorne Borough Council
Representative	:	---
Type of Application	:	Appeals against Improvement Notice, Refusal to Vary & Refusal to Revoke
Tribunal Member(s)	:	Judge J Dobson
Date of Decision	:	2nd September 2021 On the papers.

DECISION

Summary of the Decision

1. **The appeal against the Improvement Notice dated 16th September 2020 is dismissed as out of time.**

2. **The appeal against the refusal to revoke the said Improvement Notice is refused and the Respondent's decision is confirmed.**

3. **The appeal against the variation of the Improvement Notice is granted and the Respondent's decision is reversed.**

4. **The Applicant's application for costs pursuant to rule 30 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 is refused.**

Application and Background

5. The Applicant has submitted three related appeals, namely against an Improvement Notice, a Notice of Variation of an Improvement Notice and a Notice of Refusal to Revoke such Improvement Notice (collectively "the Notices"), all issued by the Respondent, Spelthorne Borough Council ("the Council") under Schedule 1 Part 2 of the Housing Act 2004 ("the Act").

6. The Improvement Notice itself is dated 16th September 2020 and the other two Notices are dated 15 December 2020. The appeal to the Tribunal was received on 5 January 2021 and is made under paragraph 10(1) in respect of the Improvement Notice and paragraph 13(1) in respect of the Refusal to Revoke (beyond the partial revocation agreed by the Respondent) and Variation, both paragraphs being found in Schedule 1 of the Act.

7. The Improvement Notice related to two category 1 hazards. There is an assessment under the Housing Health and Safety Rating System ("HHSRS") following an inspection on 25th February 2020. The first hazard is in relation to the staircase to the Property.

8. The second hazard is the lack of handrail to steps to the bathroom. The partial revocation and related variation remove the asserted hazard in relation to the steps to the bathroom, leaving one remaining hazard, namely the staircase.

9. A Notice of Intention in relation to enforcement action had been served dated 5th March 2020 including the two hazards and other contended hazards, the others not being proceeded with in the Improvement Notice. The Respondent contends that it then made allowances for the Covid- 19 pandemic and the lockdown, sending information about the undertaking of urgent works in April 2020 and sending other communications subsequently. It is also said that the Applicant responded explaining why she said works could not be undertaken, including difficulties with the occupiers in respect of access. The Applicant has disputed the

appropriateness of the Notice of Intention but that is not a matter for these appeals.

10. The Applicant asserts and the Respondent accepts, that the handrail to the steps to the bathroom ought not to have been included in the Improvement Notice and was so included in error. Hence that item was subsequently removed from the Improvement Notice.

11. At the time of the appeals to the Tribunal, the Applicant considered the matter to be urgent, on the basis that the Respondent had not agreed to refrain from action in relation to the remaining hazard pending the outcome of the appeal. The Respondent subsequently did so. Paragraph 19 of Schedule 1 to the Act applies in any event and so the Improvement Notice would not become operative during the currency of the appeal and then as the Act provides for.

12. The property 133 Church Street, Staines TW18 4XZ ("the Property") is a two-storey house. The HHSRS assessment states it to be an end of terrace house with an open- plan reception room, a kitchen, a bathroom and two bedrooms.

13. The photographs provided suggest that the ground floor of the Property principally comprises a room, which I understand to be the open-plan reception room, which includes a staircase to the first floor in or about the middle of the room. The staircase is shown in photographs helpfully supplied by the Applicant. It is of darkly varnished wood- the Applicant says non-slip varnish- with open treads and open sides. Save for a square area at the bottom of the stairs and at a height a little above the surrounding floor area, the stair treads are rectangular steps and lead up straight to the top of the staircase without any turn or break.

14. It should be recorded that the Applicant asserts in her appeal that the specific work required by the Respondent to remove the hazard would make manoeuvring furniture up and down the stairs more hazardous and larger items of bedroom furniture impossible. The Applicant proposed an alternative approach to meeting the objectives required and the Respondent has accepted that. The solution is a removable glass balustrade, with handrails.

15. Subsequent to provision of the hearing bundle and the initial consideration of that for suitability as to paper determination, the Applicant emailed to the Tribunal by email of 6th May 2021 to inform that she obtained a 14 day possession order in respect of the Property on 4th May 2021 and that the District Judge authorised enforcement action. She added that the court had an email from the occupiers stating that they vacated on 13th March 2021, although the Applicant expressed doubt as to whether that was correct. I note that some weeks have elapsed and apparently ample time for enforcement action to be taken if so required. I have no information as to whether such action was in fact required and, if so, whether it has now been undertaken.

16. It is not therefore clear whether the Improvement Notice remains relevant at this particular time, although I perceive that the Property will be occupied again in due course even if it not occupied currently. Whilst the Applicant further stated that she had invited the Respondent to revoke the Improvement Notice in the above circumstances, I have no information stating that it did so.

17. I specifically record that the Respondent has stated in an email from Mr Spearpoint dated 14th October 2020 that it would not seek its costs in relation to service of the Improvement Notice, which I understand to encompass costs of the subsequent Notices. There is no suggestion in the Respondent's communication that the outcome of these appeals is in any way relevant to that.

The history of the case and procedure

18. On 25th January 2021, the Tribunal gave Directions for the preparation of the applications for a decision, including directing that the application to be dealt with on the papers unless the parties sought an oral hearing. Further Directions were given by me on 18th March 2021.

19. The Respondent has submitted the hearing bundle, which the Tribunal reviewed, deciding that the application is suitable to be dealt with on the papers. That includes, amongst other documents, the relevant Notices and the HHSRS assessment and calculation and an extract from Guidance about the hazard of falling on stairs.

20. The parties did not request an oral hearing. This is the decision on the papers received.

21. The Tribunal did not inspect the Property. The parties did not request that the Tribunal do so and no issue in the appeal as presented turns on the hazards themselves or otherwise the condition of the Property.

The Law

22. The relevant law is set out in sections 1(4), 2, 3, 4, 5, 9, 11, 12, 13, and 16, and Schedules 1 and 3 of the Act and the pertinent parts are set out in full in the Annex below.

23. The Act introduced a new system for assessing the condition of residential premises operating by reference to the existence of category 1 and category 2 hazards.

24. By reason of Section 1(4), residential premises means a dwelling or any common parts of a building containing one or more flats.

25. Section 2 of the Act defines Category 1 and 2 hazards and provides for regulations for calculating the seriousness of such hazards. A hazard is defined in s. 2(1) as "any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the

dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)." The applicable regulations are the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) (the "HHSRS"). More serious hazards are classed as category 1 hazards, whilst lesser hazards are in category 2.

26. Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review. Section 4 imposes a duty on a local housing authority to inspect property in certain circumstances.

