

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



**First-tier Tribunal for Scotland Housing and Property Chamber) (“the Tribunal”)**

**STATEMENT OF DECISION OF THE TRIBUNAL UNDER SECTION 24 (1) OF THE HOUSING (SCOTLAND) ACT 2006**

**Case Reference FTS/HPC/RT/24/1366**

**The Haven, 27 St John Street, Stranraer, DG9 7EW being the subjects registered in the Land Register of Scotland under title number WGN3910 (“the Property”)**

**The Parties:**

**Ms Amanda Green, Dumfries and Galloway Council, Housing and Licensing Standards, Malitia House, English Street, Dumfries, DG1 2HR (“Third Party and Applicant”)**

**Mr Kenny Chung, formerly residing at 9 Fisher Street, Stranraer, DG9 7LH and now at 71 Dalrymple Street, Stranraer (“The Landlord and Respondent”)**

**Ms Natasha McGaw or Alexander, formerly residing at The Haven, 27 St John Street, Stranraer, DG9 7EW (“The Tenant”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Carol Jones (Ordinary Member - Surveyor)**

**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 had complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and has determined to make a Repairing Standard Enforcement Order (“RSEO”).**

**BACKGROUND**

1. By application received on 21 March 2024 (hereinafter referred to as “the Application”) the Third Party applied to the Tribunal for determination as to whether the landlord had failed to comply with the duties imposed by section 14 (1)(b) of the Housing (Scotland)

Act 2006.

2. The application stated that the third party considered that the landlord had failed to comply with the duty to ensure that the property meets the repairing standard, and that the landlord had failed to ensure compliance with Section 13 (1) of the 2006 Act.
3. The third party provided within the application, details as to why they considered that the landlord had failed to meet the repairing standard. By e-mail of the 21st of March 2024 to the Tribunal the third party attached a checklist, which had been sent out to landlord, detailing the nature of each complaint and of the work they considered required to be done. This checklist included an in-house repairing standard checklist stating that the landlord has failed to ensure that the property is wind and watertight and in all other respects reasonably fit for people to live in, the structure and exterior (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, an electrical installation condition report (EICR) and a PAT test certificate is provided every 5 years, any fixtures, fittings and appliances that the landlord provides under the tenancy are in a reasonable state of repair and in proper working order, the property has a satisfactory way of detecting fires and for giving warning in the event of a fire or suspected fire and the property meets the requirements of the tolerable standard. The detailed issues comprised no Electrical Installation Condition Report (EICR) or gas safety certificate, downpipes to rear are loose and need repair, rainwater goods/gutters showing signs of age and vegetative growth requires removing, ridge tile to the left of the roof when looking from the rear is damaged/missing, hall window (round part to the rear building) outside, appears rotten, vegetative growth on the sill, water marks on the kitchen ceiling, kitchen window not wind and watertight, water marks on living room ceiling, living room window inoperable, double electric socket near window defective, no extractor fan in bathroom and window damaged, roof structure may be compromised/dip in ridge line, chimney compromised with vegetative growth. In relation to smoke and heat detection the form highlighted no detector on first floor hall, heat detector in kitchen not working, smoke detector in ground floor hall not working and alarms should be interlinked. The checklist was dated the 23rd of February 2024.
4. The application was accepted by the Chamber President and was referred to this Tribunal for consideration on the 3rd of April 2024.
5. A Direction was issued on the 3rd of April 2024 requiring the landlord to provide certain

information including an up to date Electrical Installation Condition Report, Portable Appliance Test Certificate and Gas Safety Certificate. Reference is made to the terms of that Direction. The terms of the Direction were not complied with.

6. The tribunal intimated to all parties that they would inspect the property on 7th of August 2024 at 11:00 AM. Parties were advised that a telephone hearing would take place at 3:00 PM on the same date.
7. The tribunal received notification from the third-party on 3 July 2024 that the tenant had left the property. .
8. On 7th August 2024 the third-party, Fiona Smith from Dumfries and Galloway Council and the landlord, Mr Kenny Chung were both in attendance at the property inspection. They both also attended the telephone hearing. Also in attendance was a new person residing in the property, the landlord stated that she was a friend who was residing there and was not paying rent.
9. The landlord had advised the tribunal on 24 July 2024 that he had not received the application papers at the date of service, they had been sent to his home address, but he was not residing there at that time and was currently residing at another address. The tribunal considered that he had still had fair notice of the papers. The tribunal was content to proceed with the application on 7 August 2024. The landlord did not ask for further time to consider matters.

