Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0004/04/12

In the matter of 4 Mews Cottage, 13 Lily Street, Roath Cardiff CF24 3EB
And in the matter of an appeal under the Housing Act 2004

TRIBUNAL	David Evans LLB LLM Roger Baynham FRICS
APPELLANT	Mr Aristos Peters
RESPONDENT	Cardiff County Council

DECISION

BACKGROUND

1 The Appellant, Mr Aristos Peters, is the leasehold owner of number 4, Mews Cottage, 13 Lily Street, Roath, Cardiff (the Property), a small detached mews cottage situated to the rear of number 13 Lily Street. In January 2012, an officer of the Cardiff County Council (the Council) attended the Property following which on the 31st January, 2012, the Council sent the Appellant a letter which is headed "Housing Act 2004, Informal Improvement Notice requiring works to" the Property. The letter enclosed a schedule of works which were required to be carried out in order to eliminate a number of deficiencies giving rise to three hazards – excess cold, damp and mould and fire. The Appellant was required to commence the work before the 1st March 2012 and to complete it by the 1st May, 2012. The work required was:

- Roof insulation;
- Insulate the north facing front walls;
- Draught-proof the front door;
- Mechanical extractor fans to kitchen and bathroom;
- Fit a kitchen door;
- Fit a grade D LD3 fire alarm system.

2 On the 25th April, the Appellant made written representations to the Council explaining that

- There was no damp and mould; there was, however, condensation due to the tenant's lifestyle;
- He was committed to carrying out some of the work, but there were items which he considered inappropriate;
- He was replacing the bathroom fan and installing a mains connected fire alarm;
- He would consider putting in the kitchen door, but he cannot afford the cost of the necessary plumbing and other work and the tenants would not use it anyway;
- He would like the requirement for roof insulation removed as there is insufficient attic space;
- There is an extractor fan in the kitchen and a window; condensation is caused by drying clothes on the radiator and not opening the kitchen window.

3 On the 2nd May 2012, the Council revisited the Property. Following that inspection, from which it was evident that the required work had not been carried out, the officer involved with the case assessed the hazards existing on the Property as achieving the following scores:

- Excess cold – 1820; category 1
- Damp and mould growth – 523; category 2
- Fire – 235 – category 2.

The Appellant did not challenge the scores.

4 The Council again required:

- roof insulation
- wall insulation
- window and door insulation or fit double glazed units
- mechanical extraction to kitchen and bathroom
- kitchen door
- fire detection and alarm system

5 In view of the fact that the Council considered that Category 1 and Category 2 hazards existed, it was obliged under section 5 of the Housing Act 2004 (the Act) to take "appropriate enforcement action". The courses of action under section 5(2) of the Act in the case of Category 1 hazards are:

- Improvement Notice
- Prohibition Order
- Hazard Awareness Notice
- emergency remedial action
- emergency prohibition order
- Demolition Order
- declare a clearance area.

6 The Council considered that a Prohibition Order, operative 28 days from the date of the Order, was the most appropriate in view of the "extent, number and severity of the hazards identified". The Council also considered that it was not practicable to mitigate the hazards to an acceptable level "due to the dwelling, condition layout etc". The Order prohibits the use of the Property for human habitation and set out its reasons for selecting the Prohibition Order. In particular it did not consider an Improvement Notice to be appropriate because of the cost of carrying out the required work which it regarded as "prohibitively expensive".

7 It is against that Prohibition Order that the Appellant now appeals. His principle ground, as set out in the application, is that any damp is caused by condensation due to the tenant's lifestyle. He hoped to continue to talk to the Council officers in order to achieve a compromise. The Appeal was heard at the Tribunal Offices on the 12th December 2012. Prior to the hearing, we inspected the Property.

THE PROPERTY

8 The Property is a two storey, single skin 9 inch brick building with rendered external walls and a tiled roof – the weight of the tiles causing considerable bowing in the roof timbers. It is believed to have been built in about 1904 as a stable, coach house, outhouse or garage. It has been used as a dwelling since the late eighties or early nineties. The building covers its entire plot so that, apart from the north facing front, there is no access to the outside walls without going onto someone else's garden. Access to the Property is through an archway which leads to a courtyard. The door to the Property is off the courtyard. Natural light to the rooms is from the four single glazed windows which overlook this area and a single roof light.

