



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

Case Reference	:	CHI/45UC/HIN/2021/0010
Property	:	Fir Trees, Yapton Lane, Walberton, Arundel BN18 0AR
Applicants	:	Mr Michael Lawson Roddham Mrs Christina Margaret Roddham
Representative	:	Mr Michael Lawson Roddham
Respondent	:	Arun District Council
Representative	:	Mrs Shelley-Ann Flanagan (Senior Lawyer) Mrs Helen Stevens (Empty Property Officer)
Type of Application	:	Appeal against an Improvement Notice Schedule 1 paragraph 10(1) Housing Act 2004 (the Act)
Tribunal Members	:	Judge C A Rai (Chairman) Mr David Ashby FRICS Mr Simon Hodges FRICS
Date and venue of Hearing	:	06 October 2021 Full Video Hearing held remotely
Date of Decision	:	26 October 2021

DECISION

1. The Tribunal confirms the Improvement Notice dated 4 June 2021 a copy of which was served on each of the Applicants and referenced N4242 and N4243.
2. The reasons for its decision are set out below.

Background

3. The Applicants appealed against the Improvement Notices served on by the Respondent on 24 June 2021. The notices relate to Fir Trees, Yapton Lane, Walberton, Arundel BN18 0AR (the Property).
4. The Improvement Notice identified:-
15 deficiencies contributing to Category 1 hazards in:
 - a. excess cold,
 - b. falls on stairs,
 - c. electrical,
 - d. fire, and26 deficiencies contributing to Category 2 hazards in:
 - e. damp and mould,
 - f. carbon monoxide,
 - g. domestic hygiene pests and refuse,
 - h. food
 - i. personal hygiene and sanitation and drainage,
 - j. falls on the level,
 - k. collision and entrapment,
 - l. structural collapse and failing elements.
5. The Property was described by the Applicants as a 1960's four bedroomed chalet bungalow situate in a large garden. The master bedroom and the bathroom are located downstairs with three bedrooms, all with stud walling, on the first floor [B1 Page 85].
6. Following receipt of the Applicants' appeal the Tribunal issued three sets of Directions the first dated 8 August 2021, and the next two dated 13 August 2021. All the Directions contain the same provisions and were simply updated to record that the Applicants are "joint applicants" and to insert the name of the Respondent's representative.
7. The parties complied with the Directions and supplied statements, responses and the hearing bundle to the Tribunal before the date of Hearing.
8. The Hearing was a remote hearing which was consented to by all parties. The form of hearing was **(V)** video fully remote. All parties in attendance were able to participate fully.

9. A face to face hearing was not considered practical because of the Covid-19 pandemic. The documents to which this Tribunal was referred were contained in two electronic bundles, the first, B1 (512 pages) contained statements and documents and the second B2 (142 pages) only contained photographs of the Property. All references in square brackets in this decision to numbered pages are to pages in those bundles.

Applicants' submissions

10. Mr Roddham said that the Applicants had appealed against the Improvement Notice because they considered it to be an inappropriate way for the Respondent to require that they rectify the Category 1 and Category 2 hazards identified by the Respondent following Mrs Steven's inspection of the Property on 21 June 2021.
11. They do not accept that it was appropriate for the Respondent to serve the Improvement Notice at all, notwithstanding that they do not deny that some of the hazards exist.
12. The Applicants said that "the Property is to be extended and refurbished which will automatically correct any hazards and therefore enforcement at this level is unnecessary" [B1 Page 10].
13. Mr Roddham also questioned the accuracy of the description of some hazards in the Improvement Notice which, he claimed, had impacted on the scores and categorisation and stated that in all the circumstances a Hazard Awareness Notice would have been more appropriate.
14. Mr Roddham suggested that Mrs Stevens, the Respondent's Empty Homes Officer, had not followed the Arun DC "Empty Homes Strategy" and had assumed, without investigation, that the Applicants' proposed works would not happen and had moved straight to enforcement without properly engaging with the Applicants.
15. During the Hearing Mr Roddham stated that the Applicants were, and remain, unhappy with the inspection which preceded the issue of the Improvement Notice because he said they were not advised that it was an assessment of the house in relation to its suitability for occupation under the Housing Act 2004.
16. Whilst Mr Roddham accepted that the Respondent had contacted them on several occasions during the preceding year, (2020) he told the Tribunal that he had understood and believed this was because of a potential pest issue arising from the unkempt garden and grounds surrounding the Property, which had been the subject of a complaint from someone unidentified. (Arun DC are aware of the identity of the complainant but have redacted this information from the document in the bundle).