#### PROPERTY INSPECTION

10. The tribunal inspected the property on the 7th of August 2024. The landlord gave access to the property and was present at the time of the inspection. The third-party Fiona Smith was present at the time of the inspection. Also in attendance was the new resident. The landlord advised that he was not taking rent from this person, and she was not a tenant.
11. The property comprises a mid-terrace one and a half storey house situated in the centre of Stranraer which is a large historic town and former port located around 72

miles west of Dumfries in the Wigtonshire area of Dumfries and Galloway. Part of the upper floor extends over a Hair and Beauty salon at 25 St John Street and the surrounding properties are a dense mix of residential and commercial premises. The accommodation comprises a small entrance vestibule, open plan living room/kitchen and hallway to the ground floor and 3 bedrooms and a bathroom to the upper floor. The property has uPVC double glazed windows and gas central heating

*electrical installation condition report*

12. The landlord advised that there was no electrical installation condition report

*annual gas safety certificate*

13. The landlord advised there was no annual gas safety certificate

*bathroom*

14. In the bathroom there was noted to be a ceiling mounted extractor fan which appeared to be working. The window in the bathroom did open but was difficult to close and appeared to be damaged. There was masking tape on the window.

*Kitchen*

15. In the kitchen there were watermarks noted on the ceiling of the kitchen, and they did appear to be situated below where the bath upstairs is situated. The marks on the kitchen ceiling appeared to show black mould/some rot to the timber cladding. The landlord advised that there had been a possible leak in the bathroom at some point. The previous tenant had contacted him regarding a leak in the ceiling, he had pulled out the bath panels and it was dry underneath the bath. He had discovered a small leak from the toilet, and this had been repaired. He had installed a relatively new bath. He considered that the previous tenant's children may have overfilled the bath on occasion. He was not aware of any current issue with the leaks. He advised that the kitchen ceiling was marked when he purchased the property. The kitchen window had masking tape on it and no latch. The tribunal observed that the position of the Carbon Monoxide detector does not fully comply with the statutory guidance (which requires CO detectors to be located between 1 - 3 metres of the gas appliance (boiler) and above all door and window openings.).

*Living room*

16. The living room ceiling did not appear to have watermarks on it. The varnish on the wooden ceiling was patchy in places. The living room window did not open; the handle

moved but it only turned approximately 45°; and there was no key to open the window. The handle was loose and appeared to be defective. The double electric socket near the living room window was tested by a light being plugged in and it did light up.

*Outside property*

17. Outside of the property, at the hall window to the rear elevation, the timber strip above the concrete sill appeared to be rotten, at the right-hand side. The rear pvc down-pipe had been secured at all sections and was fixed to the wall with a bracket and screws; the pipe did not appear to be loose. The cast iron rainwater gutters did show signs of age, were uneven and extensively corroded and the section at the top of the rear down-pipe did not appear to align where it had been repaired previously. There did not appear to be vegetative growth at the rear of the property except to the concrete sill under the hall window. There was some vegetative growth at the front of the property at one of the sections of flashing at the left side of the dormer window and the gutter below. There appeared to be a missing or damaged tile to the rear at the top left corner of the roof verge underneath the ridge line. The ridge line appeared to dip. The chimney which appeared to be part of the property did have significant vegetation growing from it.

*Smoke and heat detection*

18. There was a functioning smoke detector in the upstairs landing and the downstairs hall. There was a heat detector in the kitchen which was not functioning. There did not appear to be any other smoke detectors in the property. The smoke detectors in the ground floor hall and upper floor landing did appear to be interlinked.

HEARING

*There is no electrical installation condition report.*

19. The landlord accepted that there was no report. He advised that he had attempted to contact an electrician to carry out the inspection. He had been unsuccessful. There had not been one done recently. He had been let down by his electrician. He advised it had been a few years since the last electrical certificate had been provided. He confirmed there was no up-to-date certificate. The landlord advised he is waiting for it to be done. The tribunal confirmed to the landlord that he was required to have an

electrical installation condition report prepared and further that he should ensure that it was carried out by an electrician who was registered with one of the recognised trade associations and suitably qualified.