9 Internally, there is a kitchen and a living room downstairs on either side of the entrance and staircase. Upstairs, there is a single bedroom and a small study area through which access is gained to the bathroom. The sloping ceilings make the fitting of roof insulation difficult except, as the parties agreed, in the central ridge area where some had been fitted. The Property has gas fired central heating.

10 When we inspected the Property, there was no evidence of damp ingress. In the living room and the kitchen, there are stud partition internal walls on the back wall only. There are vents in both the bedroom and living room. The kitchen door had been removed and we could see that its re-instatement would involve the moving of pipes. There was some evidence of mould in the kitchen. There was condensation in the bedroom. There had been mould there as well, but this had been removed by the tenants. The bathroom vent was not working (there was just an open port). There was an extractor fan over the hob in the kitchen, but there was an issue as to whether it was vented to the outside or simply recirculated the air internally. There was a battery operated fire alarm. At the time of our inspection, on the day of the hearing, the Property was unoccupied.

THE ISSUES

11 The Appellant had said that he hoped to continue to talk to the Council and, during the hearing, he told us that he was willing to carry out the certain work in order to alleviate the hazards identified by the Council.

- He would insulate the bedroom ceiling.
- He would provide internal wall insulation on the rear and external side wall of the living room (not the front wall).
- He would provide internal wall insulation on the rear and external side wall of the bedroom (again, not the front wall)
- He would provide mechanical extractor fans for the kitchen and bathroom.
- He would install a mains smoke alarm system for the landing and hallway.

12 The specific issues which remained in dispute were therefore:

- The provision and fitting of internal wall insulation to the other walls
- Window and door insulation
- Kitchen door

In addition, there was the general issue as to whether the Prohibition Order was "appropriate enforcement action".

13 We shall deal with these points in turn. We shall also limit the evidence only to those issues. No procedural issues were raised by either party. The Council had helpfully provided the Appellant and ourselves with a paginated bundle of documents to which we shall refer using the relevant page number. At the hearing, the Appellant appeared in person. The Council was represented by Mr R Grigg and he was assisted by Mr N Hockey, an experienced Environmental Officer who had carried out the rating assessments and Mr C Scrase who would deal with the costings.

INTERNAL WALL INSULATION

14 The Council's requirement is that "the solid walls should be insulated either internally using dry lining **OR** externally using wall cladding" (p 18). The Council accepted that the provision of external wall cladding was impracticable. The Appellant agreed that cold was a problem and that the central heating at present was not sufficient. All that was needed was an additional fire. The Appellant had accepted the requirement to insulate the front and external side walls of the living room and bedroom, the question at issue was whether to require the insulation of the front walls of these two rooms and all the walls of the study, kitchen and bathroom.

15 The provision of insulation to front walls of the bedroom and ~~bathroom~~ living room will require some additional work as the windows and sills will have to be accommodated. This is not a difficult or expensive requirement. Insulating the kitchen and bathroom walls, however, will require the removal of tiling and the removal and reinstallation of appliances and fittings followed no doubt by retiling where appropriate. As the Appellant points out, this is expensive. He told us that he could not afford to do this. His argument is that it is a considerable expense for very little benefit.

16 In our view, a distinction can fairly be drawn between those rooms which are used for relaxing, working or sleeping and those where the use is transitory, such as the bathroom, or the kitchen where the occupants are carrying out tasks such as cooking, washing or drying dishes. In the former, the occupants may well be sedentary – reading, watching television or, in the case of children, playing indoor games. It is important that these activities are carried out in a suitable environment which of necessity must mean that it is not affected by the cold.

17 The purpose of insulation is twofold: it retains the heat within the room and it keeps the cold out. There is little point in employing another heater if the heat is going to escape through the non-insulated wall. Further, electric heaters can be expensive and vulnerable people on limited incomes may not use them as often as they should. In our view, it is reasonable and appropriate for the Council to require the front walls in both the living room and the bedroom to be insulated. Likewise, we consider that it is reasonable and appropriate for the external walls in the study to be insulated. However, we accept the Appellant's argument that it would be disproportionate to require the external walls of the kitchen and bathroom to be treated in the same way. These rooms, as he points out, generate their own heat. We would therefore propose to vary the Order to accommodate this.

