FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/OOHG/HIN/2019/0013
Property:	Flat 4, 83 Citadel Road, Plymouth PL1 2QA and associated common parts
Applicant:	Frederick Keeling
Representative:	In Person
Respondent:	Plymouth City Council
Representative:	Andrew Elvidge
Type of Application:	An appeal against the service of an Improvement Notice - Sections 11 & Schedule 1, Pt 3 of the Housing Act 2004 [The Act]
Tribunal Members:	Judge A Cresswell (Chairman) Mr W H Gater FRICS MCIArb
Date and venue of Hearing:	13 September 2019 in Plymouth
Date of Decision:	17 September 2019

DECISION

The Application

1. The Respondent served a Notice of Improvement under section 11 of the Act in relation to hazards under the Housing Health and Safety Rating System dated 2 May 2019 on the Applicant, the owner of the property, Flat 4, 83 Citadel Road, Plymouth PL1 2QA and associated common parts.
2. On 25 May 2019, the Applicant made an appeal to the Tribunal against the Notice of Improvement.
3. The appeal was under Paragraph 10 of Schedule 1 Housing Act 2004 and was on the general grounds of Paragraph 10(1), submitting that serving a Notice of Improvement was not necessary, the nature and scope of some of the works were disputed and the Applicant had carried out some of them.
4. There was no specific challenge made by the Applicant to the HHSRS (Housing Health & Safety Rating System) calculations, so that it was not necessary for the Tribunal to undertake its own HHSRS (Housing Health & Safety Rating System) calculations.

Summary Decision

5. This case arises out of the Applicant's appeal, made on 25 May 2019, against the service of a Notice of Improvement.
6. The Tribunal has determined that the Improvement Notice be varied with one variation, which is detailed below, (but otherwise confirmed).

Inspection and Description of Property

7. The Tribunal inspected the property on 13 September 2019 at 10.00. Present at that time were the Applicant, Mr Elvidge of the Respondent council and Mr Peter Tobin of Devon and Somerset Fire and Rescue Service; the Tribunal was also assisted by the female tenant of the ground floor flat, who allowed inspection of the front door of her flat.
8. The property in question is a period house in a corner position on the junction of Citadel Road and Athenaeum Street with accommodation arranged on 3 floors, converted about 25 years ago to self-contained flats. One flat, 85 Citadel Road, has a separate front entrance but also has an entrance opening internally onto to the common stairway. All 4 flats and a room used by the Applicant have access to the common parts, being the central staircase with landings and half-landings over the building's 3 storeys.
9. The building is constructed with rendered brick/stone walls under a pitched slate and flat felt roof with some parapet edging.
10. The door to the ground floor flat required adjustment to its self-closer. The other flat doors and the door used by the landlord revealed various issues.
11. The Applicant told the Tribunal that he had installed 3 new fire doors, but the doors seen by the Tribunal were not all clearly marked as being rated as 30-minute fire doors. Additionally, the Tribunal noted gaps and holes in some of the doors and around hinges.
12. The Tribunal was shown the proposed secondary means of escape by the Applicant. There was a narrow parapet gully to the outside of Flat 4, between the wall of the flat and the parapet wall, which could only be reached by climbing through a raised window. The Tribunal also saw the roof area, reached by a door from Flat 4. The area was littered with debris; there was a lightweight flat roofing not surrounded by railings. There was a ladder lying on the roof, which the Applicant said he would use as a secondary means of escape, but this would clearly not reach the ground 3 storeys below; when this

was raised with the Applicant, he said that there was a second part of the ladder in the garage.

13. The Applicant tested the smoke detector in the kitchen of Flat 4 and it was apparent that it was an integrated detector linked to the detector outside the flat door; when that latter detector was tested, it was apparent that that was integrated and linked with detectors further down the stairwell.