17. On 15 May 2020, prompted by the receipt by the Respondent of the complaint (dated 26 April 2020), Mrs Stevens visited the Property, [B1 Page 187]. She left a card in the post box. Mr Roddham responded to her message by email on 18 May 2020 [B1 Page 190]. He said “I’m not sure why you called but thought I should let you know what is happening. We obtained planning permission in February to extend the house....”. “We are waiting for structural calculations and will then go out to tender on the project and plan to have the place finished and habitable before the end of the year. The pandemic has seriously slowed the process down.” He concluded by stating that they had been advised not to travel to the Property as it was not classed an “essential journey” during the “lockdown restrictions” in force during the Covid-19 pandemic.
18. Mr Stevens had asked Mr Roddham for confirmation that the Property was still a second home. She also sought information regarding the owners’ plans for the maintenance of the Property. She suggested that since (by then) lockdown had been partially lifted it would be possible for him to arrange for external maintenance of the grounds. She asked if perishable items and food had been removed from the Property. She said, “I appreciate that you have plans in place for the building and renovations, however the grounds of the Property are what appear to be the cause of the complaints and the indication that there may be vermin.”
19. Mr Roddham replied to Mrs Stevens on 19 May 2020 stating that “the house is still our main home, as my wife and I are in temporary accommodation until the building work is completed”. He said that until advised by the police not to visit the Property they had regularly controlled the garden. Now that lockdown has been partly lifted, they planned to visit weekly and would maintain the garden. He confirmed that there were no perishable items in the house and they had not seen signs of vermin [B1 Page 188].
20. Mrs Stevens advised Mr Roddham that she would “drive by” at the beginning of June (2020) to check on the exterior undergrowth.
21. On 9 June 2020 Mr Roddham emailed Mrs Stevens listing the works which the Applicants had carried out in the garden and expressed the hope that she would see a real difference by the end of June [B1 Page 192].
22. Mrs Stevens wrote to the Applicants on 29 April 2021, referring again to the complaint Arun DC had received in April 2020. She said “Thus far I have been unable to visit the Property internally to ascertain if the complaint is valid. I have recently been to the property and seen that some works have been carried out the gardens (sic) which has improved the site visually. In order for me to conclude the matter, I will need to arrange a mutually convenient time with you to visit” [B1 Page 197].

23. Subsequently Mrs Stevens and Mr Roddham exchanged emails regarding possible dates until on 12 May 2021 Mrs Stevens wrote stating: “Access will be required next week and as you have been unable to provide me with dates, I would like to visit on Thursday 20 May at 10am. I am requesting informal access, however if this cannot be achieved then formal action will have to be taken under the Housing Act 2004 s.239.” She asked for confirmation that access would be provided on the date stated. Mr Roddham subsequently agreed to provide access at 10am on 21 May 2021 and Mrs Stevens visited the Property on that day.
24. Following that visit, Mrs Stevens emailed Mr Roddham and said: “Thank you for meeting with us today, following my visit we have agreed for us to return on 8th June, you are going to confirm a convenient time for the appointment to check the clearance of the rear garden, in order to prevent formal notice being served under the Prevention of Damage by Pests Act Notice”. [B1 Page 208]. She also supplied the name and telephone number of a small works contractor, used by the Council, who undertook garden clearance works.
25. Subsequently Mrs Stevens prepared a Survey Report assessing the hazards which she had identified in the Property. This Report was dated 25 May 2021 [B1 Page 53]. She notified the Applicants of her findings by letter, dated 28 May 2021, and stated that the deficiencies identified required remedial action. She said some were classed as Category 1 hazards under the Housing Health and Safety Rating System of the Housing Act and explained that the Local Authority had a duty to act and therefore had decided to serve an Improvement Notice under sections 11 and 12 of the Act [B1 Page 225]. The Improvement Notice was served on both Applicants separately on 4 June 2021 [B1 Pages 231 - 257].
26. On 18 June 2021 Mr Roddham wrote to the CEO of Arundel DC asking for the Improvement Notice to be revoked. He provided a list of reasons to support his request which included alleged treatment of the Property as a “tenanted property” as opposed to a private dwelling. He said that the planning permission would correct, or remove, the Category 1 and 2 hazards but the work could not be done within the deadline in the Notice. He suggested that some of the hazards misrepresented the actual degree of risk. He alleged that Mrs Stevens had discussed a possible modification to enable the property to be let for social housing and had offered to draw up a list of necessary works. He said there had been no full discussion of their building plans. Mr Roddham also complained that no allowance had been made to take account of the Covid restrictions which, he claimed, had delayed the proposed renovation of the Property [B1 Page 269].