WINDOW AND DOOR INSULATION

18 The Order states that "the existing single glazed windows and exterior door should either be provided with suitable draught strips **OR**...they should be replaced with double glazed units". However, in evidence, Mr Nigel Hockey, for the Council, accepted that it would be acceptable for the Appellant to locate another radiator in the living room and in the bedroom beneath the single glazed windows. He considered that this would have a "huge difference".

19 Although the Council has put double glazing as an alternative, we are concerned that even with the provision of draught excluders, there is a capacity for heat loss (and ingress of cold) in the living room and the bedroom which is unacceptable. As Mr Hockey told us, the provision of an additional appropriate sized radiator beneath the windows in both rooms would make a substantial difference in counter-acting the issue of excess cold. We would therefore propose to vary the Order to remove reference to the double glazing as an alternative, but would add the requirement to place the additional radiator beneath the single glazed windows in both the bedroom and living room. The provision of draught strips is not expensive and should be done as a matter of course as otherwise much of the benefit of the additional heating will be lost.

KITCHEN DOOR

20 The Council's requirement is for a kitchen door to be fitted. There had been a door originally, but it had been removed. There were now obstructions in the way and replacing the door would be more of a job than simply installing it. The Council's reason for the requirement is that the door will reduce the escape of kitchen vapours into the rest of the house, thereby lowering the amount of condensation. It will also create a protected escape route from the living room and the upstairs rooms in the event of a fire developing in the kitchen – a common seat of household fires.

21 The Appellant's point is that apart from the practical difficulty in fitting a door, the occupiers will simply leave it open. Again this would be an unnecessary expense as it would have little practical gain.

22 In our view, there can be no compromise when it comes to fire safety. The provision of a secure escape route is a necessity and not something which any local authority – or this Tribunal – can ignore. The kitchen door will inhibit smoke from entering the rest of the house in the event of fire. If the Appellant's tenants choose not to close it, then that is a matter for them. The Appellant will have discharged his own particular duty of care to provide a safe environment. We consider that the Council is correct to insist upon a suitable kitchen door being installed.

APPROPRIATE ENFORCEMENT ACTION

23 The Appellant did not challenge the rating assessments. The issue of the excess cold creates a Category 1 Hazard and as a result, the Council must take remedial action (section 5 of the Act). Even without the issue of excess cold, there are Category 2 Hazards and in our view the Council would have been well justified in exercising its discretion in deciding to take remedial action.

24 At page 20 in the bundle, the Council has given its reasons for adopting the "Prohibition" route rather than any of the alternatives. At the time, the Property was tenanted by a young professional couple. It was summer so that even despite the weather, the temperatures were warmer than those in winter. The Council concluded that none of the hazards posed a serious and imminent risk to the health and safety of the occupiers. Emergency action was therefore not required. A Demolition Order or clearance would not have been proportional. The choice was therefore between a Hazard Awareness Notice, an Improvement Notice and a Prohibition Order. A Hazard Awareness Notice would not require the Appellant to carry out any work to reduce the hazards. Its effect therefore would be limited. In the Council's view, work was necessary in order to bring the Property up to an acceptable standard. What had to be considered was whether this would be done without a sanction of some sort. We accept the Council's view on this. The nature and extent of the work required – and its cost – was such that it was unlikely that the Appellant would do much in the way of remedial work without something to back it up. In fact, despite his protestations that he wanted to negotiate the Council's requirements, he has done nothing. He claims that he first of all tried to persuade the tenants to change their habits. He had difficulty in obtaining quotations for the smoke alarm system. He was looking at various ways to deal with the question of the insulation.

25 The facts speak for themselves. Nothing has been done. A Hazard Awareness Notice – without sanction – would simply have delayed the process. Tenants would have been occupying the Property which, in the Appellant's view, was habitable even with its deficiencies. In our view, the Council was right not to proceed with a Hazard Awareness Notice, a judgment which has been justified by the lack of progress in dealing with even those issues which the Appellant was prepared to concede.

