



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

**Statement of Decision of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under section 60(5) of the  
Housing (Scotland) Act 2006**

**Chamber Ref: FTS/HPC/RP/22/4470**

**54 Shore Road, Stevenston, KA20 3LP being the subjects registered in  
the Land Register of Scotland under Title number AYR97237 ("the  
Property")**

**The Parties:-**

**Lynne Benson residing at 54 Shore Road, Stevenston, KA20 3LP ("The  
Tenant")**

**Alister Meek, SHAP, Michael Lynch Centre, 71 Princes Street,  
Ardrossan, KA22 8DG ('The Tenant's Representative')**

**John Murphy and Margaret Murphy residing at 58B Ardoch Crescent,  
Stevenston, KA20 3PP ("The Landlord")**

**Tribunal Members:**

**Jacqui Taylor (Chairman) and Donald Wooley (Ordinary Member)**

**1. Background**

1.1 The Tenant leases the Property from the Landlord in terms of the lease between the parties dated 21<sup>st</sup> January 2020.

1.2 The Tenant applied to the Tribunal for a determination of whether the Landlords have failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ('the Act').

**2. Application**

The application by the Tenant dated 22<sup>nd</sup> December 2022 stated that she considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. She advised that the property is not wind and watertight and in all respects reasonably fit for human habitation; the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order and the Property does not meet the tolerable standard.

In particular the application stated that the work that needed to be carried out was as follows:

- 2.1 Kitchen ceiling requires repair. The ceiling has collapsed resulting in water ingress, lighting hanging by its wiring and exposed ceiling beams.
- 2.2 Exterior holes in walls require repair. The holes allow damp to penetrate through the wall affecting the interior of the property.
- 2.3 Windows and exterior doors require repair or replacement as they are not wind or watertight.
- 2.4 Garage roof requires repair as it appears to be in danger of collapse.
- 2.5 Guttering requires repair as it is in poor condition.
- 2.6 Completion of utility room including skim of walls and ceiling.
- 2.7 Handles and locks to front windows are defective.
- 2.8 Wires hanging from the ceiling in the dining room.
- 2.9 No carbon monoxide detector.
- 2.10 The electric meters are not covered.
- 2.11 There are no front or side panels to the bath.

### **3. Notice of Acceptance**

On 15<sup>th</sup> February 2023, Martin McAllister, as Convenor of the First- tier Tribunal (Housing and Property Chamber), signed the Notice of Acceptance which stated that he had considered the application, comprising documents received between 22<sup>nd</sup> December 2022 and 3<sup>rd</sup> February 2023 and he referred the application under Section 22 (1) of the Act to a Tribunal.

### **4. Inspection**

The Tribunal attended at the Property at 9.30 am on 21 April 2023. Ms Benson, Mrs Murphy and William O'Rourke, the Landlords' joiner, were present at the inspection.

The Property is an extended two storey house of traditional stone and brick construction under a pitched slate roof, with flat and mono pitched roof projections to the rear. The accommodation comprises two living rooms, four bedrooms, bathroom, kitchen and utility area. The utility area was created from a former single skin brick out-building.

In the rear garden there is a brick store under a pitched felt roof. Originally constructed as a garage, vehicular access is no longer possible following the erection of a boundary fence in the centre of what was previously a shared driveway.

Weather conditions during and for a several days prior to the inspection were dry and sunny.

The Tribunal inspected the alleged defects and found:-

4.1 Kitchen ceiling requires repair. The ceiling has collapsed resulting in water ingress, lighting hanging by its wiring and exposed ceiling beams.

The ceiling above the sink unit had been replastered, the recessed light fittings were functional and there was no evidence of any water ingress or damp.

4.2 Exterior holes in walls require repair. The holes allow damp to penetrate through the wall affecting the interior of the property.

Around the first floor rear bedroom within the two storey projection, former holes and some cracks had been infilled with expanding foam. There was no evidence of water ingress in this area although externally areas of bossed and cracked render remained.

Within the utility/kitchen projection there was a missing/defective brick in the external wall although internally there was no corresponding evidence of water ingress or damp.

