

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



### **Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland under Sections 25(1) and 25(2) of the Housing (Scotland) Act 2006**

**Property: 7 Prior Avenue, Canonbie, Dumfries and Galloway DG14 0UT  
("the Property"/ "the house")**

**Sasine Description: ALL and WHOLE that plot or area of ground with the dwellinghouse and others erected thereon known as 7 Prior Avenue, Eskdale, Canonbie, in the County of Dumfries, being the subjects more particularly described in Disposition by Annandale and Eskdale District Council in favour of Marion Graham dated 22 April and recorded in the Division of the General Register of Sasines applicable the County of Dumfries 14 May, both dates in the year 1992**

**Chamber Reference: FTS/HPC/RT/19/3345**

#### **Parties:**

**Dumfries & Galloway Council, Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries DG1 2AD ("Third Party Applicant")**

**Mr John Kerr, 1 King Garth, Cargo, Carlisle CA6 4AU ("the Landlord")**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary Member/Surveyor)**

#### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), decided, in terms of Sections 25(1) and 25(2) of the Housing (Scotland) Act 2006, to vary the Repairing Standard Enforcement Order in respect of the Property made on 4 December 2019, to allow the Landlord a period of three months from the date of intimation to the Parties of the Variation to complete the works required by the Order.**

#### **Background**

- 1. On 4 December 2019, the Tribunal made a Repairing Standard Enforcement Order ("the Order") in respect of the Property, in terms of Section 24 of the Housing (Scotland) Act 2006 ("the 2006 Act").**

2. The Order required the Landlord to:-
  - 1) Renew or repair broken and damaged wet wall lining in the bathroom ensuring that it is in a reasonable state of repair and in proper working order.
  - 2) Remove all visible mould from the internal walls, clean, treat with appropriate fungicidal solution and redecorate as necessary
  - 3) Obtain an Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT registered electrician in respect of the property, undertake any work which is identified in said report to be of Category C1 or C2 and ensure that the visible gap adjacent to the wall mounted electrical power socket within the kitchen is filled and all wiring relative thereto suitably protected,
  - 4) Repair or renew the work top surrounding the kitchen sink unit ensuring that it is in a reasonable state of repair and in proper working order.
  - 5) Install a smoke detector within the living room, ensuring that it is powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 and interconnected with the existing smoke and heat appliances currently located within the kitchen and hall.
  - 6) Repoint and repair defective joints around the base of the patio doors ensuring that they are in a reasonable state of repair and in proper working order.
  - 7) Repair or renew broken and defective paving slabs in the rear garden ensuring that they are in a reasonable state of repair and in proper working order.
  - 8) Repair or renew cracked, broken and defective rendering and coping at the chimney ensuring that they are in a reasonable state of repair and in proper working order.
  - 9) Repair renew or remove the timber gate leading to the rear garden, ensuring that it is in a reasonable state of repair and in proper working order should it remain.

The Tribunal ordered that the works required by the Order must be carried out and the Electrical Condition Installation Report exhibited within two months of the date of service of the Order on the Landlord

3. The Ordinary/Surveyor Member of the Tribunal re-inspected the Property on the morning of 17 March 2020 and was admitted by the Landlord.
4. A Schedule of Photographs, taken at the re-inspection, is attached to and forms part of this Statement of Decision.
5. The Ordinary/Surveyor Member of the Tribunal reported that all the work required by the Order had been completed, apart from Items 3) and 8).
6. A copy of the Reinspection Report was sent to the Third Party Applicant and the Landlord.

7. On 15 June 2020, the Landlord provided the Tribunal with a copy of an Electrical Installation Condition Report ("EICR") dated 12 March 2020. Provided by M.Haining Limited, Langholm. The EICR stated that Mr Haining was a member of SELECT and that the overall condition of the installation was good and there were no Category C1 or C2 items of disrepair.
8. In his e-mail of 15 June 2020, the Landlord asked the Tribunal to grant an extension of time for him to complete the other outstanding item as he had experienced difficulty in arranging the repair to the chimney.
9. On 16 June 2020, the Third Party Applicant advised the Tribunal that they had no objection to the extension sought by the Landlord.

### **Findings of fact**

10. The Tribunal makes the following findings of fact.
  - The Landlord has exhibited to the Tribunal an EICR, as required by the Order.

### **Reasons for Decision**

11. The Tribunal was conscious that the re-inspection had taken place just before the lockdown imposed following the COVID-19 outbreak and that it would not have been possible for the Landlord to instruct repairs during the period of lockdown. The Third Party Applicant had indicated that they had no objection to the extension sought by the Landlord.
12. Section 25(1) of the 2006 Act entitles the Tribunal at any time to vary a Repairing Standard Enforcement Order as it thinks reasonable and Section 25(2) of the 2006 Act requires to Tribunal to vary the Order in question so as to extend the period within which the work required by the Order must be completed, where the Tribunal considers that the work has not been completed during that period and that satisfactory progress has been made in carrying out the work required.