26 The Council decided against the service of an Improvement Notice because of the extent, number and severity of the hazards and also the cost of mitigating them. We had two concerns which we put to the Council. The Council had initially sent the Appellant an informal Improvement Notice (pp24 – 29). The impression given to the Appellant by the informal notice is that if he carried out the work that would be the end of the matter. He was given from the 1st March to the 1st May to do this. Also the requirements are less: the Notice requires the insulation of the front elevation only. It also informs the Appellant that if he fails to meet the time scales given or make reasonable progress, "a formal notice will be served upon you". Although the accompanying invitation to make written representations refers to "enforcement action" without being specific, the impression given by the informal improvement notice is that the next step will be a formal Improvement Notice. There is no reference to an "Order", only a "notice".

27 The other concern which we had was that the service of a Prohibition Order was draconian. The Appellant's income would cease. We were also concerned that the Order would affect the value of the Property. The Council accepted that the order was draconian. However, the Property was not habitable without the improvement required and it would not be possible to carry out the work with tenants in occupation. Any valuation would take into account the extent of the work that was needed to be done and so the effect of the Order was negligible.

28 Mr Grigg referred us to paragraph 5.21 of the Enforcement Guidance published by the Office of the Deputy Prime Minister which suggests that a Prohibition Order might be appropriate where remedial action is considered unreasonable or impracticable for cost or other reasons. He called Mr Scrace to give evidence as to the cost of carrying out the work. Mr Scrace, who is a senior surveyor with the Council, had prepared costings for 2 schemes. Option 1 was described as "not to B[uilding] Regs standards" and this came to £24,640.84. Option 2 came to £44,247.28. Both schemes included the cost of re-roofing the Property and also the removal and replacement of the kitchen and bathroom fixtures and fittings. Mr Scrace told us that he had used as a framework the schedules of rates which the Council used when it put work out to tender. He considered that the rates were competitive although they do not always reflect market conditions. The Council has a list of contractors which it uses. They have to have minimum standards – adhere to codes of practice, VAT registered, £5,000,000 insurance cover, health and safety policies. The Appellant challenged the necessity for the roof to be done. His insurer had told him that it was in a stable condition. There was also a variety of insulation products on the market. Mr Hockey considered that the insulation work would require other work.

29 The Appellant argued that a Prohibition Order was inflexible and that an Improvement Notice would have been more appropriate. He told us that he now had a young child and he may want to live at the Property himself. He was unemployed and was now not in receipt of any rent from the Property. He accepted that he would require a grant to do some of the work. He also told us that if he was required to do all the works, he could not afford to do them.

DETERMINATION

30 Paragraph 11(2) of Part 3 of Schedule 2 to the Act states that an appeal against a Prohibition Order "(a) is to be by way of a re-hearing, but (b) may be determined having regard to matters of which the [Council] was unaware". Our powers are to "confirm, quash or vary the prohibition order" (paragraph 11(3)).

31 The Appellant did not challenge the Council's evidence with regard to the existence of the hazards. Nor did he challenge Mr Hockey's scoring. He accepted that the Property was cold and required supplemental heating. However, he had managed to live at the Property as had other tenants without it presenting a problem. He accepted that there had been mould and damp, but considered that they were caused by the tenants' use of the Property – drying clothes on radiators with the windows closed, for example. He also accepted that the smoke alarm needed up-grading and was going to deal with it although he believed that installing a new kitchen door was a waste of time and money as it would never be closed.

32 During the hearing, he accepted the necessity for carrying out certain of the Council's requirements and the only items in dispute were the extent of the wall insulation, the door and window insulation and the installation of a kitchen door. Our findings are for the reasons stated above:

(a) Insulation is required for all the external walls of the living room, bedroom and study; it is not required for the kitchen and bathroom.

(b) A second radiator is required to be installed under the windows of both living room and the bedroom. Double glazing is not required. Draught exclusion is required.

(c) A kitchen door must be installed.

