



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

Case Reference: CHI/45UB/HIN/2021/0011

Property: 48A Featherston Road, Lancing, West
Sussex BN15 9RH

Applicant: Lee Page

Respondent: Adur District Council

Type of Application: An appeal against the service of an
Improvement Notice -
Sections 11, 12 & Schedule 1, Pt 3 of the
Housing Act 2004 [The Act]

Tribunal Members: Judge A Cresswell (Chairman)

The Hearing: On the papers

Date of Decision: 29 October 2021

DECISION

The Application

1. The Respondent served a Notice of Improvement under Section 12 of the Act in relation to hazards under the Housing Health and Safety Rating System (HHSRS) dated 25 June 2021 on the Applicant, the owner of the property, 48A Featherston Road, Lancing, West Sussex BN15 9RH.
2. On 11 July 2021, the Applicant made an appeal to the Tribunal against the Notice of Improvement. The Applicant's objection related to a number of the hazards identified in the Notice.
3. The appeal was under Paragraph 10 of Schedule 1 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, but not all, were disputed and the Applicant had carried out some of them).
4. The Applicant's objection related to a small number of the hazards identified in the Notice:

Hazard 1 – Damp and Mould	<p>An Extractor fan will be installed in the bathroom.</p> <p>In regards to installing one in the kitchen, I am very reluctant to do so given future intentions to return the property to a house as the kitchen is anticipated to be returned to a bedroom.</p>
Hazard 15 – Domestic hygiene Pests and Refuse	The broken fillet to the window will be repaired.
Hazard 17 – Personal hygiene, sanitation and drainage.	<p>There is no lack of basins in the property.</p> <p>There are 2 basins provided, one in the bathroom for sanitary use and one in the kitchen for the use of food preparation and washing dishes etc.</p> <p>Given the size of the property is so small and there is only one tenant residing in the property as per the initial Tenancy Agreement I do not feel that it would be necessary or required for a 3rd basin to be installed into such a small property.</p> <p>Further Section 11 of the Landlord and Tenant Act 1985 states the following:</p> <p>Water: Landlords must provide and ensure a supply of running water, and provide facilities including basins, sinks, baths, heater tanks etc.</p>

	<p>I believe that as a Landlord I am more than meeting these requirements.</p> <p>Hand Sanitiser can be provided as an interim between toilet and bathroom (maximum of 5 steps).</p>
20 – Falling on level surfaces	<p>Any loose carpets/lino will be secured.</p> <p>In regard to the floorboards in the property. Squeaky floorboards are not a hazard and do not affect the safety and habitability of the property.</p> <p>Where floor boards are loose, I will have these repaired.</p>
21 Falling on stairs	A hand rail will be installed.

22 – Falling between levels	<p>As per the HHSRS limiters should only be considered on property of level 2 and above – this is a 1st floor property and only has one adult presently residing.</p> <p>The HHSRS also notes that this specific requirement is for those who are vulnerable such as children aged 5 and under.</p> <p>Given that the property is occupied by one non-vulnerable adult I feel this request is not adequately scored in line with HHSRS regulations.</p>
23 – Electrical hazards	<p>This has been identified as a low risk.</p> <p>The fact that the supply to 48A is supplied through 48B does not have any impact on electrical use of 48B and does not raise any hazards or risks to the tenant.</p> <p>Each property has installed an independent mains link interconnected dual smoke alarm, there for if there was ever a fire risk, both properties would be alerted.</p> <p>Both properties also have their own individual points of isolation for the electrical supply.</p>
23- Electrical Hazard – continued The circuit board is fitted with wire fuses	I have instructed my Registered Electrician to update the wired fuses to an RCD protected MCB board which will be installed.
24 – Fire	<p>The door lock will be replaced.</p> <p>The smoke alarm has been replaced and an independent mains link interconnected dual smoke alarm has been installed within the property on Wednesday 16th June.</p> <p>A handrail and replacement lock will be installed to provide a safer exit to the property.</p> <p>In response to there being no door to the kitchen, this is not a</p>

	legal requirement. A fire safety door is only necessary to a kitchen in a HMO where there a multiple occupiers and common areas. This is a secured separate dwelling with one occupant; therefore, this is not required.
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5. Given its findings and the admissions made by the Applicant it was not necessary for the Tribunal to undertake its own HHSRS (Housing Health & Safety Rating System) calculations.

Summary Decision

6. The Tribunal has determined that the Improvement Notice be varied with one variation, which is detailed below, (but otherwise confirmed). All required works are to be completed by 29 January 2022.