27. Nat Slade, Group Head of Technical Services responded to Mr Roddham's letter on 24 June 2021 [B1 Page 259]. He prefaced his response with a statement that empty homes represent a wasted resource and can have a negative impact on local communities. He acknowledged that following complaints received about the condition of the Property Mrs Stevens had visited and been told that the Applicants planned to complete the renovation works by the end of 2020. He said (other) building works had progressed during the pandemic and he would have expected significant progress to have been made by the Applicants.
28. Mr Slade stated that Mrs Stevens had tried to gain access before that date informally and her requests were declined until May 2021. He suggested that Mrs Stevens had previously requested both timescales and schedules of work from Mr Roddham but he had provided nothing substantive despite referring to a tender exercise for the proposed works. Following Mrs Stevens inspection of the interior of the dwelling, she concluded that, because of the substantial amount of furniture within the house, it was neither being lived in nor available for habitable accommodation. He acknowledged that, whilst Mr Roddham may not agree with the risk assessment, the Council had a duty to take action which was why it had served the Improvement Notice. There was no commencement date or timetable for the proposed works.
29. Mr Slade said that the existence of planning permission was not, of itself, a guarantee that the authorised works would proceed. He said that the Improvement Notice contained a list of the required remedial works and that a Hazard Awareness Notice would not have addressed the remedy of the hazards or enabled the Council to enforce the required improvements. For all of those reasons the Improvement Notice would not be revoked. He also reminded the Applicants of their right to appeal against the Notice [B1 Pages 265/267].
30. Mr Roddham admitted that this is the Applicants' first building project and that the Applicants have made mistakes which have led to delays with the intended works. However, he said that he believes that all of the identified hazards will "automatically be corrected" once the Property is extended and refurbished.
31. Planning permission for the re-development of the Property was eventually obtained in March 2020 (during a period of lockdown restrictions). The Applicants started the tender process but then decided that the proposed plans would not provide sufficient space in the bedrooms for furniture on account of the dormer roof. They said that was why they had halted the tender process and then sought to identify another architect to revise or amend the plans.
32. Mr Roddham said that the Applicants have now found an architect/builder and an initial survey has been carried out and they anticipate submitting revised plans later this year.

33. Bob Mousley from Living Builders Ltd t/a Living Space sent Mrs Stevens a letter, dated 15 July 2021, confirming that Living Space had been appointed as both architects and builders on 26 June 2021 by the Applicants. He said that it had been initially contacted on 13 May 2021. He anticipated that a new planning application would take three months to process and that on site works would take about six months. He suggested that a reasonable period of time to carry out all works would be twelve months [B1 Page 161].
34. The Applicants claim that the expenditure incurred thus far on obtaining a planning permission demonstrates their commitment to improve the Property. They refer to the history of the original planning application and the fact that they obtained details of the grants and loans available from Arun DC.
35. Mr Roddham stated that Mrs Stevens made no attempt to engage or encourage them and that they had always assumed that the reason for her visits and emails was associated with the Prevention of Damage by Pest Act.
36. Mr Roddham blamed the Covid-19 pandemic for the lack of maintenance of the Property and said it had made it more difficult for them to obtain professional help. He said there are inaccuracies in the survey undertaken by Helen Stevens all of which he has listed in detail in his written statement. He felt that Arun did not follow the proper process.
37. Whilst Mr Roddham accepted that Arun have a duty to take action because the Property was empty, he stated that the service of an Improvement Notice is not proportionate. There is no one in occupation of the Property. The “knock on” effects of Covid-19 have affected the Applicant’s ability to commission and undertake improvement works. He says he has never been asked about the Applicants’ plans and proposed works.
38. Mr Roddham suggested that the Applicants first explored the possibility of alterations to the Property in 2018. However, it was not until after they obtained planning permission (in March 2020) they had realised that the plans were not practical. He attributed some blame to the architectural technologist who they had employed to submit the application. (The applicant referred to on the planning consent is Mr T E Unsted).
39. Whilst Mr Roddham acknowledged that he understood that Mrs Stevens had needed to inspect the interior of the Property, he denied that he was advised this might result in Arun DC taking action under the Housing Act 2004. He confirmed that there was a lot of furniture in the house. He said it was upstairs.