*There is no annual gas safety certificate*

20. The landlord accepted that he did not have a gas safety certificate. He advised the boiler had been fitted a couple of years ago. The company who had fitted it was meant to provide one. They didn't do so at the time. He advised that he contacted another company to obtain a gas safety certificate.

*The hall window (round part to the rear building outside) appears rotten; there is vegetative growth on the sill that requires replaced/repared.*

21. The landlord advised that he would have his workman out to look at the rotten part of the sill, fix it and clean the vegetation.

*The bathroom extractor fan and window.*

22. The landlord said he would have the bathroom window checked. He would have somebody look at all the windows in the property that had been flagged up by the third-party. The third-party advised in relation to the extractor fan, she could hear some noise from it, and it appeared to be operating, but she was not sure how efficient it was. She advised that the window had been difficult to close.

*The water marks on the kitchen ceiling*

23. The landlord advised these had been investigated. A pipe at the toilet had been found to be leaking and it had been replaced. There had also been a new bath fitted. Furthermore, he wondered whether the previous tenant's children had on occasion overfilled the bath. He had investigated the leak and could not find any evidence of any leak coming from the bath. He also advised that the marks on the ceiling had been there when he purchased the property. He advised that the new person currently residing in the property had said there had been no issue with any water coming through from the bathroom to the kitchen. The third party noted that the black marks at the visit were consistent with the marks noted at the original visit by the council in February 2024. The landlord said the black marks had been there for a long time.

*Kitchen window*

24. The landlord advised that he would have a tradesman attend at the property to check all three windows, and it will include this window. He accepted there was an issue with it closing, and he would have the kitchen window fixed and checked.

*Water marks on the living room ceiling*

25. The third party advised she hadn't been able to trace any photographs of the water marks on the living room ceiling from the first visit. The landlord was unclear about what marks were being referred to. He wasn't aware of any water issues in the living room.

*Living room window is unopenable.*

26. The landlord confirmed he would have a tradesman look at that window and have it repaired. He accepted that it did not open. The tribunal noted that the handle needed to be repaired or replaced and it needed to open.

*Double electric socket near the window in living room*

27. The third party confirmed that looking at the photos of the original inspection visit the double electric socket was the one in the living room. She noted that since the pictures had been taken the gas meter underneath the double electric socket had been boxed in. The landlord advised the gas meter had been boxed in a month ago. A tradesman had been out because the radiator hadn't been fixed properly to the wall and when that was fixed the tradesman also boxed in the gas meter. The third party confirmed that when the light was plugged into the double electric socket it did appear to be working today. The tribunal noted that the former electric heater socket was not screwed in properly.

*The external down-pipes*

28. The landlord advised he was aware that the sections of the rear down-pipe had been loose, and two screws had been put in to secure it to the rear elevation. He considered that they were now good. The third-party confirmed the original pictures showed the down-pipe to be loose and not attached to the guttering. This was not the case when they viewed the property today, the down-pipe was now attached to the wall and guttering.

*Rainwater good, gutters are showing signs of age and vegetative growth*

29. The landlord advised that he had these cleaned when the roof had been checked. He advised that the chimney vegetation had also been removed. It however grows back

very quickly. The third party advised that looking at the first inspection commentary in detail the gutters appeared twisted and not level above the kitchen door. There appeared to be sections of pipe that weren't fitting level with the rest of the gutter. The tribunal noted that sections of the gutters did not appear to have been fitted properly when repairs appeared to be carried out. It was unclear if the gutters were in good working order. It was noted that some of the guttering was very corroded. It was noted that there was vegetation at the front of the property to the left of the dormer window at the flashing and under the adjacent gutter.

