

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Reference number: FTS/HPC/RP/23/3080

Re: Property at A Pilmuir House, Pilmuir Estate, Haddington, East Lothian, EH41 4HS (“the Property”)

Being the subjects described in and disposed by

(i) The disposition in favour of the trustees for the firm of A&J Steven recorded in the General Register of Sasines for the County of East Lothian on 03 June 2009.

&

(ii) Disposition by the Trustees of Sir Henry Wades Pilmuir Trust in favour of the Trustees for the firm of A&J Steven, recorded in the General Register of Sasines for the County of East Lothian on 03 June 2009.

The Parties:

Christopher Cruden and Mrs Annabel Cruden, residing together at A Pilmuir House, Pilmuir Estate, Haddington, East Lothian, EH41 4HS (“the Tenants”)

The Trustees of Sir Henry Wade’s Pilmuir Trust, c/o Athene Associates Ltd, 37a Sidegate, Haddington, EH41 4BU (“the Landlord”)

Tribunal Members:

**Paul Doyle (Legal Member)
Debbie Scott (Ordinary Member)**

Decision

The First-tier tribunal for Scotland (Housing and Property Chamber) (‘the tribunal’), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenants at the

hearing, determined that the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 6 September 2023 the tenants submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the repairing standard and the tolerable standard.

2. The tenant says that the landlords have failed to comply with the duty imposed by Sections 13 & 14 of the Housing (Scotland) Act 2006 (“The Act”) and in particular that the landlords have failed to ensure that:-

the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act;

and

The house meets the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

3. By interlocutor dated 29 September 2023 the application was referred to the tribunal. By letter dated 09 November 2023 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal.

4. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants. Both the tenants and the landlord made written representations.

5. An inspection of the property took place shortly after 10.00am on 12 January 2024. During the inspection the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto. A hearing took place at 1pm on 12 January 2024. The tenants were not present, but they were represented by Mr M Coull of Haddington CAB. The Landlords were not present but they were represented by Mr T Stanley of Athene Associates Ltd.

The Tenants 'Position

6. The tenants say that the property fails to meet both the tolerable standard and the repairing standard. The tenants say that the following repairs are required.

(i) Clear drains and Gutters

- (ii) Repair harling to the exterior of the property
- (iii) Repair the East Boundary wall
- (iv) Repair the North Boundary wall

The Respondent's position

7. In a detailed written submission, accompanied by plans and photographs, the respondents' representative says that all necessary repairs have been carried out. The respondents' representative provides detail of the work carried out, and the dates when each item of work was completed.

Direction

8. To focus the outstanding area of dispute, the tribunal issued the following direction on 13 December 2023.

The Applicant is required to:

1. Confirm that the drains to the property were repaired and cleaned in November 2023.
2. Provide photographs of the exterior of the house dated after 12 December 2023.
3. Provide evidence of any moisture penetration/damp affecting the property.
4. Confirm that the East and North garden walls are now repaired.
5. Let the tribunal know whether or not they intend to proceed with their application.

The said documentation should be lodged with the Chamber no later than close of business on 29 December 2023.

9. On 29 December 2023 the tenants' representative lodged the following response to the tribunal's direction

Response to the direction from the tribunal

1. Confirm that the drains to the property were repaired and cleaned in November 2023.

We can confirm that someone attended the property with ladders and said they had cleared the gutters. We cannot verify the thoroughness or

effectiveness of this process.

We have no knowledge of the drains being cleared, which drains, by whom they were supposedly cleared or on what date they were supposedly cleared. Therefore, we cannot confirm the thoroughness or effectiveness of this process.

2. Provide photographs of the exterior of the house dated after 12 December 2023.

Attached, the harling is still not repaired.

3. Provide evidence of any moisture penetration/damp affecting the property.

4. Confirm that the East and North garden walls are now repaired.

- We are delighted to confirm that, 3 ½ after its collapse, the East Boundary wall has been very recently repaired
- We are also delighted to confirm that, 2 ½ years after its collapse, the North Boundary wall has very recently been repaired.

Further Submission

Whilst we understand that the repairs have now been made after to some time, we would like the tribunal to consider an abatement of rent. The grounds of the property formed a big part of the particulars and the advertisement of the property.

We would like the tribunal to consider 20 to 30 % of total rent paid and owed since the property and grounds were in a period of disrepair.

Summary of the issues

10. The issues to be determined are

Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006?)

Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

Findings of fact

11. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of Property at A Pilmuir House, Pilmuir Estate, Haddington, East Lothian, EH41 4HS (“the Property”). The

landlord let the property to the tenant on 11/07/2019.