27. If on such an inspection the local housing authority considers that a category 1 hazard exists, section 5 imposes a duty to take the appropriate enforcement action. The taking of action is mandatory. Although a duty is imposed on the authority to take action, no timescale is specified in the Act. Section 5(2) sets out the various courses of such action available to the authority, including the service of an Improvement Notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice.

28. Section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about exercising their functions under the Act. In particular, their functions under chapter 2 of Part 1 of the Act relating to Improvement Notices. Section 9(2) provides that a local housing authority must have regard to any such guidance. The office of the Deputy Prime Minister issued guidance under section 9, specifically Operating Guidance (reference 05HMD0385/A) and Enforcement Guidance (reference 05HMD0385/B).

29. Section 11 of the Act sets out the statutory provisions regarding Improvement Notices relating to category 1 hazards.

30. Section 13 requires an Improvement Notice to comply with the provisions of that section. The information which must be specified in relation to a hazard includes, by s. 13(2)(b) and (d), "the nature of the hazard and the residential premises on which it exists" and "the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action". By s. 13(4) details of rights of appeal must be provided. By s. 13(5) the premises in relation to which the remedial action is to be taken are referred to in Part 1 of the Act as the "specified premises".

31. Section 16 relates to circumstances in which an Improvement Notice may or must be revoked and where an Improvement Notice may be varied.

32. Parts 1 and 2 of Schedule 1 to the Act make provisions in relation to service of Improvement Notices and separately Notices relating to Revocation or Variation. Any of the latter Notices must be served within a period of seven days beginning with the date on which the decision is made.

33. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. Paragraph 10 provides that a person on whom an Improvement

Notice is served may appeal against the Notice to the first-tier Tribunal (Property Chamber). Paragraph 13 relates to appeals against decisions relating to variation or revocation.

34. Under paragraph 14(1) any appeal against an Improvement Notice must be made within the period of 21 days beginning with the date on which the Improvement Notice was served. Under paragraph 14(2) any appeal in relation to variation or revocation must be made within the period of 28 days beginning with the date on the decision is made. Given that the Notice relating to Revocation or Variation must be served within seven days of the decision- see above- there should be at least 21 days following service within which to submit the appeal.

35. Paragraph 14(3) states that the Tribunal may allow an appeal to be made to it after the end of the period mentioned in paragraph 14(1) or 14 (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

36. Paragraph 15(2) provides that the appeal is to be by way of a re-hearing but, importantly, such appeal may be determined having regard to matters of which the authority was unaware at the time of making its particular decision. Paragraph 15(3) provides that the Tribunal may by order confirm, quash or vary the Improvement Notice.

Consideration of the appeals

37. The Tribunal conducted a re-hearing in accordance with paragraph 15 of Schedule 1.

38. Whilst there is overlap between the three appeals, given that there are three distinct Notices and the parties make specific submissions in respect of each, I take each Notice in turn.

39. The Applicant's case is to be found in her application and supporting documents, in particular nine pages of factual background, and arguments in relation to the three appeals and in a fourteen- page reply to the Respondent's case. The Respondent's case is to be found in the six- page Statement of Respondent date 18th February 2021 and the witness statement of Mr Leslie Spearpoint, an Environmental Health Officer employed by the Respondent, together with related documents.

1) The appeal against the Improvement Notice

40. The Improvement Notice, dated 16th September 2020 and said to have been served as at 18th September 2020 finds, as referred to above, there to be two Category 1 hazards at the property, the staircase and, erroneously, the other handrail. The timescale for completion of the required works was thirty days. The Applicant has challenged the evidence that the Notice was posted on 16th September 2020, but I do not find it necessary to make any finding on that matter, which has no impact on the outcome of the appeal.

41. The Applicant has raised no challenge to the finding by the Respondent of the presence of a Category 1 hazard at the property in relation to the staircase. She specifically accepts the hazard in her Reply to the Respondent's Statement of Case. Various other points are made in relation to the undertaking of the works. The Applicant did raise a challenge to the finding of the presence of a Category 1 hazard in relation to the steps to the bathroom, as referred to further below and to the timescale for the works. The handrail to the steps to the bathroom is no longer relevant following the partial revocation.

42. The main limbs of the appeal relate to asserted defects with the Improvement Notice. The Notice has the usual Schedules, followed by Notes and a Statement of Reasons for service of the Notice.

43. The Ground of Appeal section of the Applicant's submissions in the application form can be read to suggest that the appeal against the Improvement Notice and the permission sought to appeal out of time are only pursued to that extent that the Respondent seeks to take enforcement action prior to the outcome of the appeal against the refusal to revoke and the variation. However, I consider it unwise to make an assumption that the Applicant may no longer wish to pursue the appeal against the Improvement Notice now that the Respondent has stated that it will not take such action pending this Decision being issued and certainly the Applicant has not stated such a wish. I do therefore address this element of the application.

44. The appeal was, as noted above, received on 5th January 2021. That is quite plainly long after 21 days from the date of service of the Improvement Notice. The appeal has therefore been made significantly out of time. The Respondent has taken that point, asserting that the last date to appeal in time was 16th October 2020. I accept the Applicant's argument that if the date of posting of the Notice is correct, the last date was in fact eight days earlier, although I note that a last date to appeal prior to the 16th October 2020 only detracts from the Applicant's case and does not assist it.

45. The Applicant has otherwise sought permission to proceed with the appeal out of time. In support of that she says that there has been no undue delay in seeking permission because final confirmation of the Council's proposals was only received on 23rd December 2020 and only then was it apparent that the Respondent would enforce the Improvement Notice, save where accepted to be in error and subsequently revoked.

46. The Tribunal may only permit an appeal out of time if there is good reason for the appeal not having been submitted in time- paragraph 14(3) of Schedule 1 to the Act- as the Applicant correctly notes in her Reply. The issue for the Tribunal to determine is therefore whether the Applicant had a good reason for submitting a late appeal against the Improvement Notice for the period from the date by which the appeal should have been submitted up to and including the date on which the appeal was so submitted. Whilst the Applicant, in her Reply asserts another "compelling

ground" for the Tribunal to exercise discretion to hear an appeal out of time, the Tribunal does not have discretion to consider such other matters in respect of permitting a late appealing. The sole issue at that stage is the question of whether there was a good reason for the late appeal.

47. In *Nottingham Council v Michael Tyas* [2013] UKUT 0492 (LC) the Upper Tribunal dealt with a late appeal against an Improvement Notice. The Upper Tribunal stated in relation to the process:

> "It was therefore essential for the RPT to decide whether there was a good reason for the failure to lodge an appeal within the 21 days allowed. That required the RPT first to identify what the reason for the failure was, and then to consider whether that reason was a good reason. It was then necessary to ask the same questions in relation to the period of delay between the expiry of the permitted time for appealing and the date on which the appeal was actually brought".