4.3 Windows and exterior doors require repair or replacement as they are not wind or watertight.

Ms Benson explained that the defective window and door referred to in the application were in the rear utility room.

The window opening had been boarded up externally and internally. Ms Benson confirmed that it was in this condition when she took entry to the Property.

The rear door leading from the utility area to the garden displayed evidence of significant wear, localised rot and flaking paint. It was ill-fitting and there was a visible gap between internal flooring and the base of the door when in the closed position.

4.4 Garage roof requires repair as it appears to be in danger of collapse.

There was no longer vehicle access to the garage which was used as a store. The garage roof was viewed from the upper bedroom of the Property. The felt roof above the garage was in a relatively poor condition and displayed evidence of previous patched repairs and significant wear. Viewed internally it was of a basic design and the roof was finished with "random" sections of timber sarking. No evidence of penetrating damp or significant recent water ingress was noted although in its present condition it is likely that short/medium term repairs will become necessary. There is a slight "sag" in the roof although it is currently functional and the timber appears mostly sound. Evidence of cracking was visible, notably around an internal lintol. The building was neither structurally unsound nor in short/medium term danger of collapse.

4.5 Guttering requires repair as it is in poor condition.

The single storey rear projection under the mono pitched, felt clad roof had recently been fitted with modern PVC gutters and a downpipe. Viewed from above the guttering was noted to be entirely free from moss and debris which, if present, may restrict water flow. The Tribunal were informed that the guttering had recently been cleared. There was no evidence around the external rendering below to suggest that the rainwater goods are defective.

4.6 Completion of utility room including skim of walls and ceiling.

The walls and ceiling at the utility area projection had been lined in plasterboard. The joints between the plasterboard paneling have not been taped and no skim of plaster has been applied.

4.7 Handles and locks to front windows are defective.

Ms Benson confirmed that she had completed the repairs to the handles and locks.

4.8 Wires hanging from the ceiling in the dining room.

There were hanging/projecting electrical wires from the dining room ceiling. The ends of the wires had been secured into PVC connectors as a means of protection. Areas of ceiling plaster surrounding the main hole were also in need of infilling/repair.

4.9 No carbon monoxide detector.

There was no functioning carbon monoxide detector around or in the vicinity of the gas fired central heating boiler located in the rear living room.

4.10 The electric meters are not covered.

There was no cover or additional protection around the electrical consumer unit.

The Tribunal were informed that this was the position prior to the inspection and preparation of the EICR by G Moir Electrical, dated 29 December 2020.

4.11 There are no front or side panels to the bath.

There were functioning panels on the side of the bath.

Photographs were taken during the inspection and are attached as a Schedule to this Decision.

## **5.Hearing**

This case called for a conference call Hearing at 12.00 on 21 April 2023. The Tenant's representative, the Landlords and William O'Rourke attended the hearing.

As a preliminary matter Mr Murphy confirmed that he owned the Property jointly with Mrs Murphy. Mr Meek confirmed that the application should be amended to show Mr and Mrs Murphy as joint landlords.

In connection with the matters detailed in the application Mr Wooley described the matters observed at the inspection, as detailed above, and the parties advised as follows:

5.1 Kitchen ceiling requires repair. The ceiling has collapsed resulting in water ingress, lighting hanging by its wiring and exposed ceiling beams.

The parties made no comments.



5.2 Exterior holes in walls require repair. The holes allow damp to penetrate through the wall affecting the interior of the property.

The parties made no comments.

5.3 Windows and exterior doors require repair or replacement as they are not wind or watertight.

Mr Murphy advised that the utility room was formed from the original wash house and he had originally intended to remove it.

Mr Meek had nothing further to add.

5.4 Garage roof requires repair as it appears to be in danger of collapse.

Mr Murphy explained that the garage was an old building that was never actually used as a garage.

Mr Meek had nothing further to add.

5.5 Guttering requires repair as it is in poor condition.

Mr Murphy explained that the gutters had been cleaned last year.

Mr Meek had nothing further to add.

5.6 Completion of utility room including skim of walls and ceiling.

Mr Murphy explained that shortly after Ms Benson moved into the Property she asked for a toilet to be installed in the utility room. He started the works but never finished the renovation of the utility room after Ms Benson changed her mind about having the toilet installed.