40. Mr Roddham referred particularly to some of his objections to the classification of the Category 1 Hazards. He disputed that “fire risk” as an issue as he said that there is fire detection and the Property is not occupied. Furthermore, he is not prepared to accept that the recommendations regarding accessing external doors was correct or a requirement of fire prevention legislation. He suggested that the legislation to which the Respondent has referred would not apply to a domestic property. He argued about the interpretation and the references to LACORS in the Respondent’s statements [B1 Page 181].
41. Mr Roddham also disputed the finding of Excess Cold despite accepting that there is currently no central heating in the Property. He insisted that because the Property is not occupied an Improvement Notice is not relevant and should not have been served. He suggested to the Tribunal that the Property is not in the same condition as it was in 2017, when last occupied, just before the Applicants moved out. He said that since then he has stripped out the kitchen and has started stripping out panelling in the first floor bedrooms.
42. When summing up his case, Mr Roddham accepted that the Respondent had made four or five visits to the Property but said Mrs Stevens had only carried out one internal inspection. He suggested that her initial inspections amounted to “looking over the gate”. He said she had never disclosed that she anticipated that the building might, or would, contain hazards. He disputed the extent of the hazards referred to in the Improvement Notice. He believed that the Applicants should have been given much more information about the reason for the internal inspection before it took place. He implied that he had put back an arranged visit from Mr Mousley (his current architect/builder) to accommodate Mrs Stevens visit. He said that at present the revised plans are not finished. However, he maintained he had updated the Respondent regularly and suggested that Mrs Stevens had not shown any interest in the Applicant’s plans or intentions for the future use of the Property.
43. Mr Roddham also told the Tribunal that he was unsure what he wanted to do with the Property because of recent developments regarding the planned A27 extension which may redirect the road much closer to the Property.

The Respondent’s case

44. Mrs Flanagan stated that the assessment of the Property carried out by Mrs Stevens was appropriate because of the poor condition of the outside of the Property and the surrounding grounds. Mrs Stevens had reasonable grounds to carry out the assessment because she believed that Category 1 and 2 hazards may exist in the Property.
45. Arun DC has a duty to inspect the Property if any concerns are raised. Immediately following receipt of the complaint only external visits were possible because of the Covid-19 restrictions.

46. Mrs Flanagan accepted that these restrictions had delayed progress of the Respondent's actions. She said that was the reason for the number of emails and external conversations. She believed that more "face to face" dialogue would have occurred in normal circumstances.
47. Mrs Flanagan was confident that the matrix and categorisation of the hazards recorded in Mrs Stevens report is an accurate "snapshot" of what she found on the day of the inspection. Once Category 1 hazards have been identified the Respondent had a statutory duty to mitigate and remove the hazard.
48. The Applicants have never provided further information about their proposed works and timescale. Mrs Flanagan said that she did not believe that the Applicants would have done so even if they had been provided with a more formal opportunity.
49. Mrs Flanagan maintained that there is still no indication as to "if and when" the works will be completed. Mr Mousley stated, in his recent letter to Mrs Stevens, that he does not know when a revision to the planning permission will be obtained and the application has still not been submitted. The Property has remained unoccupied since November 2017.
50. Mrs Flanagan said that Arun DC has a duty to take appropriate enforcement action under section 5 of the Act. Chapter 4 of the HHSRS Operating Guidance states that "as a minimum a dwelling should be capable of satisfying the basic and fundamental needs for the everyday life of a household. It should provide shelter, space and facilities for the occupants. And, it should be suitable for the spectrum of households and individuals who could normally be expected to occupy a dwelling of that size and type". Mrs Flanagan submitted that the Property does not meet these criteria. [B1 page 178].
51. In her written statement Mrs Flanagan referred to the clause 2.17 of the Enforcement Guidance which states that local authorities are encouraged to adopt the Enforcement Concordat which provides a basis for fair practical and consistent enforcement. She believed that the Respondent had been provided with clear explanations as to what was required to eliminate the hazards and that they were given an opportunity to remedy the hazards. She refuted the Applicants suggestion that Mrs Stevens had failed to engage with them or consider their plans and took no account of their "progress". She said that the inspection took place more than a year after the initial investigation and visit, by which date it was apparent that no works had been started.
52. Mrs Flanagan also referred to paragraph 2.18 of the Enforcement Guidance which states that where an owner agrees to take the action required a local authority may find it appropriate to delay serving a notice if it is confident that the work will be carried out quickly. In this case although Mrs Stevens received assurances that works would begin, they had not.