48. In *Al Ahmed v Tower Hamlets LBC* [2020] EWCA Civ 51 a relatively recent decision, a number of observations were by made about good reason by Dove J. Whilst that related to an appeal under section 204 of the Housing Act- an appeal to the Court against a decisions by a local authorities in relation to homelessness- I consider the principles on "good reason" established by Dove J are relevant to the issue of good reason in this case. The court held as follows:

> "11. A number of important points need to be taken into account when approaching the exercise of discretion under section 204(2A)(b) and considering whether in a case where permission to appeal is sought after the 21 day limit there is "good reason" for the failure to bring the claim in time. The first point is that the merits of the substance of the appeal are no part of the consideration of this question. This was made clear by Tugendhat J in *Short v Birmingham City Council* [2005] EWHC 2112; [2005] HLR6 at paragraph 26. Secondly, as concluded by Sir Thomas Morison in *Barrett v The Mayor and Burgesses of the London Borough of Southwark* [2008] EWHC 1568, the phrase good reason "is a phrase in common parlance, which in my judgment, does not need elaboration." (See paragraph 4 of the judgment).
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> 12. As was also observed in the *Barrett* case, and endorsed by Jay J in the case of *Poorsalehy v London Borough of Wandsworth* [2013] EWHC 3687, there is no general principle in cases of this kind which fixes a party with the procedural errors of his or her representative, nor is there a general principle which enables a litigant to shelter behind the mistakes of their legal advisers. As Jay J was astute to observe, in particular in paragraph 28 of his judgment, the approach to be taken to the responsibility of a litigant and his advisers must always depend upon the particular facts and the available evidence in any given case. In short, there are no bright lines in deciding whether or not there is a good reason for the delay in bringing an appeal of this kind. All of the factual circumstances have to be carefully examined and scrutinised …'

49. I am not satisfied that the Applicant has put forward a good reason for the failure to appeal before the end of 21-day period and for the delay since then in applying for permission to appeal out of time up to the date of submitting the appeal. I have noted the matter said by the Applicant- see

above- to provide a reason for the failure to submit an appeal within the required period. I have considered the factual circumstances.

50. I find that it is particularly relevant that the Applicant was engaged in relation to the Notice following its service. There is no suggestion that she was unable to submit an appeal and there is no suggestion that- although she challenges the manner in which the appeal details were provided- she was unaware of the time limit for an appeal. The Applicant emailed the Respondent in detailed terms on 6th October 2021. She received no response for a number of days and none by the date for the submission of the appeal. There was nothing received by the Applicant by the date for the appeal being submitted to suggest that such appeal may not be required.

51. I have taken account of the correspondence thereafter with regard to question of the Improvement Notice being revoked. However, at no time did the Respondent suggest that it would revoke in relation to the remaining hazard of the staircase and at no stage was it suggested that the Applicant should delay an appeal or might not need to appeal. Indeed, the approach of the Respondent from October 2020 onward was always that it would not revoke in full, albeit it would remove the second hazard stated, and so the relevant part of the Improvement Notice which is appealed would stand.

52. There was nothing provided to the Applicant during any of that period to discourage her from submitting an appeal and the indication was always that an appeal would need to be pursued if the Improvement Notice were challenged. It is plain that the Applicant continued to be able to engage with regard to matters relating to the Notice and she did so at some length. Matters of procedure are significant in the matters the Applicant raised. She was equally capable of submitting an appeal.

53. The Applicant chose to pursue another route rather than appealing, namely seeking a revocation of the Improvement Notice. That was a matter for her. It is not a good reason for not submitting an appeal at any stage until January 2021, several weeks after the time for appealing had expired.

54. I accept that the Respondent only served the Notices in respect of refusal to revoke and to vary on 17th December 2020 and communicated with the Applicant further shortly after that. However, I do not accept that provides good reason for the Applicant not appealing in time or on each subsequent date prior to 5th January 2021.

55. It follows that permission to proceed out of time is refused.

56. I do not address any other aspect of the appeal against the Improvement Notice. There is no reason to do so. As provided for by section 15(6) of the Act, where there is no appeal within the time for appealing (subject to a late appeal being permitted), the Notice is final and conclusive as to matters which could have been raised on appeal.

57. Whilst the Applicant has made particular points about the manner in which the appeal rights were referred to and the date by which the works should commence and hence asserted defects with the Notice, I determine those arguments to form part and parcel of- and indeed be the main focus of- the appeal itself. In the absence of an appeal, those points fall away.

2) The appeal against refusal to revoke the Improvement Notice

58. The original Improvement Notice was partially revoked in response to the Applicant's application for revocation of the Improvement Notice submitted on 6th October 2021, as advised by the Respondent to the Applicant by email on 14th October 2020. It was revoked in respect of the references to the handrail to the steps to the bathroom, to leave only the hazard of the staircase. It is consequently the refusal to revoke the remainder of the Improvement Notice that is the subject of the appeal.

59. I firstly address the date of the decision made. I find that the decision to refuse the revocation of the Improvement Notice was made on or before 5th November 2021.

60. The Respondent asserts that the decision was only made on 10th December 2021 and not on an earlier date. However, having considered the communications between the parties, I do not accept that. The Notice of Refusal to Revoke was dated 10th December 2020 and the decision was formally confirmed in the required Notice only at that time: the decision itself had, I find, been made some weeks earlier.

61. I agree with the Applicant that the Respondent first stated that it would refuse to do more than partially revoke by email of 14th October 2020. The Applicants relevant application had been made on 6th October 2020 by email of that date. The Applicant asked the Respondent to reconsider by email 22nd October 2020, asserting that the Respondent has misdirected itself and had not considered its discretionary power to revoke in special circumstances.

62. The Respondent's officer replied to that by email dated 5th November 2020 which stated:

"The Council will not be revoking the s11 notice……"

63. That is a definite statement. There is no hint that the Respondent might decide not to revoke after all, indeed that there was any prospect of it changing its mind. There was no hint that a decision had yet to be made.

64. I find that to reflect the fact, as I find it, that the decision had already been made. To any extent that a decision had not been made by the Respondent's email 14th October 2020, I find the wording used on 5th November 2020 to amply demonstrate that the Respondent had by then made a decision and that its approach was settled.

65. I note that Mr Spearpoint of the Respondent asserted to the Applicant by email dated 10th December 2020 that:

"the email discussion was not the Council's final decision. The final decision has now been made it was made on 10th December 2020…"

66. I reject that assertion. I also do not accept there to be any distinction between a decision in respect of the refusal to revoke and a "final decision" such that the decision I find to have been made by 5th November 2020 would not be the relevant one and some later, more formally communicated, decision would be. For the avoidance of doubt, the same comments apply in relation the slightly different description used in the Respondent's Statement of Case of a "formal decision". I note that there are provisions in relation to other matters which do provide for preliminary decisions and final decisions, but not in relation to this situation. I agree with the Applicant that the emails passing are not easy to describe as a "discussion".