Mr Meek had nothing further to add.

5.7 Handles and locks to front windows are defective.

Mr Meek confirmed that the defects had been addressed by Ms Benson.

5.8 Wires hanging from the ceiling in the dining room.

Mr Murphy explained that Ms Benson was keen to move into the Property before all the works were complete. He had arranged for a wire to be run to enable a carbon monoxide alarm to be installed but then found out the carbon monoxide alarm did not need to be hard wired. He referred the Tribunal to the EICR that had been produced.

Mr Meek had nothing further to add.

5.9 No carbon monoxide detector.

The parties had nothing further to add.

5.10 The electric meters are not covered.

Mr Meek accepted that this complaint is not a breach of the repairing standard.

5.11 There are no front or side panels to the bath.

The parties had nothing further to add.

## 6. Decision

6.1 The Tribunal accepted that the Appellant had withdrawn the following complaints from the application:

(a) Handles and locks to front windows are defective and

(b) There are no front or side panels to the bath.

6.2 The Tribunal made the following findings in fact:

6.2.1 The kitchen ceiling had been repaired and it was in a reasonable state of repair.

6.2.2 Downlights had been installed in the kitchen ceiling and they were in proper working order.

6.2.3 The render on the rear north most elevation of the Property was cracked and bossed in places. Some of the cracks had been filled with expanding foam. There was a remaining hole in the render.

6.2.4 The wooden boarding to the former window in the utility room was in a reasonable state of repair.

6.2.5 There was a gap under the rear door of the Property.

6.2.6 The garage roof was structurally sound.

6.2.7 The guttering to the roof of the kitchen extension was in a reasonable state of repair and proper working order.

6.2.8 A number of the internal walls of the utility room had been lined with plaster board and the plaster board had not been skimmed or decorated and they were in a reasonable state of repair.

6.2.9 Electrical wires protruded from a hole in the dining room ceiling.

6.2.10 There was no carbon monoxide alarm in the Property.

6.2.11 The electric meters were not covered.

6.3 The Tribunal made the following determinations in relation to the following provisions of the Repairing Standard:-

6.3.1 Section 13(1)(a) of the Housing (Scotland) Act 2006: The Property is not wind and watertight and in all other respects reasonably fit for habitation.

The condition of the utility room external door results in the door not being wind and water tight.

6.3.2 Section 13(1)(b) of the Housing (Scotland) Act 2006: The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order.

The hole in the external render to the rear of the Property results in the render not being in a reasonable state of repair and proper working order.

The kitchen ceiling was in a reasonable state of repair.

The garage roof was not in a dangerous condition it was in a reasonable state of repair for an external store.

The boarded up window in the utility room was in a reasonable state of repair as it was no longer used as a window and the wooden boarding kept the window aperture wind and watertight.

The fact that the utility room walls had not been skimmed or decorated was not a breach of the repairing standard.

The guttering to the kitchen extension was in a reasonable state of repair.

6.3.4 Section 13(1)(c) of the Housing (Scotland) Act 2006: the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order.

The wires hanging down from the living room ceiling are not in a reasonable state of repair and proper working order.

The absence of a cover over the electric meters was not a breach of the Repairing Standard.

6.3.5 Section 13(1)(h) Housing (Scotland) Act 2006: the Property does not meet the Tolerable Standard.

The Property does not comply with the Tolerable Standard as it does not satisfy provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

6.4 The Tribunal accordingly determine that the Landlords have failed to comply with the duties imposed by Sections 13 (1) (a), 13(1)(b), 13(1)(c), 13(1)(h) and 14(1)(b) of the Act, for the reasons stated. The Tribunal made a Repairing Standard Enforcement Order.