*the tile to the left of the roof when looking from the rear is damaged /missing*

30. The landlord advised that he had had the roof checked recently. The roofer had advised him that the ridge tile was not broken. He wasn't aware of any water ingress into the property from that area. He advised the roofer had looked at the whole roof and all that needed to be done was the replacement of two slates. The third party referred to photos and said that they aligned with what they had viewed today at the inspection, at the ridge there were two sloping planes and there appeared to be a gap at the left-hand side and this was consistent with what they had seen today. The tribunal noted that it could be seen that the end ridge tile had been replaced before, and that there appears to be a gap under it at the top left-hand verge or it may be broken. The third party was unaware of any report that there had been water ingress in the bedroom. The landlord advised that the roofer had not indicated there was any water ingress but he would get him to check the roof and loft again.

*The roof structure may be compromised as there appears to be a dip in the ridgeline this requires an investigation*

31. The third-party advised that the photos are consistent with what they saw at the tribunal inspection; and the ridge line does appear to dip halfway along the top of the house. She added that she was not aware of any internal implications in relation to the dip of the roofline. The landlord advised he would get it checked again. He will check with the roofer to ascertain whether or not there's any damage in relation to the ridge line. The landlord advised that he had previously been told by the roofer not to touch the roof as it was in good enough condition and starting to do things to it could lead to problems. The landlord advised he purchased the property in around 2008 and he had had no issues with the roof since that time.

*It is unclear whether the chimney is part of this property or the neighbouring property it has been compromised with vegetative growth*



32. The landlord advised that the chimney needed cleaning. The third-party advised that she didn't think the neighbouring property owned the chimney, but this would need to be clarified. She advised her photographs at the first visit were consistent with what she saw today. They showed growing vegetation, and it appeared to her there was more vegetation today than there had been at the visit on the 22nd of February 2024. She advised that it was not recorded that the chimney was causing internal issues in the property.

*smoke and heat detection*

33. The third party advised that they would want a smoke detector in the living room over and above the heat detector which was in the kitchen (the kitchen and living room are one open-plan area). The third-party advised that a heat detector is not as sensitive as a smoke detector. The landlord advised that he could put a smoke detector into the living room. The tribunal advised that the landlord had to have regard to the guidance on smoke and heat detection and the landlord had to ensure that it was complying with that guidance. The tribunal observed that while smoke detectors were noted in the ground floor hall and upper landing there was no smoke detector in the vestibule area. The landlord advised he would need to seek advice on the guidance, and he would ensure that this was done. The third-party noted that in the vestibule area, there was an exposed electrical consumer unit. She indicated that the council would expect to see this enclosed in a suitable material. She advised that this was an exit route and the electrical box needed to be enclosed. She considered that, in the vestibule if there was a failure in the electrics it was appropriate to have a smoke detector in that area. It was discussed that all detectors required to be interlinked. The landlord noted that the two detectors tested in the hallways had been in working order but the one in the kitchen had not been working.

**FINDINGS IN FACT**

34. Having viewed the property and having considered the available evidence which had been made available the tribunal makes the following findings in fact: -
35. The Landlord is the owner of the property, and the title is registered in his and one other's name.

36. The tenant is no longer a party to a tenancy. The tenant having left the property sometime in around July 2024. .
37. A new person is currently residing in the property. The landlord stated that she was not a tenant. The tribunal does not know the basis on which that person is residing in the property.
38. The landlord was notified by the third party of outstanding repairs prior to this application being made to the tribunal and given an opportunity to rectify matters.
39. This application was lodged with the tribunal on 21st March 2024.
40. There is no electrical installation condition report.
41. There is no annual gas safety certificate.
42. There was an area of rotten wood to the exterior of the rear hall window. There was vegetative growth on the sill.
43. The bathroom, kitchen and living room windows all required to be repaired or replaced. The living room window did not open. The bathroom and kitchen windows were difficult to open and close and had been repaired with masking tape. They were not in proper working order.
44. Externally, the rainwater goods are in poor condition. They are mixed cast iron and plastic. They have been repaired. They were corroded in parts. There was vegetative growth at the front dormer flashing and gutter. The rear guttering does not appear to align in places. There was no evidence to show that the guttering was in proper working order.
45. The roof ridge line appears to dip, and the roof structure may be compromised. There is a gap at the verge under the left-hand side of the ridge line (looking from the rear). There was no evidence to confirm that this structure was in a reasonable state of repair.
46. The chimney which forms part of the title to this property has been compromised by vegetative growth.