53. Paragraph 4.9 of the guidance states that the system is based on the risk to the potential occupant most vulnerable to the hazard. It also states (4.20) that it can be used to assess an empty home. The proposed use of the Property is not relevant to the assessment of the current risk. In this case the hazards identified were Category 1 hazards and are serious and therefore the Respondent believed that the only action to mitigate those hazards was service of an Improvement Notice.

The Law

54. The Respondent summarised the relevant clauses of the Act which had resulted in its inspection of the Property on 21 June 2021 and the service of the Improvement Notice on both Applicants in its statement.
55. If a local housing authority (LHA) considers that a category 1 hazard exists on any residential property it must take appropriate enforcement action in relation to the hazard (s. 5(1)). The appropriate enforcement action means whichever of the following courses of action is indicated by subsections (3) or (4).
56. Those courses of action include serving an Improvement Notice under s.11 (s.5(2)(a)) and serving a Hazard Awareness Notice (s.5(2)(c)).
57. Unless there is only one course of action available, which according to the Applicants was not the case, the LHA must take the course of action which it considers to be the most appropriate of those available to it.
58. The Applicants submitted that the Respondents could have served a Hazard Awareness Notice under s. 28 instead of an Improvement Notice.
59. Section 11 of the Act imposes a duty on a local housing authority (LHA) to serve an Improvement Notice if it is satisfied that a category 1 hazard exists on any residential property (unless a management order is in force).
60. The Improvement Notice is a notice requiring the person on whom it is served take remedial action as is specified in the Notice (s.11(2))
61. As a minimum the action required must be such as will ensure that the hazard identified ceases to be a category 1 hazard although it may extend beyond such action (s.11.5).
62. “Remedial action” means action which will, in the opinion of the LHA remove or reduce the hazard (s.11(8)).
63. Section 13 of the Act sets out the required content of an Improvement Notice. The Applicants have not claimed that the Improvement Notice served on them by the Respondent does not comply with those requirements.

64. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. An appeal may be made to the Tribunal on the ground that an alternative course of action is the best course of action in relation to the hazard(s) in respect of which the Improvement Notice was served (p.12(1)). The courses of action which include serving a Hazard Awareness Notice are listed in paragraph 12(2). In this case the Applicants' grounds for appeal are that the Respondent should have served a Hazard Awareness Notice instead of an Improvement Notice.
65. Paragraph 15(1) of Schedule 1 provides that any appeal against the service of an Improvement Notice is to be by way of a re-hearing which may be determined having regard to matters of which the LHA was unaware. The Tribunal may by order confirm, quash or vary the improvement notice (p. 15(2)).
66. When deciding whether one of the courses of action mentioned in paragraph 12.(2) is the best course of action the Tribunal must have regard to any guidance given to the LHA under section 9 of the Act (p.17(2)).
67. Section 9 states that the appropriate national authority may give guidance to the LHA about exercising their functions under parts of the Act including Chapter 2 which relates to Improvement Notices, Prohibition Orders and Hazard Awareness Notices.
68. **The Housing Health and Safety Rating System (England) Regulations 2005 SI No 3208** came into force on 6 April 2006. The Regulations prescribe descriptions of hazards for the purposes of the Act and the method for assessing the seriousness of hazards and calculating the numerical score used to determine into which of the bands prescribed in the Regulations the hazard falls. The explanatory memorandum which accompanies the Regulations and was prepared by the Office of the Deputy Prime Minister states and explains that:
- a. the regulations are intended to be read alongside the statutory guidance
 - b. a category 1 hazard is a hazard of a prescribed description which achieves a numerical score of or above the level set out in the Regulations and a category 2 hazard is a hazard of a prescribed description which achieves a numerical score below the minimum prescribed for a category 1 hazard.
69. Guidance is contained in the **2006 Housing Health and Safety Rating System Operating Guidance** and the **Housing Health and Safety Rating Enforcement Guidance – Housing Act 2004 Part 1 Housing Conditions**.
70. The bundle contains a copy of the 2006 Operating Guidance but does not contain copies of the Enforcement Guidance or the Regulations referred to in paragraph 68 above.