Directions

14. Directions were issued on various dates.
15. The directions provided for the matter to be heard on the basis of an oral hearing, and for any statements and documents upon which the parties intended to rely to be provided to the Tribunal
16. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by the Applicant, Mr Tobin, Mr John Felton-Dolecki of Ace Fire Alarms and by Ms Amy Marshall and Mr Thomas Sullivan, both of the Respondent council. At the end of the hearing, both parties told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

The Law

17. The relevant law is set out in sections 1(4), 5, 11, 28, 49 and Schedules 1 and 3 Housing Act 2004.
18. The Housing Act 2004 (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.
19. By reason of Section 1(4), *residential premises* means a dwelling or *any common parts of a building containing one or more flats*.
20. 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)."
21. 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.
22. 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.
23. 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. Section 5(2) sets out the various courses of action available to the authority including the service of an Improvement Notice. Although a duty is imposed on the authority to take action no timescale is specified in the Act.
24. Enforcement action may include serving a notice, referred to as 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.
25. Section 11 of the Act sets out the statutory provisions regarding Improvement Notices relating to category 1 hazards. Section 13 requires an Improvement Notice to comply with the provisions of that section.

26. 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(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*".
27. 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 15(2) provides that the appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority are unaware. Paragraph 15(3) provides that the Tribunal may by order confirm, quash or vary the Improvement 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.
29. The office of the Deputy Prime Minister issued guidance under section 9 relating to Operating Guidance (reference 05HMD0385/A) and Enforcement Guidance (reference 05HMD0385/B).
30. In **Sathavahana Vaddaram v East Lindsey District Council** [2012] UKUT 194 (LC) AJ Trott FRICS:

31. *13. In granting permission to appeal on 29 August 2011 the President made the following observations:*

    "The LACORS guidance is clearly important and ought to be given great weight in a case such as this."

    "63. The compliance of the windows at Flat 23B with Approved Document B1 of the Building Regulations is a matter to which I attach significant weight. The LACORS guidance states in terms that it does not apply to properties converted to a standard in compliance with the Building Regulations. The appellant argues that notwithstanding this statement LACORS should be treated as a guide to best practice. The respondent suggested that the property had significantly deteriorated and asserted that a "LD2 Grade A" fire alarm system had been removed. (No evidence of such removal has been submitted to this Tribunal). The council referred to and relied upon LACORS in its submitted documents. In my opinion the LACORS guidance is a relevant consideration in this appeal."

32. In **Hanley v Tameside Metropolitan Borough Council** [2010] UKUT 351(LC), His Honour Judge Mole said at [25]:

    "*I return to those matters that are of central relevance to this appeal. Firstly, in paragraph 23 of the decision the RPT says that where a hazard has been identified under the provisions of the Housing Act 2004, compliance with the Building Regulations is not a material consideration. I have no doubt that, stated thus bluntly, that is an error of law. It must be a "material consideration" whether something that is said to be a hazard either complies with the Building Regulations or might, without too much trouble, be made*

to comply with the Building Regulations. It is evident from the HHSRS Operating Guidance that in many instances (hazards on stairs for example; see paragraph 21.29) the Building Regulations are directly relevant. Of course, the fact that a situation that is described as a hazard nonetheless complies with the Building Regulations does not mean that it cannot be a hazard. It is possible for a hazard under the Housing Act and HHSRS Regulations to comply with the Building Regulations, yet still be a hazard. It may be that this is all the RPT intended to convey and of course the words must be read in the context of the whole paragraph. But, as Mr Hanley fairly submitted, if that is what the RPT meant, it was certainly not what it said. Compliance with the Building Regulations, in my view, is plainly a material consideration that the Tribunal must bear in mind."

33. It follows from the above guidance that once a local authority properly assesses there to be a Category 1 hazard by reason of fire, the Tribunal must give great weight to the LACORS guidance and a material consideration will be compliance with the Building Regulations.

34. LACORS Guidance

9.7 In all buildings a fully protected escape route (staircase) offering 30 minutes fire resistance is the ideal solution and it will usually be appropriate for all bedsit-type accommodation. However, in lower risk buildings (i.e. single household occupancy of up to four storeys and low risk shared houses), due to the lower risk and shorter travel distance to the final exit, this need not be insisted upon as long as all the following conditions are met:

a. the stairs should lead directly to a final exit without passing through a risk room;

b. the staircase enclosure should be of sound, conventional construction throughout the route;

c. all risk rooms should be fitted with sound, close-fitting doors of conventional construction (lightweight doors and doors with very thin panels should be avoided); and

d. an appropriate system of automatic fire detection and warning is in place (see table C4).

15. Protected routes/stairs

15.1 A protected route is designed to remain free from smoke and fire for a time adequate to allow occupiers of the building to pass safely along it to a place of safety. The level of fire separation required between the protected route and rooms presenting a fire risk is determined by risk assessment.