67. The email dated 5th November 2020 does not, I accept the Applicant's argument, amount to the requisite Notice, coming nowhere to meeting the requirements for such. That is no great surprise, it does not purport to do so.

68. I find the wording used on by the Respondent on 14th October 2020 to be less clear cut. I find that it is possible that no decision had been taken as at that point, albeit I find that the Respondent had a clear intention and that may only have fallen short of an actual decision by a whisker. I also note the Applicant's argument that the Respondent had failed as at 14th October 2020 to consider special circumstances. It is arguable, although I need not make a determination, that there was no valid decision as at 14th October 2020. Given my conclusion as to the decision having been taken by 5th November 2020 and the effect of that, I do not consider it necessary to say more about the possibility of a relevant decision having been taken by 14th October 2020.

69. I add for completeness that the Respondent rejected there being any special circumstances.

70. There are two consequences arising from my finding of the above date of the decision.

71. The first is that the Applicant's appeal against the refusal to revoke was also made out of time. The time limit provided for in paragraph 14 of Schedule 1 to the Act is 28 days from the date of the decision. It is not, as it is in the case of the Improvement Notice itself, from the date of the service of the Notice of refusal to revoke.

72. Accordingly, I need to consider the question of whether there is good reason to allow the appeal against the refusal to revoke to proceed out of time. The provision is the same as it was in relation to the appeal against

the Improvement Notice itself. I take account of the same caselaw, which in this instance I determine produces the opposite result.

73. As referred to above, the Notice of Refusal was only dated 15th December 2021 and was only deemed served, if one accepts the evidence of Mr Spearpoint that it was placed in the post the same day i.e. 15th December 2020, on 17th December 2021. It cannot have been posted sooner than 15th in any event. It necessarily follows that the Notice was not served within seven days of the date on which I find the decision to have been taken by the Respondent or even remotely close to it.

74. The question of service within seven days of 10th December 2020 or outside of seven days is not relevant where the decision was so much earlier. However, lest I be found elsewhere to be wrong as to the date of the decision by the Respondent, I record that I accept the Applicant's argument that the first of the relevant seven days would be 10th December 2020, the last of the seven days would be 16th December 2020 and necessarily 17th December 2020 or any later date fell outside of the requisite seven days. The Respondent is wrong to content that the latest date for service was seven days after the date of the decision, which is not the wording of the statute.

75. In the event, the Notice was received by the Applicant on 18th December 2020, when it was signed by her. However, whilst the actual date of receipt is known, the date the Notice is deemed to be served is the day before, namely 17th December 2020, being two days after the Notice was posted. The courts and tribunals have repeated stressed the primacy of the deemed date of service pursuant to the relevant rules as opposed to the actual date in a given instance, for the avoidance of uncertainty and unnecessary dispute. Given that both 17th and 18th December 2020 are beyond seven days commencing on 10th December 2020 and far beyond 5th November 2020, it is not necessary to address any distinction between the 17th and 18th December 2020 further.

76. I find there is a good reason why the Applicant did not appeal within 28 days of the date of the decision made by the Respondent. Whilst I have found the wording used by the Respondent to reveal that a decision had been made, that had not been communicated in appropriate terms and, in particular, no Notice of Refusal had been served on the Applicant. I am entirely content that provides a good reason for the Applicant not submitting an appeal prior to receipt of the Notice of Refusal.

77. The Applicant appealed within 28 days of the Notice of Refusal being produced, the date of service of that Notice of Refusal not being directly relevant given the requirement that it occur within seven days of the decision and an applicant consequently being given at least twenty-one days from service. I accept a good reason for not appealing on an earlier date between the date of the Notice and the date of the appeal, where there will have been a lack of clarity as to whether any earlier appeal were required in any event and where that was created by the Respondent by serving the Notice of Refusal when it did.

78. Whilst the Applicant addresses at some length in her appeal the Notice of Refusal and date of the decision, the Applicant does not make similar comments in respect of an appeal out of time as she did with the Improvement Notice itself. However, considering the circumstances in the round, I do not regard it as appropriate to approach the point too rigidly

79. The second consequence is that I need to determine the Applicant's appeal against the Notice of Refusal to Revoke.

80. I first consider the effect of the date I have found the decision to be made on the Notice of Refusal to revoke. In relation to that, I determine that the Notice of Refusal is therefore defective. I need not address any other points in relation to the refusal decision or any potential issues with the Notice itself, where the approach to be taken will be dependent on the power I consider it appropriate for the Tribunal to exercise on re-hearing the appeal.

81. The next question- and the most significant one in respect of the Notice of refusal- is therefore as to the power to be exercised by the Tribunal pursuant to paragraph 13 of Part 3 of Schedule 1 to the Act.

82. The Tribunal may adopt one of three courses. Those are to confirm, reverse or vary the specific decision of the Respondent challenged. If the Tribunal were to reverse the decision to refuse to revoke and so decide to revoke the Improvement Notice, I may make an order revoking from the date specified in the order.

83. Notably, the courses open to the Tribunal are different to those in relation to appeals against Improvement Notices themselves to the extent that the option of quashing is replaced by reversing the decision made by the Respondent. That distinction is perfectly sensible. It was either appropriate for an Improvement Notice to be served and so the Notice is confirmed (or varied where appropriate), or it was not appropriate for a Notice to be served and so the Notice is quashed.

84. Where the appeal is against a refusal to revoke or a variation, it necessarily follows that there is already an Improvement Notice. If the Tribunal decides to reverse the refusal to revoke and so concludes that the Improvement Notice should be revoked, the Tribunal will then go on to revoke that Notice. However, otherwise the Improvement Notice either remains in force as served- the same decision is made as was made by the Respondent, in effect the decision is confirmed- or the Improvement Notice remains in force but in a different form- the Respondent's decision is varied to that extent. The Tribunal must make a decision in one of the three manners available to it: the Tribunal cannot quash the Respondent's decision to refuse to revoke and leave matters in limbo, there being no mechanism for the Respondent to be required to remake the decision itself.

85. I have considered carefully which approach to adopt. I have some reluctance to effectively confirm the decision where the process adopted in the making of the refusal to revoke was so satisfactory. However, in all the circumstances, I do not consider it appropriate to reverse the decision and to revoke the Improvement Notice. I add that I do not consider that variation is the appropriate course, not least where only one hazard remains relevant, the partial revocation and variation having dealt with the other one included erroneously. I am unable to identify any variation which could be appropriate.

86. I am satisfied that the Improvement Notice was served and I have found that there has been no appeal against it submitted in time. It stands unless I consider that it should be revoked. The principal hazard on which it was based and the hazard that continued to be the subject of the Improvement Notice following the decision to vary remained and- at least as the most information presented to me- remains extant.

87. I have looked at the photographs of the staircase. I have seen and considered the HHSRS assessment of it to which there is no challenge, concluding it is- and obviously so- hazardous.