33 On the question of whether a Prohibition Order is appropriate, we have concluded that it is. We are not satisfied with the Council's schedule of works or costings. As Mr Scrace fairly observed, his costings may not be what could be available in the marketplace. Further, the costs include works which are not required either under the terms of the original Prohibition Order or the order as to be varied by ourselves. We are satisfied that a Hazard Awareness Notice is not appropriate. The nature and extent of the deficiencies are such that the work needs to be carried out and the purpose of such a Notice is to advise the Appellant "of the existence of a Category 1/ Category 2 hazard..." (ss 28 and 29 of the Act). The Appellant has been aware of the hazards since January 2012. He has acknowledged the existence of some of them and yet he has done nothing. He may have spoken to some contractors, but the jobs have not been started.

34 The Appellant suggested that an Improvement Notice would have been more appropriate. In certain circumstances, we could well have been persuaded that such was the case. However, the principle issue here is excess cold. It is Winter, with January and February generally being the coldest months of the year. An Improvement Notice would allow the Appellant to let or live in the Property straight away and for the work to be carried out within a defined time scale. As a result of our variations, it would now be possible for much of the work to be carried out with the Property being occupied, albeit with considerable inconvenience. However, in our view, the nature of the hazards, in particular the issue of excess cold at this time of the year, are such that it is not appropriate to allow the Property to be occupied until the work has been carried out. The prospect of the Appellant bringing his young child to live in a single skin, single glazed, inadequately heated house with insufficient roof insulation, an open port in the bathroom, inadequate ventilation in the kitchen and without the necessary fire/smoke precautions persuades us that an Improvement Notice is not the appropriate way forward. Any vulnerable person living in that accommodation would be particularly at risk, but so would anybody. For this reason, we do not consider it practicable to restrict the Prohibition Order to defined categories of persons.

35 Demolition and clearance are not proportional. Emergency remedial action and an Emergency Prohibition Order are not necessary as the Property is unoccupied. We agree with the Council that a Prohibition Order is indeed appropriate.

36 We therefore vary the terms of the original Prohibition Order as follows:

Excess Cold

1 **Provide and fit insulation to the roof space**

[As drawn]

2 **Provide and fit wall insulation**

The external walls in the living room, bedroom and study area are to insulated internally using dry lining.

Internal insulation using laminated insulating plasterboard should be fixed to a studwork frame. A vapour barrier is required on the room side of the insulation to prevent interstitial condensation.

The manufacturer's instructions must be strictly adhered to when carrying out the insulation work.

3 **Provide window and door insulation and additional radiators**

The existing single glazed windows and exterior door should be provided with suitable draught strips

An additional central heating radiator of appropriate capacity must be located beneath the window in both the living room and the bedroom.

The remainder of the Order is as drawn.

Dated this 29th day of January 2013

CHAIRMAN

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: 1034835

In the matter of 4 Mews Cottage, 13 Lily Street, Roath, Cardiff CF24 3EB
And in the matter of an appeal under the Housing Act 2004

TRIBUNAL	David Evans LLB LLM Roger Baynham FRICS
APPELLANT	Mr Aristos Peters
RESPONDENT	Cardiff County Council

APPLICATION FOR PERMISSION TO APPEAL

DECISION

1 BACKGROUND

1.1 On the 12th December 2012, we heard an Appeal by Mr Aristos Peters (the Appellant) against the decision of the Cardiff County Council (the Council) to make a Prohibition Order pursuant to sections 20 and 21 of the Housing Act 2004 (the Act) in respect of the Appellant's leasehold property known as 4 The Mews, 13 Lily Street, Roath, Cardiff CF24 3EB (the Property).

1.2 The basis of the Appellant's case was that the Council's requirements were more than were reasonably necessary and that a Prohibition Order was unduly harsh. In the Appellant's view many of the problems at the Property were as a result of the way the tenants used their accommodation.

1.3 During the course of the hearing, the Appellant accepted certain of the requirements but he argued against the imposition of others and so both parties concentrated upon the issues in dispute. In our Decision dated the 29th January 2013, we accepted the Council's case as to the appropriateness of a Prohibition Order but varied the Order so as to take account of certain of the Appellant's arguments.