15.2 Ideally the recommended standard of fire resistance enclosing a protected route is 30 minutes for normal risk premises. However, subject to risk assessment, in lower risk properties (average single household occupancy or low risk shared houses) with automatic fire detection this may be relaxed (see paragraph 9.7). In such cases it may be sufficient to accept sound, conventional construction throughout the route. Larger properties, however, will require 30 minutes protection including fire doors. Areas of high fire

risk may require 60 minutes protection. Examples of 60-minute requirement include:

. walls, ceilings and doors separating commercial uses from residential parts;

. walls, ceilings and doors separating areas of high fire risk, for example commercial kitchens, large boiler rooms or large stores;

. separating walls between buildings; and

basement areas or cellars without automatic fire detection.

35. Building Regulations 2010
Section 1: Fire detection and fire alarm systems
B1
1.7 A large dwellinghouse of 3 or more storeys (excluding basement storeys) should be fitted with a Grade A Category LD2 system as described in BS 5839-6:2004, with detectors sited in accordance with the recommendations of BS 5839-1:2002 for a Category L2 system.

B1.vi For the purposes of Building Regulations, the following are not acceptable as means of escape:

a. lifts (except for a suitably designed and installed evacuation lift);

b. portable ladders and throw-out ladders; and

c. manipulative apparatus and appliances, e.g. fold-down ladders and chutes.

Note: The regulations would not prohibit the use of such measures as an additional feature but they are not considered suitable as an alternative to adequate means of escape.

B1.viii Protected stairways are designed to provide virtually 'fire sterile' areas which lead to places of safety outside the building. Once inside a protected stairway, a person can be considered to be safe from immediate danger from flame and smoke. They can then proceed to a place of safety at their own pace. To enable this to be done, flames, smoke and gases must be excluded from these escape routes, as far as is reasonably possible, by fire-resisting construction and doors or by an appropriate smoke control system, or by a combination of both of these methods.

Emergency egress windows and external doors
2.8 Any window provided for emergency egress purposes and any external door provided for escape should comply with the following conditions:
. the window should have an unobstructed openable area that is at least $0.33m^2$ and at least 450mm high and 450mm wide (the route through the window may be at an angle rather than straight through). The bottom of the openable area should be not more than 1100mm above the floor; and

. the window or door should enable the person escaping to reach a place free from danger from fire. This is a matter for judgement in each case, but, in general, a courtyard or back garden from which there is no exit other than through other buildings would have to be at least as deep as the dwellinghouse is high to be acceptable, see Diagram 4.

Balconies and flat roofs
2.10 A flat roof forming part of a means of escape should comply with the following provisions:

a. the roof should be part of the same building from which escape is being made;

b. the route across the roof should lead to a storey exit or external escape route; and

c. the part of the roof forming the escape route and its supporting structure, together with any opening within 3m of the escape route, should provide 30 minutes fire resistance (see Appendix A, Table A1).

2.11 Where a balcony or flat roof is provided for escape purposes guarding may be needed, in which case it should meet the provisions in Approved Document K *Protection from falling, collision and impact.*

7.2 If a fire-separating element is to be effective, then every joint, or imperfection of fit, or opening to allow services to pass through the element, should be adequately protected by sealing or fire-stopping so that the fire resistance of the element is not impaired.

36. The relevant statute law is set out in the Annex below.

Agreed History

37. The Tribunal first records the relevant history agreed by the parties.

38. The Respondent (Mr Sullivan) inspected the property on 12 February 2019. The Respondent assessed the risks to health and safety from the potential fire hazard under the HHSRS and derived a score of 1101. That placed the hazard into Category 1.

39. The appropriate enforcement action was first considered to be a Hazard Awareness Notice, which Mr Sullivan served upon the Applicant.

40. On 2 May 2019, the Respondent (Ms Marshall, who had independently also assessed the risks) served an Improvement Notice.

41. Essentially, the parties agree with the situation at the premises being as detailed in the Tribunal's record of Inspection above.