Inspection and Description of Property

7. The Tribunal did not inspect the property, but saw the property on the internet and had descriptions and photographs within the bundle. The property in question is said to consist of a 1-bedroom first floor flat of a semi-detached house, the ground floor flat also being owned by the Applicant.

Directions

8. Directions were issued on 13 August 2021. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. This determination is made in the light of the documentation submitted in response to those directions.

The Law

9. The relevant law is set out in sections 1(4), 2, 3, 4, 5, 9, 11, 12, 13, 28, 49 and Schedules 1 and 3 Housing Act 2004.
10. 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.
11. By reason of Section 1(4), *residential premises* means a dwelling or *any common parts of a building containing one or more flats*.

12. 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).*”
13. 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.
14. Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review.
15. Section 4 imposes a duty on a local housing authority to inspect property in certain circumstances.
16. If on such an inspection the local housing authority considers that a category 2 hazard exists, Section 7 confers a power to take the appropriate enforcement action.
17. 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.
18. Section 12 of the Act sets out the statutory provisions regarding Improvement Notices relating to category 2 hazards. Section 13 requires an Improvement Notice to comply with the provisions of that section.
19. 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*”.
20. 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 is unaware. Paragraph 15(3) provides that the Tribunal may by order confirm, quash or vary the Improvement Notice.

21. 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.
22. 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).
23. The relevant statute law is set out in the Annex below.

Agreed History

24. The Tribunal first records the relevant history agreed by the parties.
25. The property was inspected by the Respondent on 14 June 2021.
26. The Improvement Notice of 25 June 2021 identifies the following Category 2 hazards:
 - a) No Mechanical extraction in kitchen or bathroom. No door to kitchen.
 - b) Broken window fillet and loose lino.
 - c) No wash hand basin in WC.
 - d) Loose floorboards to kitchen and bedroom. Exposed threshold bar to the WC and loose lino in kitchen.
 - e) No handrail to stairs.
 - f) Low sills with no window limiters.
 - g) Electrical supply is shared and the circuit board is fitted with wired fuses.
 - h) Inside key to front door could impede escape in the event of fire and mains-powered smoke detection head missing on the landing.

The Issues Before the Tribunal

The Applicant

27. The Applicant says that the tenant of the property was served 6 months' Notice to Vacate the property on 5 November 2020 and was scheduled to

- vacate the property on 6 May 2021 at the end of her tenancy. The tenant has not vacated and remains in the property without his consent or permission.
28. He wished to return the property to a single dwelling from the present 2 flats.
 29. He has always maintained the property and was unaware of any issues with it, there being no complaints or concerns raised by the tenant.
 30. Given his intention to not re-let the property and to convert the property into a single dwelling, many of the suggestions in the Improvement Notice are not necessary, feasible or required.
 31. He has produced the table at paragraph 4 above to detail those views.

The Respondent

32. On 5 May 2021, there was a complaint from the tenant of the property that the building was a house split into two flats, but that there was only one electricity meter which was located in her flat. The tenant stated that the landlord was refusing to put a new meter in as he wanted to move back into the building in a couple of years.
33. Enquiries revealed that the building used to be a house, but that no planning application had ever been received to convert it into two flats. Building control department informed that they had a contravention on record from 2009 when it was reported as two flats, but that no application for building regulation approval had been made.
34. This led to a visit to the property on 31 May 2021 followed by the inspection.
35. Falling on level surfaces, falling on stairs and Fire were identified as high category requiring the consideration of enforcement action.
36. The Respondent says that as the hazard score is based upon the most vulnerable potential occupant, it can be applied to owner-occupied, tenanted or even empty properties. Whether a Notice-to-Quit has, or has not, been correctly issued is not relevant to the assessment of the property.
37. There is no evidence provided of an intention to return the 2 flats into a single house. There is no record of an extant planning application for the address to allow such a conversion as at 1 September 2021. Since this conversion would represent a net reduction in the number of dwellings in the District, there is no guarantee that planning permission would be granted.