47. There is no functioning smoke detector in the living room which is frequently used by the occupants for general daytime living purposes or in the front entrance vestibule.
48. The heat detector in the kitchen was not in working order.
49. The property does not meet the repairing standard as set out in the findings in fact.

#### REASONS FOR DECISION

50. The Tribunal had regard to what it found at the property inspection and considered the evidence at the hearing from both parties. The tribunal had regard to statutory obligations imposed upon a residential landlord to comply with Scottish Government guidelines. We also considered the terms of sections 13 and 14 of the 2004 Act in relation to the repairing standard.
51. We find that the property is let as a residential tenancy.
52. The tribunal was concerned about the lack of any up-to-date certification in terms of gas and electrical installations/appliances.
53. The tribunal had concerns about safety aspects in relation to smoke and heat detection within the property. Notably, there was a lack of sufficient smoke detectors within the property and further, the heat detector in the kitchen did not work.
54. There were concerns in relation to three windows within the property which either did not close properly or did not open at all. The tribunal did not consider that those windows were in a reasonable state of repair and proper working order. Two windows had been repaired by masking tape being applied to the frames. The living room window could not be opened at all.
55. Externally, the tribunal was concerned about the structure and exterior of the house as it did not appear to be in a reasonable state of repair. There was a rotten area at the exterior sill of the hall window. There was vegetation on the roof and the exterior

hall window sill. The gutters were in poor condition, and it was unclear whether or not they were in good working order. There appeared to be a missing or damaged tile just under the ridge line at the top of the roof at the left verge (looking from the rear of the property). There was considerable vegetation growing from the chimney to the property. We did see that the ridge line dipped and therefore the roof structure may be compromised. There was no report to demonstrate whether or not this was indeed the case.

56. The tribunal concludes that the property does not meet the repairing standard for the above reasons. In terms of section 13 of the 2006 Act we find that the house is not wind and watertight and in all other respects reasonably fit for human habitation; we are not satisfied the structure and exterior of the house is in a reasonable state of repair and in proper working order; the necessary certification in respect of the installations in the house for the supply of gas and electricity cannot be provided because associated inspections have not been carried out; some fixtures and fittings that the landlord has provided are not in a reasonable state of repair or in working order; the property does not have a satisfactory means of detecting fires and for giving warning in the event of a fire or suspected fire; and we are not satisfied that the property meets the requirements of the tolerable standard.
57. The tribunal determined that the landlord had failed to comply with the duty imposed by section 14 (1)(b) of the 2006 Act in respect of the matters set out above. The tribunal therefore must require the respondent to carry out the works necessary for meeting the repairing standard and will therefore make a repairing standard enforcement order ("RSEO") in terms of Section 24 (2) of the 2006 Act.
58. Having decided to make an RSEO the tribunal considered the length of time which should be provided for compliance. The tribunal elected that a period of six weeks from the date of the RSEO was suitable having regard to the nature of the matters which require to be addressed by the landlord, the length of time it appears that they have been outstanding for, and the likely length of time to instruct and carry out the required works and provide supporting evidence of same.
59. OBSERVED The tribunal observes that the position of the Carbon Monoxide detector does not fully comply with the statutory guidance (which requires CO detectors to be located between 1 - 3 metres of the gas appliance (boiler) and above all door and window openings.) As this matter is not contained in the application the Tribunal does

not have jurisdiction to order that it be made compliant, that said we would draw it to the attention of the Landlord and suggest that he takes steps to address this issue while carrying out other works to the Property.

60. We also observe, that while the previous tenant has left the property, the landlord did not dispute that the property was rented out for residential purposes. We note his evidence at the time of the property inspection, that the current person residing there was not residing there as a residential tenant. This has not been verified. We make no finding about that third person's status at this time.