(b) The property was built in 1624 (the date is inscribed above the original doorway). It consists of a main rectangular block, with two storeys and a dormered attic; a smaller wing projects from the centre of its North side - this houses a spiral staircase and rises one storey higher. A turret stair is corbelled out over the West re-entrant angle. The two-storeyed outbuilding in the East re-entrant angle is probably an addition. In the early 18th century, a new front door was made in the centre of the South front and the windows were altered. The walls are of harled rubble; the gables and dormer pediments are crow-stepped.

(c) The property is an A listed building situated in a secluded rural area. It stands in large garden grounds surrounded by farmland. Internally, the property has a rambling, unusual, layout. Because of the size, age, location, and nature of the building, the property has three separate oil-fired heating systems. The tenants choose to only heat certain rooms within the property, and leave parts of the property unheated.

(d) Each room within the property had single glazed units with either a timber sash and case windows or single pane metal casement. Some of the windows open, some do not. The windows are functional considering the age and style of construction, however it was noted that the windows were draughty. The tenants have blocked more than half of the windows with plastic sheeting or foam sheets to provide insulation. The windows carry the marks of condensation and appeared weathered, this is commensurate with age and style of construction.

(e) The property does not suffer either penetrating or rising damp.

(f) In the turret (on the top level of the property) there is a shower room with a three-piece sanitary suite. That shower room has a window which opens and closes. There are signs of historic condensation marks which have been cleaned from the ceiling. The room has two central heating radiators, and a heated towel rail. A working extractor fan is fitted to the ceiling.

(g) Two stories down, on the first floor of the property, there is another bathroom containing a three-piece sanitary suite. That bathroom has a window which does not open. An extractor fan is fitted within this bathroom providing mechanical ventilation.

(h) The property is large. It is difficult to heat. Where the available heating system is not used the rooms are cold and draughty.

(i) Each year, the landlord arranges for cleaning and maintenance of the gutters, drainage, and downpipes. Maintenance and clearance of the gutters and rainwater goods was last carried out in November 2023. The tenants now

accept that the drains and gutters are in a reasonable state of repair and in proper working order.

(j) The East wall and the North wall of the property form part of the walled garden adjacent to the property. When the tenants submitted their application, both the East wall and the North wall were incomplete because some stonework in the upper levels of each wall had slipped.

(k) In May 2023, the landlord instructed repairs to both the East and North walls. Those repairs are complete. The tenants accept that there is no defect in either the East or the North wall now that the repair works are complete.

(l) The harling to the exterior of the main residential property appears to be in fair order and functioning. The harling carries the marks of age, with some historic water staining externally, no evidence of damp penetration was noted.

(m) To the East of the property there is a harled brick wall separating two areas of garden ground. On the North facing elevation, the harling is partially bossed; there is a small area (approximately 2 metres from ground level) where the harling has come away, and the brick course is exposed.

(n) There is no sign of water penetration to the wall. Despite the breach of the harling on the wall, it is in otherwise good condition. The wall has a cosmetic defect but is stable and secure.

(o) The property meets both the repairing standard and the tolerable standard.

Reasons for the decision

12. (a) On 12 January 2024, the tenants welcomed tribunal members and the landlord's representative into the property. The tenants showed tribunal members around the property and allowed tribunal members to closely inspect each room, take photographs, and take damp meter readings.

(b) The hearing, which was delayed until 1pm on 12 January 2024, was not attended by the tenants but was attended by both representatives who helped tribunal members to draw a clear focus in this case.

(c) In the application submitted in September 2023, the tenants rely on section 13(1)(b) and section 13(1)(h) of the 2006 Act. In the paper apart accompanying the application, the tenants specify four heads of claim under the repairing standard. The tenants then specify seven items of garden maintenance, which do not engage either the repairing standard of the tolerable standard.

(d) At the start of the hearing on 12 January 2024, the appellant’s representative candidly agreed that the seven items of garden maintenance do not fall within this tribunal’s jurisdiction.