The Issues Before the Tribunal

The Fire Hazard

The Respondent

42. Mr Tobin told the Tribunal that escape routes should not involve the crossing of roofs. He pointed to paragraph 029 of approved document B to the Building Regulations 1991, indicating that this was not an acceptable means of escape where portable ladders and throw-out ladders etc. were to be used (see paragraph 35 above where this guidance is repeated in the 2010 Building Regulations). The Respondent placed strong reliance upon the perceived failure of the Applicant to comply with the Building Regulations 1991 in this respect.
43. Mr Tobin pointed out that if the building had complied with the 1991 Building Regulations, the structure of the doors and the internal layout of flats would aid safety on exit.
44. He noted that the self-closer to the ground floor flat needed adjustment.
45. In the door to Flat 85, there were holes where a door handle had been replaced and the rear of the door had been part-bored when fitting a door handle; there was also a closer issue. He pointed out that if a fire built up in the flat, it would build up under pressure and force against the back of the door; it would then act as a blow torch through the holes with an increased burning effect on the material so that it would burn away more quickly.
46. There were gaps on the hinges of the door to the flat on the first floor and it could not be closed fully.
47. He could see gaps past the hinges of the door to the room used by the Applicant.
48. The door to Flat 4 had no intumescent strip on its leading edge; whilst it closed properly, slight adjustment was required.
49. He told the Tribunal that a Grade A fire alarm would involve detection in the stairwell and entrance of each flat. The existing system of smoke detectors would give some warning, but it is not tamper-proof. A Grade A system would reveal any interference. A heat detector in the flats would set off in the event of fire, so that before there was smoke there was a warning.
50. Mr Felton-Dolecki told the Tribunal that Mr Tobin had given a good description of a Grade A system. He had already inspected the property in April 2019, when it was clear that the Grade D smoke alarm system was not up to standard because there were missing detectors. The initial recommendation was to fix the current system for safety in the interim before a fuller system could be installed. A fuller system would cost something in the region of £2500-£3000 for a building of that size, rising to £5000-£5500 for a wireless system.

The Applicant

51. The Applicant first presented his case in his written submissions.
52. The Applicant said that he believes the Respondent may have a form of grievance against him based on past history of a caution for removing old windows and his highlighting a possible lack of diversity in the Respondent organisation.
53. His tenant turned out to be a drug dealer and the police reported to the Respondent that he had disabled fire alarms at the property.
54. He understands that there is no requirement to upgrade the fire safety standards in the case of flats converted after 1992 that comply with the building regulations prevailing.

55. The first officer representing the Respondent failed to locate the planning papers and suggested it was not his job to do so.
56. The officer said the property was a HMO, but there are no shared facilities and the flats are entirely self-contained.
57. His planning application was post-1992 and although two existing front doors were not fire doors they were stout solid wood doors which would not have burnt readily and at the time of converting the building into flats were not replaced. That has now been remedied. The defective smoke alarms have also been replaced.
58. He believes the better course would have been to serve the initial hazard notice, advise him to replace the front doors that were not fire doors with fire doors and encourage him to take further measures such as heat sensors in the various lobbies.
59. The LACORS guidance does not apply to the property.
60. He would suggest the proper advice would be to have ensured that the property was certified as complying with building regulations, which would need to be done when the flats were sold.
61. There have been no mishaps during his 25 years of ownership. To treat a man in his 74th year and in poor health as the Respondent has done was not a proper course of behaviour.
62. In oral evidence, the Applicant provided more detail.
63. He said that he had recently replaced 3 flat front doors with 30-minute fire doors, purchased from Totem Timber. He said that he had sent receipts for the doors to the Respondent (but Ms Marshall denied receipt thereof). The Applicant gave further details of his escape plans, being to go downstairs from Flat 4, which is on the third floor of the building, to go out on to the roof or to climb out of the kitchen window. In relation to the second option, he believed that he could remain on the open part of the roof at the extreme part of the building and wait for the Fire Service to arrive; or he could use a ladder and, although only one was present, doubled there are 3 rungs spare. His option of climbing out of the window, stepping into the parapet gutter and travelling along to the next building had not been tested, but a neighbour had walked from her own building using that method to provide his dog with a bone.
64. He said that he did not need an alarm as the building was converted to flats with permission granted in September 1993 whilst the building regulations 1991 were in force; accordingly the LACORS guidance does not apply. He then went on to say, however, that there was a Certificate of Compliance for No 85 Citadel Road because he had wanted to let it out as a flat. He did not produce that certificate. Although he had complained in correspondence about the failure of the Respondent to provide the Certificate of Compliance relating to the circa 1993 conversion, he now admitted that there was no such certificate and told the Tribunal that it was not a requirement to have building regulations approval at that time. "*It was an expense and I thought I would do it when I came to sell*".
65. In terms of the works being compliant with the Building Regulations 1991, he said that he had not actually said to his installer what alarms he wanted, but had simply given him the plans and he worked to the plans. He believed the installer had done all the electrical work and smoke alarms happened. He had stuffed the space under the floorboards with fibreglass, which also inhibits fire.
66. Having purchased the 3 fire doors and had them fitted, it had been his intention to find a building inspector to check the doors. He accepted that the

doors are not all sealed. He had ensured that the glazed panels to Flats 3 and 4 were no longer there.