### **Decision**

13. The Tribunal decided, in terms of Sections 25(1) and 25(2) of the 2006 Act, to vary the Repairing Standard Enforcement Order in respect of the Property made on 4 December 2019, to allow the Landlord a period of three months from the date of intimation to the Parties of the Variation to complete the works required by the Order.
14. The decision of the tribunal was unanimous.

## **Right of Appeal**

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

Signed **G Clark**

*This is the Remedial Report  
referred to in the original  
Statement of Defence*

**G Clark**

**Housing and Property Chamber  
First-tier Tribunal for Scotland**



**First-Tier Tribunal for Scotland  
(Housing and Property Chamber)  
Re-inspection report**



**Property** 7 Prior Avenue, Canonbie, DG14 0UT

**Ref No:** FTS/HPC/RT-19-3345

**Surveyor:** Donald Wooley MRICS

**Previous inspection**

The subject property was previously inspected on 4 December 2019 by the First-tier Tribunal for Scotland (Housing Property Chamber). Following a subsequent hearing a Repairing Standard Enforcement Order (RSEO) was issued dated 4 December 2019

**Access:**

A re-inspection of the subject property was arranged for Tuesday 17 March 2020 at 10.00 am. I arrived at the property at 9.45 am and confirmed my arrival with the Housing and Property Chamber (HPC) Administration. There was no clerk available to attend and I understand that although a venue assistant had been requested, there was none in attendance.

Access to the property was provided by Mr John Kerr, the landlord. The property was unoccupied and vacant. Third Party Applicant was unable to attend the inspection.

Weather conditions at the time of the inspection were dry, cold and sunny. I left the property at 10.40 am and confirmed my departure with HPC Administration.

### **Purpose of re-inspection**

The purpose of this re-inspection was to determine if the required works as detailed under the Repairing Standard Enforcement Order had been completed.

### **Work required under the Repairing Standard Enforcement Order (RSEO):**

1. Renew or repair broken and damaged wet wall lining in the bathroom ensuring that it is in a reasonable state of repair and in proper working order.
2. Remove all visible mould from the internal walls, clean, treat with appropriate fungicidal solution and redecorate as necessary
3. Obtain an Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT registered electrician in respect of the property, undertake any work which is identified in said report to be of Category C1 or C2 and ensure that the visible gap adjacent to the wall mounted electrical power socket within the kitchen is filled and all wiring relative thereto suitably protected.
4. Repair or renew the work top surrounding the kitchen sink unit ensuring that it is in a reasonable state of repair and in proper working order.
5. Install a smoke detector within the living room, ensuring that it is powered in accordance with the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 and interconnected with the existing smoke and heat appliances currently located within the kitchen and hall.
6. Repoint and repair defective joints around the base of the patio doors ensuring that they are in a reasonable state of repair and in proper working order.
7. Repair or renew broken and defective paving slabs in the rear garden ensuring that they are in a reasonable state of repair and in proper working order.
8. Repair or renew cracked, broken and defective rendering and coping at the chimney ensuring that they are in a reasonable state of repair and in proper working order.
9. Repair renew or remove the timber gate leading to the rear garden, ensuring that it is in a reasonable state of repair and in proper working order should it remain.

### **Site Observations:**

The damaged wet wall lining in the bathroom has been renewed with a modern "tile effect" replacement



**Damaged wet wall lining 4 December 2019**



**Replacement lining 17 March 2020**

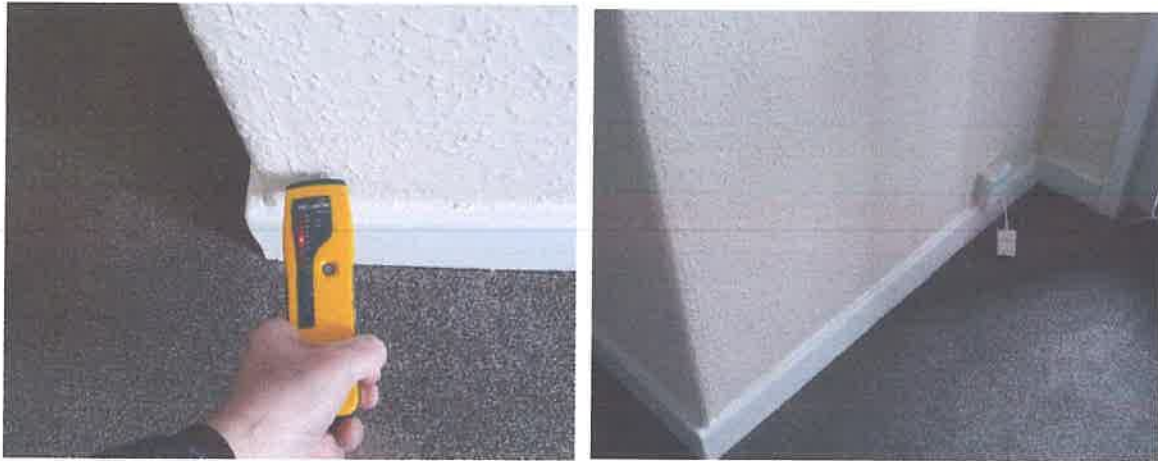
The areas of mould affecting the hall wall have been cleaned, treated and redecorated, specifically at the mutual wall with the bath / shower attachment.