38. Although it is accepted that Notice to Vacate was given to the tenant, she remains in residence and the Applicant increased her rent and defended an appeal against that increase at the Tribunal on 20 August 2021. The Notice to Vacate expired on 5 September 2021, 10 months after it was served.
39. The Applicant's intentions for the flat remain unclear and he appears to be uncommitted to a timescale for conversion works. Even if his intention is to convert the two flats into a single property, this is unlikely to take place in the short term i.e. within the next twelve months especially as this will involve obtaining planning permission and building control consent and restarting eviction proceedings.
40. The deficiencies that should have been addressed when the unauthorised conversion of the property into two flats took place need to be mitigated to prevent ongoing foreseeable risks to the health and safety of occupants and visitors of both flats. There are still two separate flats that are still occupied.
41. The hazard ratings do not relate to opinion. *Deficiency* is defined in the Operating Guidance as (p10, para 2.02) as '*The failure of an element to meet the Ideal*'. *The Ideal* is defined as (p12, para 2.18) '*The perceived optimum standards at the time of the assessment, intended to prevent, avoid or minimise the hazard*'.
42. If the conversion of the property had been carried out with building regulation consent, then elements such as fitting mechanical extraction to the newly created kitchen and providing a wash hand basin in the standalone WC would have been required. Compliance with Building Regulations must be considered as the Ideal for these elements and the failure to meet these requirements is a deficiency that has been assessed as needing mitigation.
43. In respect of requirement for opening limiters, it is unclear where the Applicant has gleaned the information that '*As per the HHSRS limiters should only be considered on property of level 2 and above*'. The Operating Guidance (p144, para 22.13) however clearly states '*Catches which restrict the distance a window can be opened to 100mm should be fitted to windows above ground floor level to reduce the possibility of an accident involving a child*'. The absence of opening limiters is therefore a deficiency that requires mitigating.

44. The HHSRS assessment considers any potential occupant or visitor and some hazard profiles have a nominal most vulnerable age group (such a person under the age of 5 years in the case of Falling between levels) and the actual occupation of the dwelling does not form part of the assessment.
45. Occupants of the ground floor flat do not have control over the supply of electricity to their dwelling and the potential withdrawal of this supply directly impacts upon the provision of secondary heating, electrical lighting and the preparation of food and drink. The Respondent is aware that they were asked to intervene in this case in the first instance due to the first floor tenant's concern about a large electricity bill, which she believes is not covered by the monthly contribution made by the ground floor tenants. Neighbour disputes of this type increase the likelihood of retaliatory removal of electrical supply and similar harassment behaviour.
46. The Respondent chose to assess this hazard under Electrical hazards as the electrical system was clearly outdated and landlords are required to carry out an Electrical Installation Condition Report on their rented properties at least once every 5 years when these deficiencies should be addressed.
47. In respect of the door to the kitchen, the lack of such a door effectively makes the bedroom and living room 'inner' rooms in that they can only be accessed through a hallway that is open to the kitchen. The Respondent has not required a fire safety door but has specified that a substantial close-fitting door be fitted to allow the most basic of fire control measures to be in place (i.e. closing a door at night). This is not a requirement purely for multi-occupied dwellings.
48. The Operating Guidance states at 5.38 that a Hazard awareness notice may be a reasonable response to a less serious hazard where the Local Authority wishes to draw the attention to the desirability of remedial action. The service of a hazard awareness notice does not prevent further formal action, should an unacceptable hazard remain. This guidance states this is used where the Local Authority are confident that the works will be carried out. This is not the case in this instance as the works are disputed.

49. An intention to alter the property, of itself, does not avail the Applicant so as to prevent enforcement action. The HHSRS standards apply just as much to a single dwelling as they do to a rented part of a property, as Section 11 includes any residential premises.
50. There is here, the Tribunal finds, no real clarity, in any event, as to the Applicant's actual intentions. He says that he wanted possession so that he could restore the building to a single home, but there is conflicting evidence within the bundle as to whether this is for his own use or for the use of the tenant of the other flat.
51. Notwithstanding the above, the Notice seeking possession has expired and there is no evidence of any court action to evict the tenant, but rather evidence of a continuing landlord/tenant relationship by reason of the rent increase notice and subsequent proceedings and absence of court action.
52. The Applicant has shown an acceptance of some of the hazards, but an unwillingness to address some of the hazards and a rejection of some as being a matter of opinion on the part of the Respondent. It is clear that a Hazard Awareness Notice would not have been the correct response to the presence of the Category 2 hazards given the Applicant's attitude to them.
53. There is no evidence to support the Applicant's contention that he has already remedied some of the defects identified and a number is noted as an intention to remedy.
54. The Tribunal notes that the Respondent first visited the property on account of a complaint by the tenant about there being only one electricity meter to record the use of electricity in both flats, so that the tenant did have some concern.
55. The Applicant's reluctance to installing an extractor fan in the kitchen is based upon his planned conversion of the property but, as the Tribunal has detailed above, there can be no certainty and, at present, there is no probability that that conversion will take place.
56. The Applicant's reluctance to install a wash basin in the toilet appears to relate in part to the identity of the current tenant, but that argument is not tenable as the HHSRS assessment is aimed not at a current occupier, but considers any potential occupant or visitor. Nor is Section 11 Landlord and Tenant Act 1985 of avail to the Applicant because Section 11 does not say what the

Applicant says it says and is a section relating, in this context, to a landlord's duty of repair.