67. He believes that there must have been sufficient means of escape in 1993 because he believes that the works complied with the 1991 Building Regulations.
68. He accepted that there was work to be done on the doors.
69. He contrasted the attitude of the Fire Service and the Council. He found the Respondent's attitude, in the person of Mr Sullivan, to be markedly different to that of the Fire Service. He was concerned that the Hazard Awareness Notice was served on him 3 days before it expired and it had led to problems with his tenants and a financial loss to him. He believed that he should not have been given that notice at all, but that there should have been further discussion. He queried why the notice had not been served at his home address. He had resisted an inspection as he had been given so little notice and because he no longer trusted the Respondent.
70. The Applicant said that he was sceptical about the need for a Grade A fire alarm system and was concerned about the running of wires through his beautiful building, but that he would be content to put in such a system if it was required.

The Tribunal

71. The Applicant, as freeholder, is a "responsible person" within the meaning of Article 3 of the Regulatory Reform (Fire Safety) Order 2005 ("the 2005 Order") of premises defined by Article 31(10), i.e. the common parts of the building, but not the individual flats. As such, he is required to take measures as "general fire precautions" under Article 4. He is required to carry out a fire risk assessment (Article 9) and take specific action to minimise the risk of fire in the common parts. Having identified the general fire precautions that are necessary and, having implemented them, the responsible person must put in place a suitable system of maintenance and ensure that equipment is maintained in an efficient state, in effective working order and in good repair (Article 17). Some breaches of the 2005 Order can be criminal offences (Article 32).
72. As freeholder of the premises, the Applicant is also required to ensure the absence of Category 1 risks in the dwelling and common parts under the Housing Act 2004, as detailed above.
73. Under the 2005 Order, the Applicant is required to get rid of or reduce the risk from fire as far as is reasonably possible and provide general fire precautions to deal with any possible risk left.
74. The Tribunal noted reference by the Respondent to the premises being a HMO and the Applicant's submission that it is not. That dispute has no relevance to the Tribunal's Decision as the issue here relates to both *a dwelling or any common parts of a building containing one or more flats* which are *residential premises* within the meaning of Section 1(4).
75. The Tribunal has already noted the condition of the building as seen at the inspection and further detailed by Mr Tobin. The Tribunal was very much assisted at the inspection by Mr Tobin's presence and the cooperation of the Applicant.
76. The Applicant's proposals of alternative escape routes were not seen by the Tribunal to be viable. The roof is 3 storeys high; the use of ladders does not find favour with the guidance quoted above; the roof was strewn with rubbish; there was no assurance as to the weight-bearing ability or fire resistance of the roof. The escape through a window out to the parapet gully option was also

unattractive. Could somebody climb out? There was a risk of falling over the low parapet wall immediately beyond the gully when exiting the window or once out. There was no assurance that it led to a place of safety. Neither of the options could be reached by any other occupants of the building as they were behind the door of Flat 4. Neither of the options meets the criteria of the available guidance.

77. The Applicant's main contention is that the conversion works in circa 1993 comply with the 1991 building regulations, such that no further works, particularly those recommended by the LACORS guidance, could be required. There is, however, no evidence at all to support the Applicant's contention of compliance with the 1991 Building Regulations. There is no Certificate of Compliance and, more importantly, it was the Applicant's own evidence that he did not seek approval for No 83 because of the cost. Accordingly, on that ground alone, the Tribunal finds that the LACORS guidance is not excluded. Even had there been, in circa 1993, compliance with the then Building Regulations, the fact remains that there is within this property a Category 1 fire hazard under HHSRS and safety requires adherence to the best available guidance. That guidance, as noted in cases referred to by the Tribunal above, is to be found in the LACORS guidance and the current Building Regulations. Both of those sources point to the desirability of fire-resistant doors leading to common parts, the installation of a Grade A fire alarm system and the undesirability of escape via rooftops and using ladders.

