



**Statement of Decision under Rule 38(3) of *The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017* (contained in Schedule 1 of the *Chamber Procedure Regulations 2017* (SSI No 328)) (“the Procedure Rules”) as amended in relation to a request for permission to appeal under section 46(3) (a) of the Tribunals (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/RT/19/3633**

**Re: Property at Flat 3F1, 13 Gillespie Crescent, Edinburgh EH10 4HT (“the property”)**

**Parties:**

**The City of Edinburgh Council, 101 Niddrie Mains Road, Edinburgh EH16 4DS (“the Third Party Applicant”)**

**Edinburgh Holiday & Party Lets Limited (SC577943), sometimes trading as EHPL Limited; AND Mr Mark Edward Fortune, for any right, title and interest he has in the property (“the Landlord”). The definition of “Landlord” is provided at Section 194 of the Housing (Scotland) Act 2006.**

**Tribunal Members:**

**Mrs Aileen Devanny(Chamber President) and Ms Carol Jones(Ordinary Member)**

## **DECISION**

The Tribunal refuses to give permission to appeal in terms of Rule 38 of the Procedure Rules.

### **1. BACKGROUND**

1. On 28 September 2023 Edinburgh Holiday & Party Lets Limited requested permission to appeal a direction issued by the First-tier Tribunal for Scotland Housing and Property Chamber (“the Tribunal”). The direction was made in

terms of Schedule 2 Paragraphs 3(1) (b) of the Housing (Scotland) Act 2006 in relation to the property.

The email from Edinburgh Holiday & Party Lets Limited making the request for permission to appeal was received by the Tribunal on 28 September 2023 and states

“Good afternoon,

We hereby request permission to appeal the attached document to the upper tribunal.

Regards  
EHPL”

2. The direction issued by the Tribunal which is the subject of the request states:

*“Background*

*The First-tier Tribunal (“the Tribunal”) is at the stage of proceedings where it is considering whether the Repairing Standard Enforcement Order dated 8 November 2022 (“the RSEO”) has been complied with and the various works as detailed in the RSEO have been completed. An inspection of the property was scheduled for 26 July 2023 but did not proceed as no access was provided by the tenants.*

*The RSEO specifies the following requirements as part of works required to the property:*

*(ii) Repair the damage to the living room ceiling caused by the ingress of water and, in particular, re-plaster and redecorate all affected areas.*

*(vi) Engage a suitably qualified SELECT, NICEIC or NAPIT registered electrical contractor or suitably qualified fire engineer to test and repair or replace the system for detecting fires and for giving warning in the event of fire to ensure that the system meets the requirements of the Act and all current statutory guidance. Thereafter, to provide the Tribunal with a report on the working order of the system and written evidence of compliance with all fire safety requirements of a House in Multiple Occupation.*

*In relation to item (ii) of the RSEO detailed above, documentation from a company called Fire Flood Emergency Services TWS dated 18 August 2023 has been lodged by or on behalf of the Landlord. The documentation states that this company has provided an estimate for undertaking plasterwork and painting of the lounge ceiling but that it will take until October 2023 to allow time for the ceiling areas to dry out and show no signs of dampness or rot. The company Fire Flood Emergency Services TWS indicates that they are happy to undertake the ceiling repair as quoted and have an inspection pencilled in for October and the company indicates that,*

*including preparation work, it will take approximately 4 days for the ceiling works to be completed.*

*In relation to item (vi) of the RSEO detailed above, a fire detection and alarm system inspection and servicing report by EFS-GROUP/FIREALARM GUY dated 22 June 2023; and portable fire extinguishers report of same date, both documents signed by Peter Brown of EFS-GROUP/FIREALARM GUY, have been lodged with the Tribunal by or on behalf of the Landlord. The documentation refers to an inspection of and service of the fire alarm system and service and replacement of fire extinguishers. Beyond these two documents dated 22 June 2023, no written fire safety risk assessment nor any other documentation, which may be required under the legislation relating to houses of multiple occupation, is lodged with the Tribunal. There is guidance issued by Scottish Ministers in relation to fire safety in houses of multiple occupation and the Scottish Fire and Rescue Service (SFRS) has a role in enforcing the relevant legislation and guidance. Schedule 2 paragraph 4 of the Housing (Scotland) Act 2006 (“the Act”) as amended places a duty on the Tribunal, where the application relates to the standard of repair mentioned in the repairing standard in relation to the provision for detecting fire, to consult with the chief fire officer of SFRS. Originally, this related to the repairing standard duty in Section 13(1) (f) of the Act but, following statutory amendment, this repairing standard duty for provision for detecting fire now falls within Section 13(1) (h) of the Act. This was an amendment introduced by the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019.*

*In considering the repairing standard regard has to be had to guidance issued by Scottish Ministers in relation to equipment for detecting fire and for giving warning of fire and suspected fire and the tolerable standard, in accordance with Section 13(7) of the Act.*

*It is appropriate that the Tribunal consult with SFRS in relation to whether Peter Brown of EFS-GROUP/FIREALARMGUY, the company who issued the paperwork dated 22 June 2023, is a registered third party certificated company or individual with the appropriate level of technical training, experience and knowledge to provide fire safety and fire risk assessment documentation and, furthermore, whether the appropriate equipment has been installed and is in operation in the property and a fire safety risk assessment has been carried out and implemented for the property as a house of multiple occupation. This will provide assistance for the Tribunal in determining whether there has been compliance with fire safety requirements for the property.*