(e) The tenants’ application simply says that the house does not meet the tolerable standard, but does not specify why. The tolerable standard is set out in section 86 of the Housing (Scotland) Act 1987 (as amended) as follows.

a house meets the tolerable standard for the purposes of this Act if the house—

- (a) is structurally stable;
 - (b) is substantially free from rising or penetrating damp;
 - (c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;
 - (ca) has satisfactory thermal insulation;
 - (d) has an adequate piped supply of wholesome water available within the house;
 - (e) has a sink provided with a satisfactory supply of both hot and cold water within the house;
 - (f) has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;
 - (fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;
 - (g) has an effective system for the drainage and disposal of foul and surface water;
 - (ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply;
- “the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances;
- “the relevant requirements” are that the electrical installation is adequate and safe to use;
- (h) has satisfactory facilities for the cooking of food within the house;
 - (i) has satisfactory access to all external doors and outbuildings;
 - (j) has satisfactory equipment installed for detecting, and for giving warning of, fire or suspected fire;
 - (k) has satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health,
- and any reference to a house not meeting the tolerable standard or being brought up to the tolerable standard shall be construed accordingly.

(f) We asked the tenants' representative to tell us which part of the tolerable standard the property does not meet. In response, he asked us to consider subparagraphs (b) & (c) of section 86 of the 1987 Act.

(g) When pressed, the tenants' representative had to concede that there is no reliable evidence of either rising or penetrating damp. In a direction dated 13 December 2023 the tenants were asked to

Provide evidence of any moisture penetration/damp affecting the property.

No response was made to that part of the direction. The tenants did not indicate any areas of moisture penetration or damp during the inspection. Tribunal members own observations during the inspection lead to the conclusion that the property does not suffer from either moisture penetration or damp.

(h) Tribunal members could see historic condensation marks around windows and on one bathroom ceiling, but this property is 400 years old. The windows are all single glazed units, and the property is inadequately heated. Section 13 (3) of the 2006 Act tells us to have regard to—

- (a) the age, character and prospective life of the house, and
- (b) the locality in which the house is situated.

(i) It is not unreasonable to expect to find condensation in an inadequately heated 400-year-old house with draughty, single glazed, windows.

(j) The tenant's representative focused on section 86(c) of the 1987 Act, telling us that the house is inadequately ventilated because some windows do not open, and all of the windows let in draughts.

(k) The windows show the signs of age and would benefit from some maintenance. They are so draughty that the tenants have covered more than half of the windows with sheets of foam or plastic to limit the draughts. The tenants may well say that draughts howling through the property from North to South and West to East make the property cold, but there is no logic in saying that a house with wind whistling through tired windows lacks ventilation.

(l) Turning to the repairing standard, the tenant's representative agreed that maintenance has cured any perceived defects in the drains and gutters, and that both the East wall and the North wall have been repaired satisfactorily. That leaves only one head of claim relating to the damage to the harling on the wall to the east of the property which separates two areas of garden ground.

(m) The tenants' representative said that the damaged harling raised the risk of water ingress, which would make the wall unstable.

(n) In reply, the landlord's representative bemoaned the lack of specification in the complaint about the tolerable standard, and told us that the garden wall does not form part of the house so that the repairing standard is not engaged.

(o) For the reasons already given, we find that the house meets the tolerable standard. Relying on tribunal members' own observations, we find in fact that the sections of the harling on the garden wall are bossed and cracked, and a small section of harling is missing - exposing the damp proof course covering the bricks which form the wall. At the moment, that is a cosmetic defect which does not challenge the structural integrity of the wall.

(p) We remind ourselves that we must take account of the age, character, and location of the property. We find that the structural integrity of the garden wall is not compromised. We therefore find that the structure and exterior of the house is in a reasonable state of repair.

(q) A combination of agreed facts, persuasive evidence, and tribunal members' observations tell the tribunal that the property meets both the repairing standard and the tolerable standard. We therefore dismiss the application.

Decision

13. The tribunal accordingly determined that the Landlord has complied with the duty imposed by Section 14 of the Act.

14. The tribunal dismiss the application.

15. The decision of the tribunal is unanimous.

Right of Appeal

16. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

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

Signed
Legal Member

16 January 2024

Housing and Property Chamber First-tier Tribunal for Scotland



Inspection and photograph Schedule - Appendix 1



Property: Pilmuir House, Pilmuir Estate, Haddington, East Lothian, EH41 4HS

Reference number: FTS/HPC/RP/23/3080

Tribunal Members: Debbie Scott (Ordinary Member), Paul Doyle (Legal

Member)

Tenants: Christopher Cruden and Mrs Annabel Cruden, residing together at A Pilmuir House, Pilmuir Estate, Haddington, East Lothian, EH41 4HS. Represented by Mr M Coull of Haddington CAB.

Landlord: The Trustees of Sir Henry Wade's Pilmuir Trust, c/o Athene Associates Ltd, 37a Sidegate, Haddington, EH41 4BU. Represented by Mr T Stanley of Athene Associates Ltd.