88. I note that the Respondent stated in an email to the Applicant dated 11th May 2020 that it was informed that the son of the adult occupier had fallen down the stairs and that the Applicant contends that is hearsay evidence. However, the Tribunal is able to admit hearsay evidence and determine the weight to be given to it, as with any other evidence- and where the court rules as to evidence do not apply, albeit those do not preclude hearsay evidence either. This is perhaps an opportune time to mention that the Applicant makes various references to the Civil Procedure Rules applicable to civil court proceedings and that those do not apply to this Tribunal. More immediately relevant, the hazard was assessed as category 1 prior to that fall being asserted and whether there was a fall or there was not, does not, I consider, alter the correct answer to this aspect of the case.

89. Whilst the Applicant has argued that the Improvement Notice should be revoked because of asserted defects with it, I do not consider that to be a basis for revocation pursuant to the Act. The remedy where the Improvement Notice is asserted to be defective is to submit an appeal against the Notice, not to seek to utilise revocation pursuant to section 16 as what is effectively a back-door route to the same outcome.

90. I have considered the points made by the Applicant in relation to special circumstances pursuant to section 11(2)(a) of the Act. If special circumstances are found, the Respondent may, but is not compelled to, revoke the Improvement Notice. By re-hearing the matter, the Tribunal may similarly revoke if special circumstances are found but again the Tribunal is not compelled to.

91. There is no definition of special circumstances in the Act. The Applicant has set out the Respondent's approach to the question. That only refers to two scenarios, one of which is that there has ceased to be a hazard (it

appears that is for a reason other than because the Notice has been complied with) and the other is that the Respondent concludes that it is safe to take no action, giving the example of the Property being unoccupied. The Respondent re-iterates those matters in its Statement of Case.

92. Those special circumstances both relate to there not being a hazard which may affect an occupier, in the latter instance because there is no such occupier. They are not directed to wide features of the situation, for example the circumstances of the owner of the Property.

93. The Applicant argues that the Respondent's approach construes the concept of special circumstances too narrowly and argues that the Respondent thereby unlawfully fetters its discretion. She argues that "special circumstances" should be given its ordinary meaning.

94. **However, the Applicant does not identify in her statement of case or Reply what she says that meaning to be. No examples are given from any other provisions, caselaw or guidance. The Applicant has not sought to provide any authority that the Respondent is unable to adopt and apply the construction that it has or that such a construction is incorrect. There is no argument that the Respondent's usual approach was not followed by the Respondent- indeed it is the fact of the Respondent following its usual approach that is criticised. The furthest I can identify the Respondent to go is that in her email dated 22nd October 2020 she suggests that special circumstances are circumstances greater or otherwise different from the usual.**

95. I am cautious about setting too much store by the Respondent's construction and slavishly applying it. I have no evidence that there is any formal policy or any information about such policy and no authority that I should be constrained by such a policy or otherwise the Respondent's approach. I consider it appropriate to construe the meaning of the phrase "special circumstances" as it appears in the Act applying the usual principles of construing statutes, including with appropriate consideration of the clause in which it appears and the wider purposes of the Act.

96. I do not accept the Applicant's arguments that anything different from the usual, which is not itself identified, amounts to special circumstances. I consider it entirely appropriate that the special circumstances relate to the hazard or lack of it and not to wider matters. I find that consistent with the purpose of the Act to, essentially, address the risk of harm to the health and safety of an occupier. Where there has been an appropriate assessment, one or more category 1 hazards have been identified and an Improvement Notice has been served, in my judgement any circumstances, including special ones, must properly relate to the hazard.

97. I also find such a construction to be consistent with the wording of the clause and the Act more widely. The phrase is found in other statutes and

in other contexts, with the meaning varying, although always referring to exceptions to the usual situation. In this context that usual situation is that the hazard needs to be rectified to avoid the risk which has been identified.

98. The Applicant also criticises the Respondent's willingness to suspend the Improvement Notice as and when the Property is empty but not to revoke it. However, I find that entirely sensible for the above reasons.

99. The Applicant relies on as a special circumstance the fact that she had issued court proceedings for substantial rent arrears and her contention that the claim for possession must succeed. She adds that having served the requisite notice seeking possession, she perceived that the occupiers would vacate and so the Property would be empty prior to the date for completion of the works to remove the hazard. However, it is apparent even on the Applicant's case that the Property remained occupied as at the date of the Respondent's decision to refuse to revoke and indeed, given the date by which I have found the Respondent to have made the decision, the notice was only just expiring or only just had expired (and the date for completion of the works required in the Improvement Notice had not yet passed). There was, I find, no basis for the Respondent to treat the Property as unoccupied where plainly it was occupied, and it may remain occupied for some time to come. Any failings on the part of the Respondent as to their perception of the occupiers' legal rights do not alter the actual position at the Property.

100. The Applicant also refers to her financial situation. However, that is not a special circumstance, as explained above. In addition, she asserts that the Respondent agrees that the hazard poses no imminent risk, although no evidence is pointed to of such agreement and no suggestion is made that the hazard was wrongly assessed as category 1. I do not accept the Respondent to agree, absent identified evidence of that, but in any event, I hold that the matter would not amount to a special circumstance in any event, the staircase remaining unsafe.

101. In my judgement none of the matters asserted by the Applicant as special circumstances are therefore such circumstances.

102. Accordingly, the discretion to revoke the Improvement Notice provided for in section 16 of the Act does not arise and in re- hearing the application once I have found there to be no special circumstances, that is the end of the matter. The only decision to be made in the event was whether, or not, there were special circumstances, where I have found there were not.

103. In the event that I am wrong about the above and the question of whether to revoke or not should have arisen because there were special circumstances so that the Respondent may revoke and the Tribunal likewise in re-hearing the matter, I would in any event have determined that the Improvement Notice should not be revoked.

104. I consider that the obvious and significant category 1 hazard and the need to address that would have outweighed the matters advanced by the

Applicant. The weight would have firmly remained with the Improvement Notice continuing in place.

105. I consider there to be no proper basis for revoking the Improvement Notice.

106. In all the circumstances, in my judgement the correct course to adopt is for the Tribunal to confirm the decision not to revoke, beyond the partial revocation made. I do so, notwithstanding the significant procedural failings with the Respondent's approach.

107. I should make it clear that I am not at all without sympathy for the Applicant both in respect of her financial situation and in respect of the difficulties which she describes, and which evidence I accept, in relation to the occupiers with regard to access and dealings with tradespersons. However, I do not find that to be any reason why the Respondent ought to have revoked the Improvement Notice in full or why the Tribunal should do so in re-hearing the appeal.

108. I should also add that as partial revocation is not challenged, I have not considered in detail the Respondent's power to partially revoke and I make no finding on that decision. I am inclined to the view that section 16(2)(a) would cover the matter, the fact of there being no hazard being a special circumstance such that the Improvement Notice may be revoked insofar as appropriate to deal with that lack of hazard. I put matters no higher.