1.4 The Appellant is not satisfied with the Decision and wishes to appeal to the Upper Tribunal and, in order to do so, he seeks our permission to appeal. He contacted the Tribunal by e-mail on the 18th day of February 2013 indicating his wish to appeal. He did not include any grounds for appeal at that stage. We extended his time to provide the grounds and they were received by letter dated the 20th February 2013. We have considered the grounds and our original decision and, for the reasons set out below, we REFUSE permission to appeal.

2 PRINCIPLES

2.1 Permission to appeal will only be granted where:

(a) The Tribunal has wrongly interpreted or applied the law;

(b) The Tribunal has wrongly applied or misinterpreted or disregarded a principle of valuation or professional practice;

(c) The Tribunal has taken account of irrelevant considerations or failed to take account of relevant considerations or evidence or there was a substantial procedural defect;

(d) The point or points at issue is/are of potentially wide implication.

2.2 A finding of fact is generally not able to be appealed unless it falls within paragraph 2(c) above or it is one which no tribunal could reasonably have reached based upon the evidence. It is

not the purpose of this procedure to re-argue the issues dealt with at the hearing, nor is it for us to re-consider our Decision.

3 GROUNDS OF APPEAL

The Appellant raises 14 reasons in support of his request for permission. We shall deal with them in turn as follows:

3.1 *Reasons for not carrying out work before Council visit on 2nd May 2012; no damp at Property*

The appeal to this Tribunal was by way of a rehearing. We looked at the situation as we found it as at the 12th December 2012. The Council accepted from the start that the damp was not penetrating the external walls. It was also evident from our inspection that this was the case (see paragraph 10 of the Decision). In paragraph 3 of the Decision, we were merely outlining the background to the appeal. This ground does not raise any issue which merits the grant of permission to appeal.

3.2 *Hazard rating assessments*

Paragraph 3 of the Decision is setting out the history - the reasons why the Council made the Prohibition Order. The assessments were mentioned at the hearing during the Council's evidence. Mr Hockey, the Council's Environmental Health Officer, referred to them at the start of his evidence. He indicated that they were contained within the Council's bundle of documents (pp 35-40). They formed the basis of the Council's view that a category 1 hazard existed at the Property - mentioned in the Prohibition Order (p20 in the Council's bundle). The assessments were part of the Council's case, but the Appellant did not challenge either the assessments or the existence of a category 1 hazard. He was more concerned with the Energy Performance Certificate (EPC) dated 13th May 2010 (two years before the Council's inspection and over 2½ years before the hearing) which he introduced in evidence and put to Mr Hockey who pointed out that the rating of E48 meant that something needed to be done and that the certificate was actually based upon a false premise that there were 200mm of roof insulation, which from his own inspection he knew not to be correct. The EPC measures the energy efficiency and environmental impact of a property. It does not assess the hazards at a property. We should perhaps for the sake of completeness point out that the EPC rated the walls and windows as "very poor" and that the roof was only rated good on the false assumption that there were 200mm of loft insulation. At paragraph 13 of the Decision, we indicated that we would only refer to the evidence relating to the points at issue. During the hearing, the issues between the parties became clearer: wall insulation, window and door insulation and the kitchen fire door. An assessment of the energy efficiency and the environmental impact of the Property 2½ years before the hearing did not in our view have any bearing on the hazards which may or may not be present at the Property in December 2012. The Appellant has given no explanation in the grounds of appeal as to why it should. As a Tribunal, we noted the evidence and considered it, but in the Decision we only dealt with the issues which were in dispute and the evidence and arguments relating to those issues. This ground does not raise any issue which merits the grant of permission to appeal.

3.3 *Council's decision to make a Prohibition Order*

Paragraph 6 of the Decision is simply narrative. We are explaining how the Council reached its decision. The Appellant complains that the Council did not clarify which walls needed insulating. With respect, the Order is clear - it refers to "the solid walls" requiring insulation "either internally... or externally..." (p 18). He also suggests that the Council never entered into discussions with him. The letter dated the 31st January 2012 enclosing the "Informal Improvement Notice" mentioned in paragraph 1 of the Decision gave contact details should the Appellant "wish to discuss any matter" and the Notice informed him "of the opportunity to make representations" and contained a reply

form. The Appellant was requested to respond within 14 days. His reply is dated the 25th April 2012, a week before the deadline for completing the work expired. We do not see that this ground raises any issue which merits the grant of permission to appeal.