Date of Inspection: 12th January 2024

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

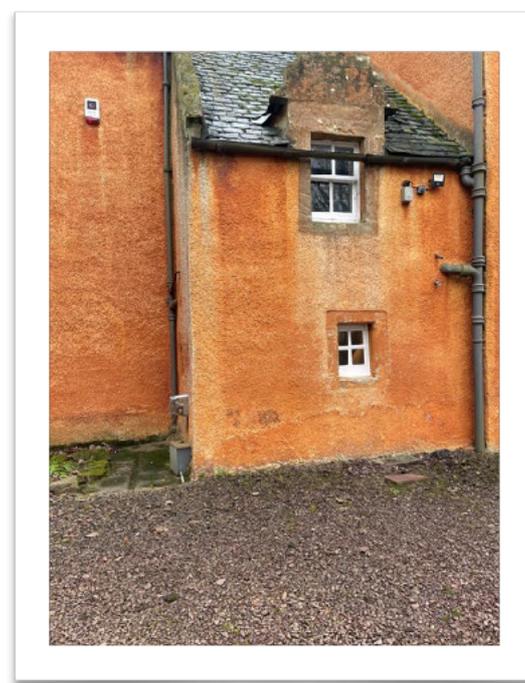
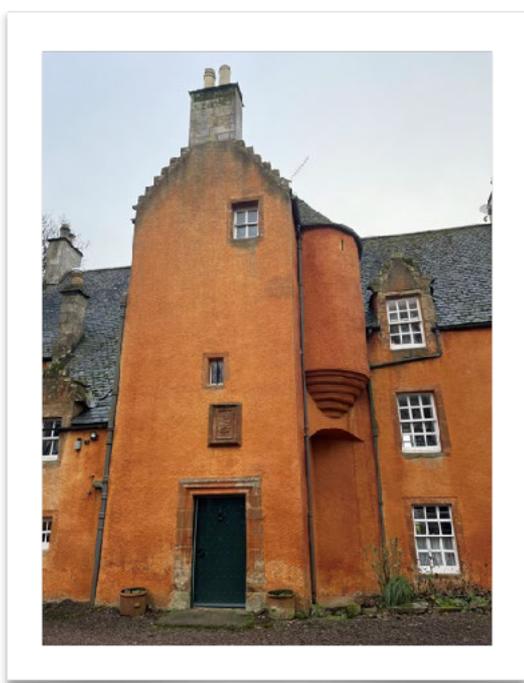
Access

The Tribunal Members attended the property on 12th January 2024.

Appendix 1

Schedule of Photographs taken during the inspection specifically relating to items raised in the application.

Drains, gutters and external pipes:

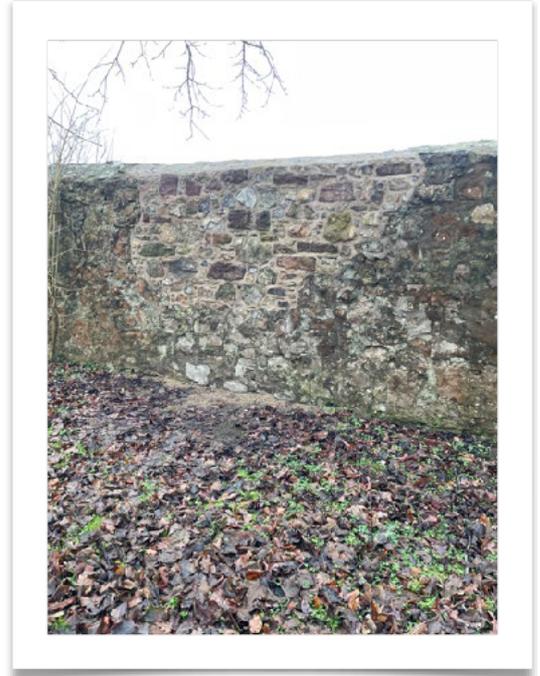
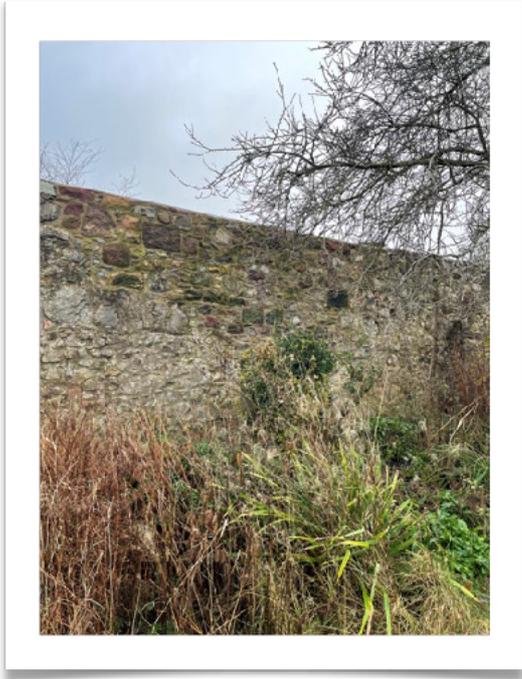