Reasons for the Decision

71. The Applicants appealed against the Improvement Notice because they considered that it was an inappropriate response to the hazards identified by the Respondent following an inspection of the Property on 21 June 2021. The Applicants submitted that, notwithstanding the existence of hazards at the Property, it would have been more appropriate for the Respondent to serve a Hazard Awareness Notice.
72. Both parties agree that the hazards identified and categorised in the Improvement Notice existed on the date of the inspection. The Applicant questioned the rating scores attributed to some of the hazards in the survey report and in particular those scores relating to Fire Safety connected with the locks on the exit doors, and the assessment of the potential vulnerability of the open staircase [B1 page 211].
73. Mr Roddham said it would be better and more efficient and cost effective to simply eliminate and correct the hazards by redeveloping the Property which he suggested they will do once a further planning permission is obtained. In addition, the Applicants also stated that, given their redevelopment plans for the Property, evidenced by the fact that they have obtained a planning permission earlier this year (notwithstanding that they now accept it is unworkable), it is inefficient for them to be forced to address and remedy the hazards in a piecemeal fashion.
74. The Respondent “stands by” Mrs Steven’s assessment of the Property and the categorisation of the hazards in her report. Mrs Flanagan stated that service of a Hazard Awareness Notice would not result in any remedy. The hazards would continue to exist.
75. A complaint about the condition of the Property received by the Respondent in April 2020 prompted it to visit the Property. Following several external visits by Mrs Stevens she had reasonable cause to suspect that there may be hazards within the Property. When, more than a year after her initial visit, she was able to inspect the interior of the Property she identified Category 1 Hazards which led to the service of the Improvement Notice.
76. The Applicants agreed that Mrs Stevens has visited the Property on several occasions although Mr Roddham claimed that her earlier visits involved little more than her looking over the gate. Mrs Flanagan accepted that because of the restrictions intermittently in force on account of the Covid-19 pandemic, communication between the parties was more reliant on emails than actual conversations.
77. The Tribunal noted and accepted Mr Roddham’s evidence that the Applicants desire and intention to renovate and extend the Property. However, from the information provided it suspects that the initially proposed works might not have extended the total area of the Property but would have simply rearranged it.

78. The Applicants have now admitted, and accepted, that due to their inexperience and employment of an architectural technologist, rather than an architect, the planning permission obtained in February/March 2021 is not workable. Mr Roddham told the Tribunal that it would have been impossible to furnish the “new” bedrooms because of the ceiling height and that the space was insufficient for “modern living”.
79. Mr and Mrs Roddham vacated the Property in or about November 2017. Since that date it has been (and remains) listed as a second home by the Respondent. The Property has not subsequently been occupied and appears to have been used, possibly intermittently but certainly at present, to store significant amounts of second-hand furniture which it was suggested that the Applicants “sell online” [B2 pages 78 and 80].
80. The photographs in the second bundle, taken by Mrs Stevens on the date of her inspection, demonstrate that the internal condition of the Property at that date made it unsuitable for habitation and unready for renovation. One photograph shows a bath stored within the shower cubicle [B2 page 75]. Another photograph shows something stored in the bath [B2 page 129]. Items are being stored at the bottom of the stairs [B2 page 89] and in the hall on the first floor [B2 page 134].
81. Although Mr Roddham has provided evidence of his engagement with various professionals regarding the proposed renovation work and that he started a tender process, after receipt of planning permission, there is little evidence of any works within the Property. Emails sent to Mrs Stevens, following her visits, which he claimed updated their progress, refer only to garden clearance works [B1 page 91].
82. The Tribunal did not see any evidence of any significant internal works. From the photographic evidence it does not appear that any bathroom is currently usable (see paragraph 79 above).
83. There does not appear to be any functional heating in the Property. Mr Roddham suggested that there are night storage heaters which have enabled an acceptable level of temperature to be maintained over the winters. However, he has not suggested that the Property is therefore currently suitable for occupation.
84. At the date of the Hearing, the only evidence of an intention to submit a further planning application is that it is mentioned in a letter from Mr Mousley, and the evidence, which was accepted, that a ground survey has been undertaken by his company. However, Mr Mousley has stated that no definite timescale for the commencement of works can be provided until a new planning permission is obtained.