3) The appeal against the variation of the Improvement Notice

109. The variation ties in with the refusal to revoke. The relevant dates and process adopted are the same. I do not repeat all that was said in relation to the refusal to revoke, considering it unnecessary to do so.

110. The variation is to remove the work to the handrail to the steps to the bathroom, that part of the Improvement Notice as has been revoked. The variation does so by amending the Schedules to the Notices, such that the item of hazard is removed from Schedule 1 and the works originally required in relation to it are removed from Schedule 2.

111. It will be no surprise that the same comments as to the process apply. I find that the decision not to vary the Improvement Notice was made on or before 5th November 2021. I find that the Respondent only served the Notice in respect to variation on 17th December 2020.

112. Accordingly, I determine that the Notice of Variation is therefore defective.

113. I also accept, for what it is worth, that the Respondent was wrong to state that the variation was considered on the application of the Applicant. Nothing turns on that.

114. The next question is again as to the power to be exercised by the Tribunal pursuant to paragraph 13 of Part 3 of Schedule 1 to the Act. The Tribunal may again adopt one of three courses. Those are the same as in relation to the refusal to revoke, that is to say to confirm, reverse or vary the specific decision of the Respondent to vary the Improvement Notice.

115. I have again considered carefully which approach to adopt. I again have some reluctance to confirm the decision where the process adopted was so satisfactory. I do not consider that variation of the variation is the appropriate course and cannot identify what any such variation could properly be.

116. I bear in mind that the Notice remaining in place is only such part of the original Improvement Notice as has not been revoked. However, the variation sought to be made by the Respondent is only to remove from the Notice such relevant part of the Notice as has been revoked and so necessarily is no longer in place in any event. It is arguably superfluous.

117. I have taken careful account of the Applicant's point that section 16 of the Act provides that an authority may vary the remainder of an improvement notice if they are only required to revoke part of it- section 16 (3)(b)- and also in other circumstances- section 16 (4). It is clear that section 16(4) does not apply.

118. The Applicant asserts that the Respondent was not "required to" revoke the Improvement Notice in part because section 16(1) only says that the Respondent "must" revoke the Improvement Notice if satisfied that the requirements have been complied with, whereas the requirement to undertake work to the handrail to the steps to the bathroom had not been complied with, being unnecessary.

119. My reading of the statute is that section 16(3) addresses how an authority deals with an improvement notice containing multiple hazards where the authority must revoke in relation to one or more of those hazards and that it does not relate to circumstances in which the authority may revoke pursuant to section 16(2). The authority is not required by that section to revoke. The section simply identifies circumstances in which the authority may revoke, as contrasting with other circumstances.

120. I am inclined to accept the Applicant's argument. However, I do not consider that in this instance it is necessary to make any specific determination on the point for the reason below.

121. That reason is that in any event, the variation which may be made would be to the unrevoked part of the Improvement Notice. In this instances, that part has not been varied.

122. The variation sought to be made is to remove the part which has been in any event been revoked. That is not what I determine section 16 permits. I consider that entirely logical, given that once part of an improvement

notice has been revoked, it no longer exists; it cannot therefore be varied, no longer being in place to be capable of being so varied.

123. I note that the Council stated in the email from Mr Spearpoint dated 14th October 2020 that it would vary the Improvement Notice to reflect the acceptance by the Council of the different approach to removing the hazard proposed by the Applicant. However, I cannot identify any such change to the wording in the event. It may be that it was concluded- and it seems to me that such a conclusion would be reasonable- that the original wording could encompass the original and the Applicant's approaches.

124. I therefore determine that the Respondent lacked the power to vary in the manner in which it has sought to, that is to say varying the Improvement Notice in relation to the partial revocation as opposed to any other part of the Notice. I reverse the Respondent's decision.

125. There is no practical impact. In effect, the variation of the Improvement Notice simply neatened the appearance of it to remove from the face of the Improvement Notice the part which has been revoked. The Improvement Notice as remains following the partial revocation continues in force in its original form save to the extent of that partial revocation.

126. The Applicant's appeal is therefore granted. However, that achieves nothing substantive.

4) Suspension of the Improvement Notice and Variation

127. The Applicant's application includes the above two additional headings within the detailed narrative. However, they are not in terms said to form additional appeals, even assuming that they could. I touch upon them only briefly.

128. The Applicant asserts that the Respondent had a discretion to consider whether to require the hazard to be addressed after the Applicant had obtained vacant possession. The implication is that the Respondent did not make a decision as to the exercise of that discretion. I do not have any such decision in the bundle.

129. The Tribunal cannot in these proceedings deal with a challenge to a decision not made. If the assertion is in effect part of the appeal against the Improvement Notice, the determination above as to the refusal of permission to appeal out of time applies. I do not add any other observations.

130. The variation referred to related to the work required by the Respondent. As the Respondent had to consider any alternative proposals and has done so and as the Applicant's proposed work has been agreed by the Respondent, there is no live issue to address.

5) Application for costs pursuant to rule 30 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ("the Rules")

131. The Applicant has applied for an order that the Respondent pay her costs of the proceedings. She has done so in her Reply, as provided for in the later Directions issued.

132. The Respondent did not make submissions about any claim for costs on its behalf with its statement of case. The Respondent did seek to make such submissions subsequently, but I refused that as a case management decision, essentially on the basis that the original Directions had been clear and there was no sufficient reason for departure from them. The bundle does include an application for costs by the Respondent nevertheless but in the above circumstances there is no need for me to say anything about that.

133. I did allow the Respondent to reply to the Applicant's application for costs, which had not been in the Applicant's original statement of case which pre-dated the Directions where I allowed her to include submissions as to costs in her reply to the Respondent's case. Given that the Respondent could not have responded within its statement of case to an application for costs that the Applicant had not at that point made because her Reply necessarily followed the Respondent's statement of case, I further allowed the Respondent to make separate submissions as to the Applicant's costs.

134. The basic power of the Tribunal to award costs is found in section 29 of the Tribunals, Courts and Enforcement Act 2007, which states that costs shall be in the discretion of the Tribunal but subject to, in the case of this Tribunal, the Rules. The Rules then proscribe the discretion substantially.

135. The Rules provide that costs may be awarded to a party if another party has acted unreasonably or an award of wasted costs is appropriate. More particularly, the relevant provision in the Rules reads as follows:

13 Orders for costs, reimbursement of fees and interest on costs

136. The Tribunal may make an order in respect of costs only –

a) Under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
b) if a person has acted unreasonably in bringing, defending or conducting proceedings……

137. The leading authority in respect of part (b) the above rule is the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Alexander* (and linked cases) [2016] UKUT 290 (LC). It is worth bearing in mind the status of the guidance given by the Upper Tribunal in its decision. It is not uncommon to hear practitioners refer to the *Willow Court* "rules" or "tests". But that is strictly speaking wrong. Although the Upper

Tribunal's decision in *Willow Court* was intended to be of general application, it does not purport to lay down any "rules" at all.