3.4 *Evidence of mould and condensation*

Paragraph 10 is setting out what we noted on our inspection of the Property. There was evidence of mould in the kitchen and condensation in the bedroom, not the bathroom as stated in the grounds of appeal. The Appellant does not dispute the former and has misread the latter. We do not see that this ground raises any issue which merits the grant of permission to appeal.

3.5 *The Appellant was willing to install a radiator beneath windows in living room and bedroom*

The issue of a second radiator in each of the living room and bedroom was raised in evidence during Mr Hockey's re-examination. The Appellant did indeed accept, during the course of his own cross-examination by the Council, that he would be willing to place a second radiator beneath the windows in those rooms. Our Decision reflects this. As the Appellant had agreed to do this, we cannot see that this ground raises any issue which merits the grant of permission to appeal.

3.6 *Reference to the provision of insulation in the bathroom is in error*

The Appellant is correct. There is a clerical error in paragraph 15 of the Decision. The sentence should refer to "bedroom and living room" as is apparent from the context. The Decision is unaffected, however, and we do not see that this ground merits the grant of permission to appeal.

3.7 *No reference to insulation of study walls*

The Council's case was that all external walls needed insulation. The issue of the study was raised during the Appellant's cross-examination of Mr Hockey. The Appellant accepted the need for some insulation in the living room and bedroom. He did not accept that need for the kitchen, bathroom and study area. The issue was considered during the evidence. We agreed with the Appellant in respect of the kitchen and bathroom for reasons stated at paragraphs 16 and 17 of the Decision. We agreed with the Council in respect of the study for the reasons set out in those same paragraphs. The Appellant does not state why he considers the decision to be wrong. We do not see that this ground raises any issue which merits the grant of permission to appeal.

3.8 *Draught strips*

The Council had included insulation of the front door in its Informal Improvement Notice (p27). The Prohibition Order provides for the provision of draught strips to the existing windows (as well as the door) or the installation of double glazing (p 18). During the hearing there was a discussion as to the relative merits of an additional central heating radiator and double glazing. As we have already stated, the Appellant agreed to install an additional radiator in each of the living room and bedroom. We concluded that the additional radiators were acceptable. However, this would leave the existing windows and for the reasons referred to in paragraph 19 we considered that the problem of heat loss would still be there - the installation of new windows would have removed this problem. The Council's case was that the old windows needed draft insulation. The installation of extra heating did not remove that need. Whilst the Appellant did not specifically concede the point, he did not challenge it. We considered that it was reasonable to retain that requirement for the reasons expressed. We were entitled to come to that conclusion. We were after all considering the case afresh. It was the Council's case that the draught insulation was needed if the old windows were retained. We agreed. We have dealt with the issue of the EPC previously - the windows were rated "very poor". The Appellant does not put forward any reason why it is wrong to have included the

draught strips. We do not see that this ground raises any issue which merits the grant of permission to appeal.

3.9 *The Tribunal did not take account of the fact that the property had been unheated*

A brief summary of our inspection appears at paragraph 10 of the Decision. It is a factual statement of what we observed. The fact that the heating was not on did not influence either those observations or our Decision in any way. The reference to "excess cold" in paragraph 23 relates to the rating assessment (p35). The Appellant does not point to any finding or any of the variations which we made as being influenced by the fact that the central heating was not working during the inspection. The Council's case was that the Property was unfit because of the hazards of cold, damp and mould and fire. We accepted to a large part the Council's case. We were entitled to do so. We do not see that this ground raises any issue which merits the grant of permission to appeal.