85. The Tribunal has concluded that the Applicants have provided no evidence which demonstrates any actual intent to redevelop the Property in the foreseeable future. The first planning application was submitted on 23 December 2019. That was more than two years after the Applicant's moved out of the Property. During those two years the Property appears to have been used solely for storage of furniture. There is little evidence, nor do the Tribunal consider it likely that the furniture stored in the Property was bought with the intention of it being used within the Property. Given the condition of the Property as shown in the photographs it is inconceivable that the works discussed following the grant of the current planning permission and the preparation of the tender could have been undertaken without emptying the Property. The Applicants have never suggested that they intend or have commenced the removal of the items currently stored in the Property.
86. Mr Roddham suggested that the Respondent, and in particular Mrs Stevens never engaged with him regarding their plans. However, the evidence suggested that he has never clearly indicated his proposals with regard to the use of the Property. During the Hearing Mr Roddham referred to three different proposed uses for the Property.
87. He suggested that the Applicants would return to the Property and occupy it. Thereafter he said that they considered letting it as social housing. Later he said the Applicants proposed to refurbish the Property so it could be let as a holiday home.
88. In his written statement Mr Roddham said the Applicants "had also, in 2020, on their own initiative, obtained details of Arun DC's grants and loans" [B1 page 69]. This seems to have been prompted by a discussion with Mrs Stevens of the incentives Arun DC offered to owners of empty property by way of loans and or grants.
89. Mrs Stevens's letter dated 4 June 2021 sent to Mr Roddham following her inspection on 21 May 2021, which explained her decision to serve the Improvement Notice stated "The local authority have taken into account the information you provide in respect of the intentions for the house and you are intending to rent the property as social housing, as explained to you at our meeting the local authority cannot leave the property in its present condition to continue to deteriorate and as you have been unable to provide evidence of contractor being appointed this course of action is now being taken" [B1 page 101].
90. In his statement dated 26 August 2021, Mr Roddham said "the owners have not decided yet whether to let (and to whom), sell or re-occupy the house" [B1 page 68]. However, in Mr Roddham's notes on the visit by Mrs Stevens on 21 May 2021 he recorded that "Mrs Stevens asked that we provide the name of our chosen contractor. I said we were thinking of letting through the council as social housing. Mrs Stevens offered to provide a list of the improvements needed to meet the standard required. She agreed that any deficits would be dealt with by our building works".

91. The Tribunal has concluded that none of the evidence in the bundle demonstrates that the Applicants had any real intention of letting the property as social housing notwithstanding that Mr Roddham suggested that was his intention to Mrs Stevens on 21 May 2021.
92. The Tribunal also finds that the only evidence provided to back up Mr Roddham's suggestion that the Property might be renovated with a view to being used as a holiday let is his email to Bob Mousley dated 13 May 2021 in which he wrote: "We want to move the bathroom and downstairs bedroom upstairs and move the front door to the centre of the house. We plan to let the house as a holiday cottage, so are not looking for a dream home".
93. During the Hearing Mr Roddham told Mrs Flanagan that he intended to keep the kitchen as a farmhouse kitchen designed for an owner/occupier.
94. Towards the end of the Hearing Mr Roddham suggested that the proposed extension to the A27 might impact on the suitability of the Property for use as a holiday let. In response to questions from the Tribunal he said that he was concerned about the recently identified preferred route implying that it would directly affect the use of the Property.
95. The Tribunal also considered whether the legislation provided any scope which would have enabled the Respondent to have served a Hazard Awareness Notice instead of an Improvement Notice.
96. The Respondent told the Tribunal that service of a Hazard Awareness Notice would not achieve an acceptable remedy. The hazards would continue to exist and there would be no timescale for the elimination of the hazards.
97. The Tribunal concluded that this statement is borne out by the lack of progress made by the Applicants thus far. The Property has not been occupied for almost four years. The Covid-19 pandemic explains to some extent on the Applicants' progress but cannot excuse it. As Mrs Flanagan stated other building works have progressed. It has been possible for the Applicants to obtain planning permission and put the original works proposed out to tender.
98. The Applicants complained that the Respondents did not inform them properly about the purpose of the internal inspection of the Property and that they never anticipated that it was connected with the Housing Act and possible enforcement actions.