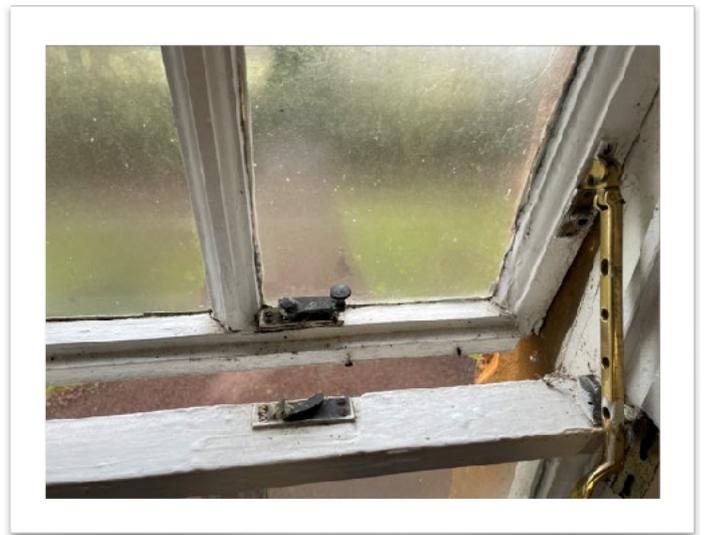
Boundary wall - Garden wall, harling and brick work visible.



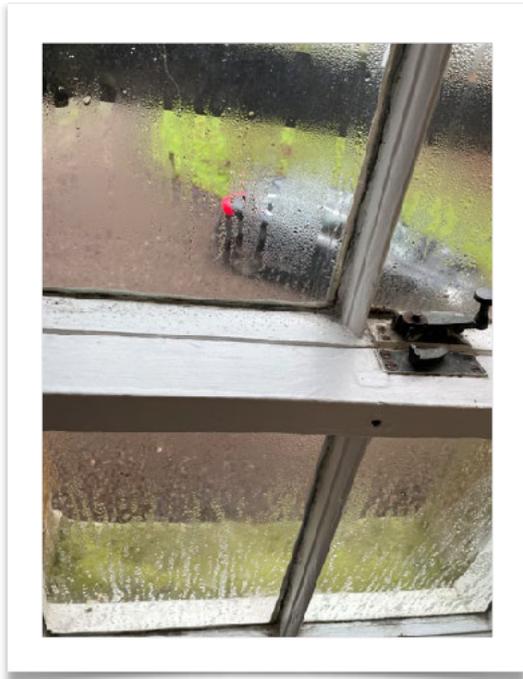
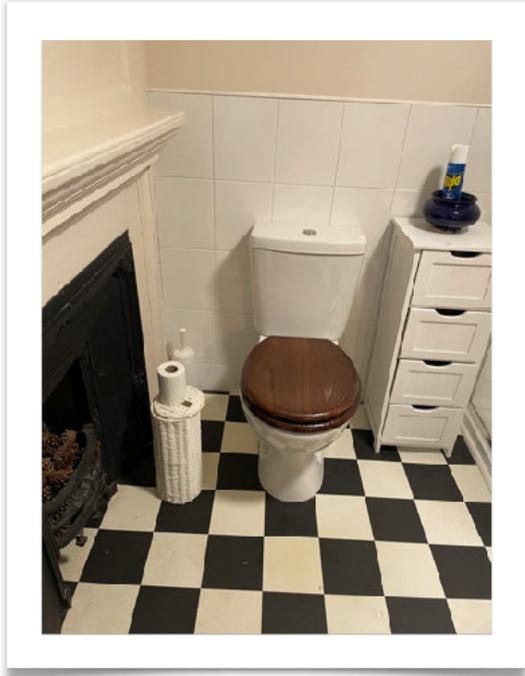
Repaired East Boundary wall and repaired the North Boundary wall



Bathroom - Turret level - Extractor Fan and Bathroom Window (Open)



Bathroom above shower area, window closed and WC



Signed
Debbie Scott
Ordinary Member
12th January 2024