Some localised damp readings remain at the lower wall in the hall. These readings are almost certainly the result of isolated residual damp still present following the repair of the original source, a water leak in the previously defective wet wall lining.

The house has remained mostly unheated and permanently unoccupied since the original inspection



**Mould and damp in hall wall 4 December 2019**



Cleaned and decorated hall wall with localised residual damp at lower level  
**17 March 2020**

The landlord indicated that an Electrical Installation Condition Report (EICR) had been instructed and was completed last week. He had not yet received a written copy and I was therefore unable to verify that it contained no category C1 or C2 items or observations.

The previously defective kitchen worktop has now been renewed with a modern replacement



Kitchen worktop **4 December 2019**



Replacement worktop **17 March 2020**

A suitably powered smoke detector has been fitted to the living room ceiling. It was tested and established to be both functioning and interlinked with the smoke detector in the hall and heat detector in the kitchen.





**Ceiling mounted smoke detector in living room 17 March 2020**

The joints at the base of the patio doors leading to the rear garden have been repointed and repaired.



**Lower right corner 4 December 2019**



**Lower right corner 17 March 2020**



**Lower left corner 4 December 2019**



**Lower right corner 17 March 2020**

The previously defective paving slabs in the rear garden have been repaired and replaced as necessary.



**Paving slabs 4 December 2019**



**Paving slabs 17 March 2020**

The cracked, broken and defective rendering and coping at the chimney head remains unrepaired.



**Chimney head 4 December 2019**



**Chimney head 17 March 2020**

The previously defective timber gate leading to the rear garden has been renewed with a timber replacement which is in good order.



Projecting nails, broken spar and defective closing mechanism at garden gate  
**4 December 2019**



Replacement timber gate **17 March 2020**

**Outstanding Repairs:**

I can confirm that item numbers 1,2,4,5,6,7 & 9 as identified in the RSEO dated 4<sup>th</sup> December 2019 have been satisfactorily addressed. In respect of item 2, I am satisfied that the localised damp at skirting level is a residual feature and was originally caused by split, defective and broken wet wall lining in the bathroom. This has since been renewed. There are no other signs of damp affecting surrounding areas and it is likely that this will dry when the house is occupied and heated.

The repairs at the chimney head coping and rendering (item 8) are still to be addressed and remain outstanding.

It is understood that an EICR was recently completed, prior to my re-inspection, although no written copy has yet been provided. When available the landlord indicated that he would forward a copy to the Housing and Property Chamber, for consideration by the Tribunal.

**Comments:**

This report will be passed to the parties for comment before being submitted to the First-tier Tribunal for Scotland (Housing Property Chamber) for their decision.

Donald Wooley MRICS  
Ordinary Member  
First-Tier Tribunal for Scotland  
17 March 2020

**Housing and Property Chamber**  
**First-tier Tribunal for Scotland**

---



**Variation of Repairing Standard Enforcement Order made by the Housing and Property Chamber of the First-tier Tribunal for Scotland under Section 25(1) and 25(2) of the Housing (Scotland) Act 2006**

**Property: 7 Prior Avenue, Canonbie, Dumfries and Galloway DG14 0UT (“the Property”/ “the house”)**

**Sasine Description: ALL and WHOLE that plot or area of ground with the dwellinghouse and others erected thereon known as 7 Prior Avenue, Eskdale, Canonbie, in the County of Dumfries, being the subjects more particularly described in Disposition by Annandale and Eskdale District Council in favour of Marion Graham dated 22 April and recorded in the Division of the General Register of Sasines applicable the County of Dumfries 14 May, both dates in the year 1992**

**Chamber Reference: FTS/HPC/RT/19/3345**

**Parties:**

**Dumfries & Galloway Council, Strategic Housing Services, Council Offices, Buccleuch Street, Dumfries DG1 2AD (“Third Party Applicant”)**

**Mr John Kerr, 1 King Garth, Cargo, Carlisle CA6 4AU (“the Landlord”)**

**Tribunal Members – George Clark (Legal Member/Chairperson) and Donald Wooley (Ordinary Member/Surveyor)**

**NOTICE TO MR JOHN KERR (“the Landlord”)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), has decided, in terms of Sections 25(1) and 25(2) of the Housing (Scotland) Act 2006, to vary the Repairing Standard Enforcement Order in respect of the Property made on 4 December 2019, to require that the works



required by the Order must be carried out within the period of 3 months from the date of intimation to the Parties of this Variation.

**Right of Appeal**

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

**IN WITNESS WHEREOF** these presents, typewritten on this and the preceding page, are subscribed by George Barrie Clark, Legal Member/Chair, at Lasswade on 16 June 2020, before this witness Valerie Elizabeth Jane Clark, Droman House, Lasswade, Midlothian.

**G Clark**

..... Legal Member/Chair

**V Clark**

..... Witness