99. From the evidence supplied Mr Roddham was quite evasive once Mrs Stevens indicated she wished to inspect the interior of the Property. She suggested that it was necessary so she could close her file. He tried to put her off for most of a month and eventually offered her the same date he had already offered to Mr Mousley. Mrs Stevens subsequently emailed him advising him that she would be able to use the Housing Act to formally require an inspection. For that reason, the Tribunal believes that Mr Roddham was aware of the reason for the inspection. He could have simply rearranged the time of Mr Mousley's visit but he chose to put it off until the subsequent week.
100. His subsequent written complaint to Arun DC about the service of the Improvement Notice and the preceding circumstances was rejected.
101. For all of these reasons the Tribunal has decided to **confirm the Improvement Notices dated 24 June 2021**. (A separate copy of the same notice was served on each of the Applicants).
102. In response to questions during the Hearing the Respondent suggested that if works are commenced promptly, it might be able to reconsider the timescale for remedying the hazards. This was in response to Mr Roddham's suggesting that to remedy the hazards independently rather than as part of an entire redevelopment would be inefficient and duplicate works which would be carried out as part of the redevelopment.
103. Given the state and condition of the Property at the date of the inspection the Tribunal concludes that it would be difficult to remedy the hazards without clearing the Property. If the Applicants are prepared to do that it might, although this would be for the Respondent to decide, provide the Respondent with some assurance that the Applicants have a real intention to remedy the hazards within a defined timescale and make the Property suitable for occupation.
104. However, the evidence provided by Arun at the Hearing was that it would normally only extend timescales for carrying out works when a contractor had been appointed and was undertaking works in accordance with an agreed programme. In this case, there is absolutely no indication as to when such an appointment could be made.
105. Although not fundamental to the reasons for it reaching, because it is satisfied that Category 1 Hazards were correctly identified by Arun DC, the Tribunal has considered the objections made by the Applicant to the scoring attributed by the Respondent to the hazards.
106. The Respondent said that it took account of the Regulations and also the Operating and Enforcement Guidance.

107. The Tribunal questioned Mrs Stevens with regard to her survey and the scoring of the hazards. The Regulations set out the range of ratios of likelihood. Mrs Stevens assessed the hazards and applied likelihood ratios within a matrix which led to the scores in her report. She correctly applied the ratios on the basis of a vulnerable individual. That is appropriate, since these are not applied on the basis of an actual or intended occupant. Paragraph 6(2) of the Regulations states that “The Inspector shall assess the likelihood, during the period of 12 months beginning with the date of the assessment, of a relevant occupier suffering any harm as a result of that hazard as falling within one of the range of ratios of likelihood set out in column 1 of Table 1”.
108. Whilst acknowledging that the Applicant took issue with some of the Respondent’s assessment the Tribunal has concluded that even if, and it has not determined this, any of the ranges of likelihood affected the categorisation of any of the identified hazards, the number of hazards identified when considered by reference to the actual condition of the Property justified the Respondent’s action. This is borne out entirely by the photographs contained in Bundle 2 which record the condition of the Property on 21 May 2021.
109. As explained in its statement once the hazards were identified the Respondent has a statutory duty to take action and in making this decision the Tribunal has accepted that the action taken by it was appropriate.

Judge C A Rai
Chairman

Appeals

1. A person wishing to appeal this decision to the Upper 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. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
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.

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.