#### RIGHT OF APPEAL

Landlords, tenants or third-party applicants 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

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 date in which the appeal is abandoned or, so

determined.  
Melanie Barbour

Jamie Buchanan

Legal Member

4 September 2024

Date

Photograph Schedule Attached

Witness

Jamie Buchanan  
c/o Glasgow Tribunals Centre  
20 York Street  
Glasgow  
G2 8AT

Housing and Property Chamber  
First-tier Tribunal for Scotland

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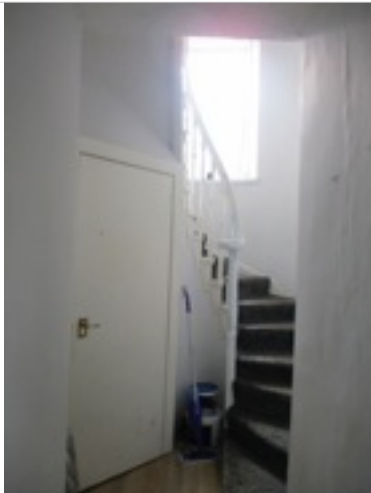
Schedule of photographs taken during the inspection of The Haven, 27 St John Street,  
Stranraer DG9 7EW by the First-tier Tribunal for Scotland (Housing and Property  
Chamber) on Wednesday 7 August 2024

Reference Number : FTS/HPC/RT/24/1366

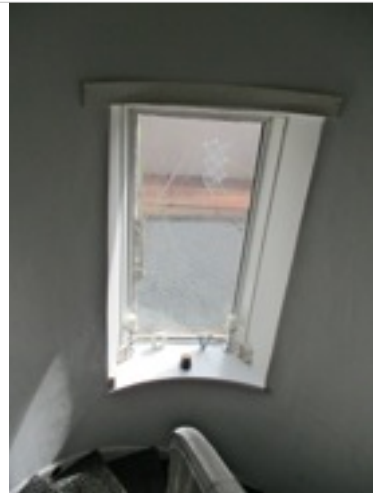


Front Elevation





Ground Floor Hall - circular staircase leading to upper floor



Hall/Staircase - uPVC double glazed window



Hall/staircase - window sill internal and external view



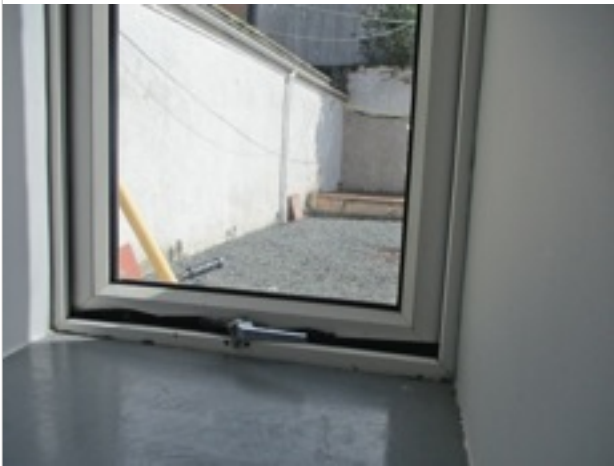
External view of Hall window - vegetation growth below concrete sill



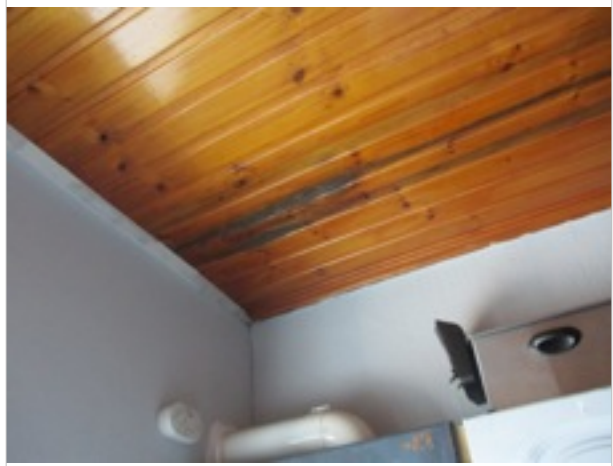
External view of Hall window showing extensive moss to concrete sill, vegetation growth and possible rot to timber above



Kitchen



Kitchen - uPVC double glazed window - duct tape applied to lower section of frame