138. The position was recently explained in *Laskar v Prescot Management Company Ltd* [2020] UKUT 241 (LC), at paragraph 34:

> "Although at paragraph 28 of its decision in *Willow Court* the Tribunal suggested an approach to decision making in claims under rule 13(1)(b) which encouraged tribunals to work through a logical sequence of steps, it does not follow that a tribunal will be in error if it does not do so. The only 'test' is laid down by the rule itself, namely that the FTT may make an order if is satisfied that a person has acted unreasonably in bringing, defending or conducting proceedings. The rule requires that there must first have been unreasonable conduct before the discretion to make an order for costs is engaged, and that the relevant tribunal must then exercise that discretion. Whether the discretion has been properly exercised, and adequately explained, is to be determined on an appeal by asking whether everything has been taken into account which ought to have been, and nothing which ought not, and whether the tribunal has explained its reasons and dealt with the main issues in such a way that its conclusion can be understood, rather than by considering whether the *Willow Court* framework has been adhered to. That framework is an aid, not a straightjacket."

139. In *Willow Court*, the Upper Tribunal suggested three sequential stages should be worked through, summarised as follows:

> Stage 1: Whether the party has acted unreasonably. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.
>
> Stage 2: Whether the tribunal ought (in its discretion) to make an order for costs or not. Relevant considerations include the nature, seriousness, and effect of the unreasonable conduct: see para 42.
>
> Stage 3: Discretion as to quantum. Again, relevant considerations include the nature seriousness and effect of the conduct: see para 42.

140. The Upper Tribunal expanded on what constitutes "unreasonable conduct". The Upper Tribunal said that an assessment of whether behaviour is unreasonable requires a value judgment and views may differ. However, the standard of behaviour should not be set at an unrealistic level. Tribunals must not be "over-zealous in detecting unreasonable conduct" and must use their case management powers appropriately. The Upper Tribunal referred to tests and comments from other case authorities.

141. The burden is on the applicant for an order pursuant to Rule 13 and where orders under r.13(1)(b) are to be reserved for the clearest cases.

142. Rule 13(1)(b) is quite specific that an order may only be made "if a person has acted unreasonably in … defending or conducting proceedings". Under the Tribunal Procedure Rules, the word "proceedings" means acts undertaken in connection with the application itself and steps taken

thereafter (Rule 26). Such an application does not therefore involve any primary examination of a party's actions before a claim is brought (although pre-commencement behaviour might relevant to an assessment of the reasonableness of later actions in "defending or conducting proceedings").

143. The Applicant has cited other caselaw, including *Ridehalgh v Horsefield* [1994] EWCA Civ 40, which is a significant Court of Appeal decision in relation to wasted costs orders against legal representatives. She additionally cites *Awuah and Others (Wasted Costs Orders)* [2017] UKFtT (IAC), a decision of the Immigration and Asylum Chamber about wasted costs and *Distinctive Care Ltd v Revenue and Customs Commissioners* [2019] All ER 111 as to costs of and incidental to an appeal.

144. However, I consider none of those to be relevant where there is a specific set to rules in relation to proceedings before this Tribunal and where the Upper Tribunal in *Willow Court* has addressed the particulars so clearly.

145. I do not consider the Respondent to have acted unreasonably in defending or conducting proceedings. Whilst the outcome of the proceedings is not the be all and end all as to whether, or not, it was reasonable to defend the proceedings, the outcome is that the Respondent has for practical purposes succeeded and the Applicant has failed. The Improvement Notice, as partially revoked, stands, which is the same position as existed prior to the three appeals.

146. I cannot identify anything amounting to unreasonableness in defending the proceedings or in their conduct such as to merit a costs order. Whilst it is correct for the Applicant to assert that the Respondent argued that the decisions to refuse to revoke and to vary were only made on 10th December 2020, when the relevant Notices were produced, and I found that to be incorrect, the fact that the Respondent lost on that point is not sufficient for a finding to be made that the Respondent defended the proceedings unreasonably. Neither is my determination that the Applicant succeeds, albeit as a somewhat pyrrhic victory, in relation to the variation appeal.

147. In terms of the Respondent's conduct of the proceedings, the Respondent took the steps directed as and when directed. There was nothing of the conduct of the Respondent which has been identified to me that could properly be regarded as unreasonable.

148. It follows that the application for costs on the basis of acting unreasonably falls at stage 1. I do not consider stages 2 and 3, there being no basis for doing so and so make no comment as to the submissions of either party in respect of such matters.

149. For the avoidance of doubt the Applicant is not, I determine, entitled to payment from the Respondent of the fee paid for the application.

Rights of Appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annex- relevant legislation

Housing Act 2004

1 New system for assessing housing conditions and enforcing housing standards

(1) This Part provides—
(a) for a new system of assessing the condition of residential premises, and
(b) for that system to be used in the enforcement of housing standards in relation to such premises.
(2) The new system—
(a) operates by reference to the existence of category 1 or category 2 hazards on residential premises (see section 2), and
(b) replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c. 68).
(3) The kinds of enforcement action which are to involve the use of the new system are—
(a) the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices),
(b) the new emergency measures contained in Chapter 3 (emergency remedial action and emergency prohibition orders), and
(c) the existing kinds of enforcement action dealt with in Chapter 4 (demolition orders and slum clearance declarations).
(4) In this Part "residential premises" means—
(a) a dwelling;
(b) an HMO;
(c) unoccupied HMO accommodation;
(d) any common parts of a building containing one or more flats.
(5) In this Part—
"building containing one or more flats" does not include an HMO;
"common parts", in relation to a building containing one or more flats, includes—
(a) the structure and exterior of the building, and
(b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats;
"dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling;
"external common parts", in relation to a building containing one or more flats, means common parts of the building which are outside it;
"flat" means a separate set of premises (whether or not on the same floor)—
(a) which forms part of a building,
(b) which is constructed or adapted for use for the purposes of a dwelling, and
(c) either the whole or a material part of which lies above or below some other part of the building;
"HMO" means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, without the exclusions contained in Schedule 14);
"unoccupied HMO accommodation" means a building or part of a building constructed or adapted for use as a house in multiple occupation but for the

time being either unoccupied or only occupied by persons who form a single household.
(6) In this Part any reference to a dwelling, an HMO or a building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the dwelling, HMO or building (or any part of it).
(7) The following indicates how this Part applies to flats—
(a) references to a dwelling or an HMO include a dwelling or HMO which is a flat (as defined by subsection (5)); and
(b) subsection (6) applies in relation to such a dwelling or HMO as it applies in relation to other dwellings or HMOs (but it is not to be taken as referring to any common parts of the building containing the flat).
(8) This Part applies to unoccupied HMO accommodation as it applies to an HMO, and references to an HMO in subsections (6) and (7) and in the following provisions of this Part are to be read accordingly.