78. It was very clear to the Tribunal that the safest means of escape from this building was via the common stairway; that any fire was more likely to arise in one of the flats; that the presence of such a fire should be communicated at the earliest opportunity via a system which could not be easily interfered with and that the escape of fire from the flats should be retarded by sealed fire-resistant doors.

79. Whilst it is acknowledged by the Tribunal that the Applicant has taken some steps already to mitigate the risk of fire spread, there is yet some way for him to go so as to remove the Category 1 hazard and comply with his duties under the 2005 Order. He indicated to the Tribunal his desire to improve the situation regarding the doors and a willingness to install a Grade A fire alarm system.

80. The Applicant expressed concern about the behaviour of the Respondent. Whilst respecting his opinion in that concern, this Tribunal is concerned solely with the safety of the occupants of the building.

81. The Applicant believed that the service of the Hazard Awareness Notice was precipitous and that he was given little time to respond. The Tribunal notes, however, that issues of safety were first raised in January 2019 by a concerned member of the public and communicated to the Applicant. There was a formal inspection on 12 February 2019 and a HHSRS assessment on 8 March 2019. The Hazard Awareness Notice was not served until 1 April 2019 and was served both at the Land Registry address and the Applicant's home address and notified to him by email of 2 April 2019; that the Improvement Notice was served on 2 May 2019; that the Applicant felt antipathy towards the Respondent; that as at the time of inspection on 13 September 2019, there still existed a Category 1 fire hazard at the property and measures to date have not been sufficient to remove that hazard and improve the safety of residents.

82. The Tribunal's view is informed by the advice of the Fire Officer detailed above.

83. The Tribunal's view is also supported by the Building Regulations 2010, Fire Safety, which, whilst not directive in this situation, are influential when considering the removal of risk. The Tribunal is also assisted by the LACORS guidance and the advice of Mr Felton-Dolecki of Ace Fire Alarm Systems.
84. The Improvement Notice resulted from the presence of a significant Category 1 hazard, detailed in the Schedule of the Improvement Notice and discussed above.
85. The Tribunal conducted a re-hearing in accordance with Paragraph 15 of Schedule 1 (see above) and concluded that the Improvement Notice in respect of the property specifically relating to use for residential purposes was one that was properly available to the Respondent under Section 11 of the Act and should, for the reasons discussed and detailed above, be confirmed in the main and varied only by the addition of the following words to item 2 of the Schedule of Works:
Every joint, or imperfection of fit, or opening to allow services to pass through the doors*, should be adequately protected by sealing or fire-stopping so that the fire resistance of the* doors *is not impaired.*
86. The period within which the remedial action is to be completed is 2 months from the date of this Decision.
87. The Tribunal, accordingly, varies the Improvement Notice.

A Cresswell (Judge)

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

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.

28 Hazard awareness 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 a hazard awareness 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) A hazard awareness notice under this section is a notice advising the person on whom it is served of the existence of a category 1 hazard on the residential premises concerned which arises as a result of a deficiency on the premises in respect of which the notice is served.
(3) The notice may be served in respect of 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 be served in respect of the dwelling or HMO;
(b) if those premises are one or more flats, it may be served in respect of 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 be served in respect of 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), be served in respect of 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 desirable for the notice to be so served in the interests of the health or safety of any actual or potential occupiers of one or more of the flats.
(5) A 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.
(6) A notice under this section must specify, in relation to the hazard (or each of the hazards) to which it relates—
(a) the nature of the hazard and the residential premises on which it exists,
(b) the deficiency giving rise to the hazard,
(c) the premises on which the deficiency exists,
(d) the authority's reasons for deciding to serve the notice, including their reasons for deciding that serving the notice is the most appropriate course of action, and
(e) details of the remedial action (if any) which the authority consider that it would be practicable and appropriate to take in relation to the hazard.
(7) Part 1 of Schedule 1 (which relates to the service of improvement notices and copies of such notices) applies to a notice under this section as if it were an improvement notice.
(8) For that purpose, any reference in that Part of that Schedule to "the specified premises" is, in relation to a hazard awareness notice under this section, a reference to the premises specified under subsection (6)(c).

SCHEDULE 1
Section 18
PROCEDURE AND APPEALS RELATING TO IMPROVEMENT NOTICES
***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).
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.