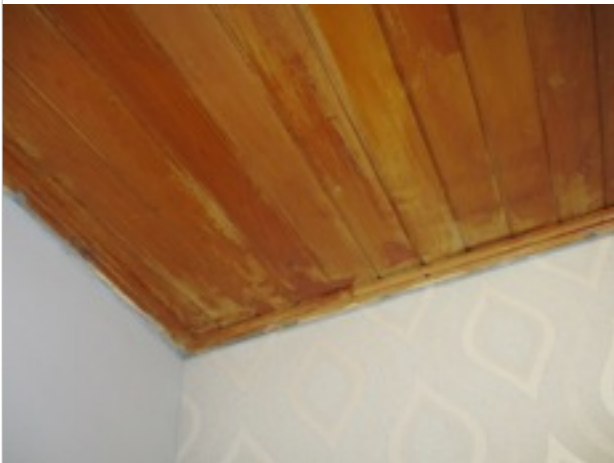
Kitchen - blackened section of timber clad ceiling/water damage



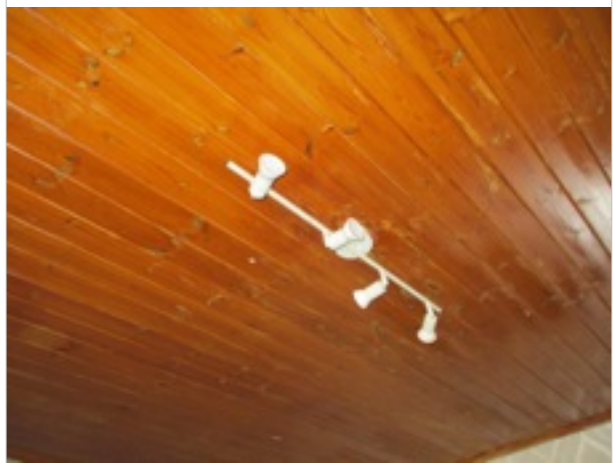
Living Room and front vestibule



Living Room - some deterioration to varnish on timber clad ceiling



Living Room - deterioration/uneven application of varnish to timber clad ceiling



Living Room - some deterioration to varnish on timber clad ceiling (no smoke detector)





Living Room - uPVC double glazed window



Living Room - window - not possible to open/  
missing key/loose/damaged handle



Living Room - double socket near window



Living Room - switch for former electric storage  
heater - loose screws



Bathroom - ceiling mounted extractor fan



Bathroom - uPVC double glazed window - hard  
to close properly/possible defective hinges



Bathroom - window - duct tape applied to base of frame



Bathroom - new pipe at toilet



Rear Elevation - downpipe to right side of back door - sections mismatched/poor appearance



Rear Elevation - downpipe secured to wall



Rear Elevation - rainwater goods/soil and waste pipes - mixture of cast iron and pvc



Rear Elevation - uneven/misaligned section of gutter at top of downpipe



Rear Elevation - pvc gutter and downpipes to dormer window



Rear Elevation - staircase projection - corrosion to cast iron gutters/uneven and loose/damaged fixings



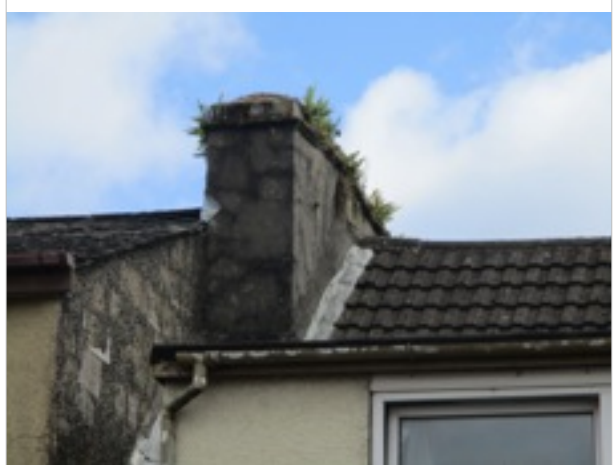
Rear Elevation - roof - sagging ridge line



Rear Elevation - uneven tiles at roof verge and ridge/gap near ridge/broken tile



Rear Elevation - chimney - extensive vegetation growth



Front Elevation - chimney - extensive vegetation growth





Front Elevation - vegetation growth on flashing at dormer and around gutter



Upper Floor Landing - ceiling mounted smoke detector



Ground Floor Hall - 2 x ceiling mounted smoke detectors



Kitchen - ceiling mounted heat detector (not working)



Ground floor front entrance vestibule - electric cupboard/consumer unit



Kitchen - wall mounted CO detector (observation)