57. The Applicant also queries the requirement of limiters for the windows identified in the inspection. In that context, he refers to the identity of the current occupant, but that is to miss the point which the Respondent properly makes that the HHSRS assessment considers any potential occupant or visitor and some hazard profiles have a nominal most vulnerable age group (such as a person under the age of 5 years in the case of Falling between levels) and the actual occupation of the dwelling does not form part of the assessment.
58. The Applicant resists the inclusion of the requirement of a separate electricity meter for the ground floor flat 48b. The Tribunal agrees with the Applicant on this issue. The Respondent has particularised the Improvement Notice to Flat 48a, so that the concern is with potential occupants or visitors to that flat.
59. The Operating Guidance does not refer to independent metering, meters being relevant to hazards from shock and burns.
60. The Respondent points to a potential interruption of supply arising from the current arrangement, but the Tribunal cannot see how that could be so; there is no evidence that the supply to 48a comes from 48b as the meter is in 48a (Image 7) and the meter usually marks the commencement of supply, and, even if it does come from 48b, there is no demonstrated likelihood that the occupants of 48b would cut a live wire supplying 48a.
61. Clearly, the status quo is otherwise wholly unsatisfactory and should be separately remedied, given the very high price of fuel, and creates a situation where each flat is unaware of how much it contributes to the overall bill and creates a circumstance where unfairness can be the norm.
62. Finally, the Applicant refutes the requirement of a door to the kitchen. The Operational Guidance tells the Tribunal that over 65 % of fires start in kitchens and that one of the matters affecting likelihood and harm outcome is inadequate separation of the kitchen from living or sleeping areas. The Tribunal notes from the plan that the kitchen opens out on to the corridor which is the means of escape from the bedroom. The Tribunal concludes that the requirement of a close-fitting door to the kitchen is a reasonable requirement.

63. The Improvement Notice resulted from the presence of a number of Category 2 hazards, detailed in the Schedule of the Improvement Notice and discussed above.
64. 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 12 of the Act and should be varied only by the exclusion of Electrical Hazards - Provide a separate metered electrical supply to Flat 48B (confirmed in the main) for the reasons discussed and detailed above.
65. The Tribunal, accordingly, in good part confirms the Improvement Notice, with a single variation.

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.

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)

servicing 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.

S12 Improvement notices relating to category 2 hazards: power of authority to serve notice

(1) If-

(a) the local housing authority are satisfied that a category 2 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,

the authority may serve an improvement notice under this section in respect of the hazard.

(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 subsection (3) and section 13.

(3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section.

(4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) An improvement notice under this section may be combined in one document with a notice under section 11 where they require remedial action to be taken in relation to the same premises.

(6) The operation of an improvement notice under this section may be suspended in accordance with section 14.

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) *servicing 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.

6(7) Housing Health and Safety Rating System (England)

Regulations 2005

(7) In this regulation—

“relevant occupier” means, where the risk of harm concerned is associated with the occurrence of any of the matters or circumstances listed in—

- (a) paragraph 1 of Schedule 1, an occupier under the age of 15 years;
 - (b) paragraph 2, 3 or 6(a) of Schedule 1, an occupier aged 65 years or over;
 - (c) paragraph 7 of Schedule 1, an occupier under the age of 3 years;
 - (d) paragraph 8 of Schedule 1, an occupier aged 60 years or over who has been exposed to radon since birth;
 - (e) paragraph 11 of Schedule 1, the actual occupier;
 - (f) paragraph 17, 22, 23 or 25 of Schedule 1, an occupier under the age of 5 years;
 - (g) paragraph 19, 20, 21, 24 or 28 of Schedule 1, an occupier aged 60 years or over;
 - (h) paragraph 26—
 - (i) except where a collision is with low architectural features, an occupier under the age of 5 years, and
 - (ii) where a collision is with low architectural features, an occupier aged 16 years or over;
 - (i) any other paragraph of Schedule 1, any occupier; and
- “RSPPR” means the representative scale point of the percentage range.