*As a consequence of the forgoing background, the Tribunal issues the following directions:*

**A. Direction to Chief Fire Officer of Scottish Fire and Rescue Service (SFRS)**

The Chief Fire Officer of SFRS is consulted as specified in Schedule 2 Paragraph 4 of the Act in relation to the fire detection provisions which apply at the property and is directed **within one month of the date of this direction** (which date may be extended on cause shown by SFRS) to inspect the property and provide to the First-tier Tribunal Housing and Property Chamber, 20 York Street, Glasgow G2 8GT a fire safety report taking into account guidance issued by Scottish Ministers in relation to

1. whether Peter Brown of the company EFS-GROUP/FIREALARM GUY, who issued the paperwork attached, is a registered or third party certificated company or individual for completion of fire safety documentation and fire safety risk assessments.
2. whether the SFRS consider that satisfactory fire safety equipment meeting the guidance issued by Scottish Ministers has been installed and is in operation and in working order in the property;
3. whether any required fire safety risk assessment has been carried out for the property by a person with the appropriate level of technical training, experience and knowledge and the assessment has been implemented for the property as a house of multiple occupation;
4. specification of all documentation which would be required to be prepared for the property to meet the guidance of Scottish Ministers in relation to houses of multiple occupation; and
5. any other fire safety information relevant to the Tribunal's role in determining if the RSEO provision (vi) above relating to the property has been complied with.

It is proposed that the Tribunal will on receipt of the report from the Chief Fire Officer or his delegated representative in the SFRS circulate it to the parties to inform them of the contents and to allow further written representations from them on the report.

**B. Direction to Edinburgh Holiday and Party Lets Ltd and Mr Mark Edward Fortune**

Edinburgh Holiday and Party Lets and Mr Mark Edward Fortune are directed to provide details on whether it is their intention to carry out the works to the ceiling identified by company called Fire Flood Emergency Services TWS in documentation dated 18 August 2023 and in which case to provide the date by which time it would be anticipated that the works to the living room ceiling would be completed in full. This information requires to be provided to the First tier Tribunal Housing and Property Chamber, 20 York Street, Glasgow G2 8GT **no later than 11 October 2023.**

*It should be noted that the Tribunal has yet to decide whether a further attempt to inspect the property is required.*

**Please send all Email Replies to: [HPCadmin@scotcourtribunals.gov.uk](mailto:HPCadmin@scotcourtribunals.gov.uk)  
Website: [www.housingandpropertychamber.scot](http://www.housingandpropertychamber.scot)  
DX: DX 551943, GLASGOW 42**

**Mrs A Devanny  
Chamber President  
Dated: 27 September 2023”**

## **2. GROUNDS OF APPEAL AND REASONS FOR DECISION**

Section 46(2) (b) of the *Tribunals (Scotland) Act 2014* provides that an appeal is to be made on a point of law only. Section 46(3) of that Act provides that an appeal requires the permission of the First-tier Tribunal. Section 46(4) of that Act provides that such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are “arguable grounds for appeal”.

Rule 37 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that a party making application for permission to appeal must identify the alleged point of law on which the person making the application wishes to appeal.

Rule 38 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended provides that the Tribunal must decide whether to give permission to appeal on any point of law.

The request for permission to appeal relates to the issue of a direction seeking further information before a decision of the Tribunal is made. In terms of Schedule 2 Paragraph 2 of the Housing (Scotland) Act 2006 (“the Act”), the Tribunal may make inquiries as it thinks fit for the purposes of determining whether the landlord has complied with the duty imposed by section 14(1) (b) of the Act in relation to the house concerned. Schedule 2 paragraph 3 of the Act states that for the purpose of making inquiries the Tribunal can require any person to give such documents or information as it may reasonably require. Schedule 2 Paragraph 4 of the Act places a duty of the Tribunal to consult the Chief Fire Officer of Fire and Rescue Service in certain circumstances.

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 contains the Housing and Property Chamber Rules of Procedure.

Rule 20(1) states that Tribunal may make such inquiries as it thinks fit for the purposes of exercising its functions and these inquiries may consider any report instructed by the Tribunal about any of the matters referred to in the application. Rule 16 refers to the issue of directions relating to the conduct or progress of the case. Rule 26 refers to decisions of the Tribunal. A direction relating to the conduct or progress of a case is not a decision of the Tribunal. In terms of Rule 37(2) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 the application for permission to appeal must “identify the decision of the First-tier Tribunal to which it relates.” It is not competent to make application for permission to appeal relating to a direction.

The application seeking permission to appeal does not comply with the requirements of Rule 37(2) *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017*.

For the forgoing reasons, permission to appeal the direction dated 27 September 2023 issued by the Tribunal is refused.

#### **APPEAL PROVISIONS**

**3. A party aggrieved by the decision of the Tribunal may seek permission to appeal to the Upper Tribunal for Scotland on a point of law only. That party must seek permission to appeal within 30 days of the date the decision was sent to them. The request for permission to appeal must be in writing and a party may wish to consult the Scottish Courts and Tribunals Service website which includes an application form with information on the details required.**

**A decision of the First-tier Tribunal relating to a permission to appeal request cannot be appealed or reviewed.**

# A Devanny

**Mrs Aileen Devanny**

**Chamber President**

**Dated: 25<sup>th</sup> October 2023**