5 Category 1 hazards: general duty to take enforcement action

(1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.
(2) In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action is indicated by subsection (3) or (4)—
(a)
serving an improvement notice under section 11;
(b) making a prohibition order under section 20;
(c) serving a hazard awareness notice under section 28;
(d) taking emergency remedial action under section 40;
(e) making an emergency prohibition order under section 43;
(f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);
(g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.
(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.
(4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.
(5) The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard—
(a) either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or
(b) another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under section 289(2F) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.
(6) To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is "available" to the authority in relation to the hazard, see the provision mentioned in that paragraph.

(7) Section 6 applies for the purposes of this section.

11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(1) If—
(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).
(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.
(3) The notice may require remedial action to be taken in relation to the following premises—
(a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;
(b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;
(c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.
Paragraphs (b) and (c) are subject to subsection (4).
(4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—
(a) that the deficiency from which the hazard arises is situated there, and
(b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.
(5) The remedial action required to be taken by the notice —
(a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but
(b) may extend beyond such action.
(6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.
(7) The operation of an improvement notice under this section may be suspended in accordance with section 14.
(8) In this Part "remedial action", in relation to a hazard, means 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.

16 Revocation and variation of improvement notices

(1) The local housing authority must revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with.
(2) The local housing authority may revoke an improvement notice if:
(a) In the case of a notice served under section 11, they consider that there are any special circumstances making it appropriate to revoke the notice; or
(b) In the case of a notice served under section 12, they consider that it is appropriate to revoke the notice.
(3) Where an improvement notice relates to a number of hazards:
(a) Subsection (1) is to be read as applying separately in relation to each of those
hazards, and
(b) If, as a result, the authority are required to revoke only part of the notice, they
may vary the remainder as they consider appropriate.
(4) The local housing authority may vary an improvement notice:
(a) With the agreement of the person on whom the notice was served, or
(b) In the case of a notice whose operation is suspended, so as to alter the time or events by reference to which the suspension is to come to an end.
(5) A revocation under this section comes into force at the time when it is made.
(6) If it is made with the agreement of the person on whom the improvement notice
was served, a variation under this section comes into force at the time when it is
made.
(7) Otherwise a variation under this section does not come into force until such
time (if any) as is the operative time for the purposes of this subsection under paragraph 20 of Schedule 1 (time when period for appealing expires without an
appeal being made or when decision to vary is confirmed on appeal).
(8) The power to revoke or vary an improvement notice under this section is exercisable by the authority either:
(a) On an application made by the person on whom the improvement notice was
served, or
(b) On the authority's own initiative.

18 Service of Improvement Notices etc and related appeals

Schedule 1 (which deals with the service of improvement notices, and notices relating to their revocation or variation, and with related appeals) has effect.

SCHEDULE 1
PROCEDURE AND APPEALS RELATING TO IMPROVEMENT NOTICES

PART 2
SERVICE OF NOTICES RELATING TO REVOCATION OR VARIATION OF IMPROVEMENT NOTICES

Notice of refusal to revoke or vary Notice

8(1) This paragraph applies where the local housing authority refuse to revoke or
vary an improvement notice.
(2) The authority must serve:
(a) notice under this paragraph, and
(b) copies of that notice
on the persons on whom they would be required to serve an improvement notice and copies of it under Part 1 of this Schedule.
(3) Sub-paragraph (4) applies if, in so doing, the authority serve a notice under this paragraph on a person who is not the person on whom the improvement notice was served ('the original recipient').
(4) The authority must serve a copy of the notice under this paragraph on the original recipient unless they consider that it would not be appropriate to do so.
(5) The documents required to be served under Sub-paragraph (2) must be served within the period of seven days beginning with the day on which the decision is
made.
9. A notice under Paragraph 8 must set out:
The authority's decision not to revoke or vary the improvement notice
The reasons for the decision and the date on which it was made
The right of appeal against the decision under Part 3 of this Schedule
The period within which an appeal may be made (see paragraph 14(2)).

PART 3 APPEALS RELATING TO IMPROVEMENT NOTICES

Appeal against improvement notice

10 (1) The person on whom an improvement notice is served may appeal to a residential property tribunal against the notice.
(2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).
11 (1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or 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.
(2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.
12 (1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.
(2) The courses of action are—
(a) making a prohibition order under section 20 or 21 of this Act;
(b) serving a hazard awareness notice under section 28 or 29 of this Act; and

(c) making a demolition order under section 265 of the Housing Act 1985 (c. 68).

13(1) The relevant person may appeal to the Property Chamber of the First Tier
Tribunal (PC) against:
A decision by the local housing authority to vary an improvement notice, or
A decision by the authority to refuse to revoke or vary an improvement notice
13 (2) In Sub-paragraph (1) 'the relevant person' means:
In relation to a decision within paragraph (a) of that provision, the person on whom the notice was served
In relation to a decision within paragraph (b) of that provision, the person who
applied for the revocation or variation

Time limit for appeal

14(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.
(2) Any appeal under Paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under Paragraph 6 or 8 as the date on
which the decision concerned was made.
14(3) A Property Chamber of the First Tier Tribunal (PC) may allow an appeal to be made to it after the end of the period mentioned in Sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

Powers of residential property tribunal on appeal under paragraph 10

15(1) This paragraph applies to an appeal to a residential property tribunal under paragraph 10.
(2) 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.
(3) The tribunal may by order confirm, quash or vary the improvement notice.
(4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.
16 (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 11.
(2) On the hearing of the appeal 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 in accordance with paragraph 11; or
(b) make such order as it considers appropriate with respect to the payment to be made by any such owner to the appellant or, where the action is taken by the local housing authority, to the authority.
(3) 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 interests 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.
(4) Sub-paragraph (5) applies where, by virtue of the exercise of the tribunal's powers under sub-paragraph (2), a person other than the appellant is required to take the action specified in an improvement notice.
(5) 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 notice was served (in place of any other person).
17 (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 12.
(2) When deciding whether one of the courses of action mentioned in paragraph 12(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.
(3) Sub-paragraph (4) applies where—
(a) an appeal under paragraph 10 is allowed against an improvement notice in respect of a particular hazard; and
(b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 12(2) is the best course of action in relation to that hazard.
(4) The tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned

Powers of Property Chamber of the First Tier Tribunal (PC) on appeal under Paragraph 13

18(1) This paragraph applies to an appeal to a Property Chamber of the First Tier Tribunal (PC) under Paragraph 13.
18(2) Paragraph 15(2) applies to such an appeal as it applies to an appeal under Paragraph 10.
18(3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.
18(4) If the appeal is against a decision of the authority to refuse to revoke an improvement notice, the tribunal may make an order revoking the notice as from a date specified in the order