3.10 *The Appellant "has done nothing"*

The Council was required - as are we - to consider the alternatives to a Prohibition Order in order to establish the appropriateness of that course of action (see section 5 of the Act). One of those alternatives is a Hazard Awareness Notice considered in paragraphs 24 and 25. This type of notice simply informs the Appellant of the issues requiring attention. The Appellant had received the Informal Improvement Notice in January (or possibly early February) 2012. The Appellant accepted that nothing physically had been done to the Property by December 2012. For whatever reason, the Property was in the same condition as it was when that informal notice was served. We appreciate that there are financial constraints and that it takes time to organise contractors, but it was the Council's view - and ours - that the Property should not be lived in until certain works had been carried out. Since the Appellant throughout the hearing maintained the Property was habitable and indeed at one point stated that he wished to live there himself with his young child, we were entitled to conclude that a Hazard Awareness Notice would not have the effect of ensuring that work was done before the Property was occupied. The reference to 28 days is in accordance with section 25 of the Act. The issue was not whether the Appellant had been contacting suppliers or contractors, but whether the Property was habitable without the work being done. We were entitled on the evidence to conclude that it was not. We do not see that this ground raises any issue which merits the grant of permission to appeal.

3.11 *The Council had not proved severity of the hazards; Council failed to enter dialogue*

Paragraph 26 of the Decision is in fact dealing with the merits of an Improvement Notice. In his closing remarks (not in his grounds of appeal to us dated 23rd August 2012) the Appellant stated that he thought that an Improvement Notice would have been more appropriate (see paragraph 29). After considering the evidence and the enforcement guidance (paragraph 28), we concluded that it was not the best course of action (paragraph 34). We were entitled to come to that conclusion. We were satisfied that the hazards existed. The lack of dialogue does not affect the existence or otherwise of those hazards. However, as pointed out at paragraph 3.3 of this Decision, it took the Appellant nearly 3 months to make representations in response to the Informal Improvement Notice. We do not consider that this ground raises any issue which merits the grant of permission to appeal.

3.12 *Property habitable*

This was the Appellant's principle argument (see paragraph 29). We did not accept it. We considered that the hazards were of such a nature that the Property should not be occupied until the work was carried out (paragraph 34). Again we were entitled to come to that conclusion based

upon the evidence. We do not consider that this ground raises any issue which merits the grant of permission to appeal.

3.13 *Appellant did not accept that Property was cold, damp and in need of extra heating*

As the Appellant states, he had offered his tenants extra heating but they had sourced it themselves. When cross-examined, he had stated that "cold is a problem, not a big problem. Some people can deal with it. [The tenants] needed an additional fire. The central heating isn't enough at present as [they] needed an electric fire". With regard to the damp, we accepted that there was no ingress of damp, but there was damp caused by condensation. The Appellant accepts this in paragraphs 1 and 4 of the present grounds of appeal. We have dealt with the rating assessments earlier in this Decision. As the Appellant says, he agreed to install radiators in the bedroom and living room (initially on the side walls but subsequently under the windows) as well as a mains smoke alarm system on landing and hallway. Therefore, as far as the Order is concerned, these items were not in issue. We do not consider that this ground raises any issue which merits the grant of permission to appeal.

3.14 *Temperature of Property at time of inspection*

As explained in paragraph 3.9 above, the lack of heating at the time of the inspection had no bearing on the Decision. The issue of the hazard ratings is dealt with in paragraph 3.2 above. We do not consider that this ground raises any issue which merits the grant of permission to appeal.

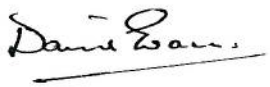
4 CONCLUSIONS

4.1 At paragraph 2.1 above, we set out the basis upon which permission would be granted to enable the Appellant to appeal to the Upper Tribunal. All the issues raised are matters of fact, many of which were either conceded by the Appellant or not challenged. Some of the points refer to the reasons why the Appellant was unable to carry out the work as opposed to the need for the work to be carried out.

4.2 The Appellant is really arguing that in respect of most of the issues challenged we preferred the evidence and arguments presented by the Council. He has sought to re-argue or explain his case which is not a proper basis for giving permission to appeal. We considered all the evidence when making the decision and, except in the limited instances where we have varied the Order, we were not persuaded by the Appellant's arguments. The Decision was one which we were entitled to make. There is nothing in the grounds which convinces us otherwise. We do not consider that there is a reasonable prospect of success on appeal and accordingly we refuse permission to appeal.

4.3 An application to appeal this decision to the Upper Tribunal must be made in writing and received by the Upper Tribunal no later than 14 days after the date of this Decision.

DATED this 28th day of March 2013



CHAIRMAN