7. The decision of the Tribunal was unanimous.

**8. A landlord, tenant or third party applicant 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 **J Taylor**

Chairperson

Date: 27<sup>th</sup> April 2023

**Schedule of Photographs**

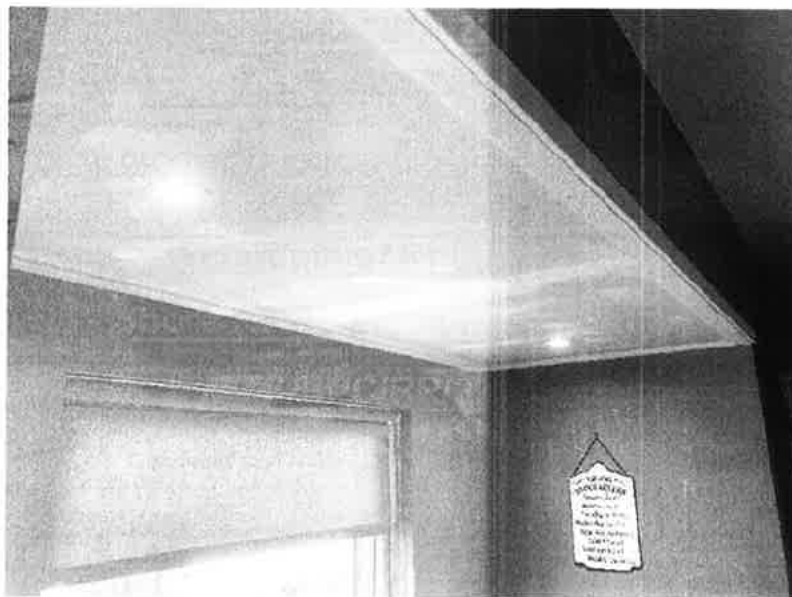
**54 Shore Road, Stevenston, KA20 3LP**

**FTS/HPC/RP/22/4470**

**Schedule of Photographs taken at the inspection on 21<sup>st</sup> April 2023**

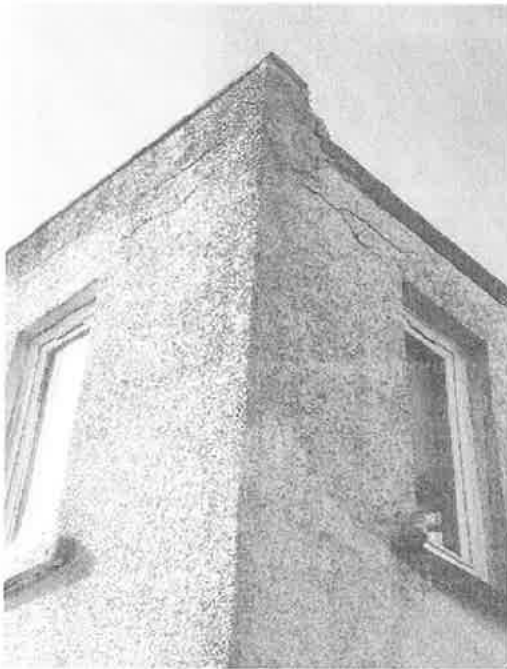


1. Front elevation

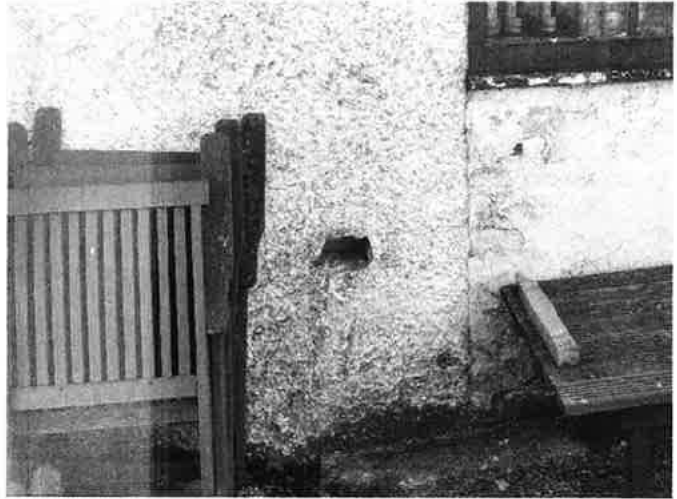


2. Kitchen ceiling and "down-lights"

*J. Taylor*



3. Expanded foam filled former hole above rear bedroom



4 Hole in kitchen wall

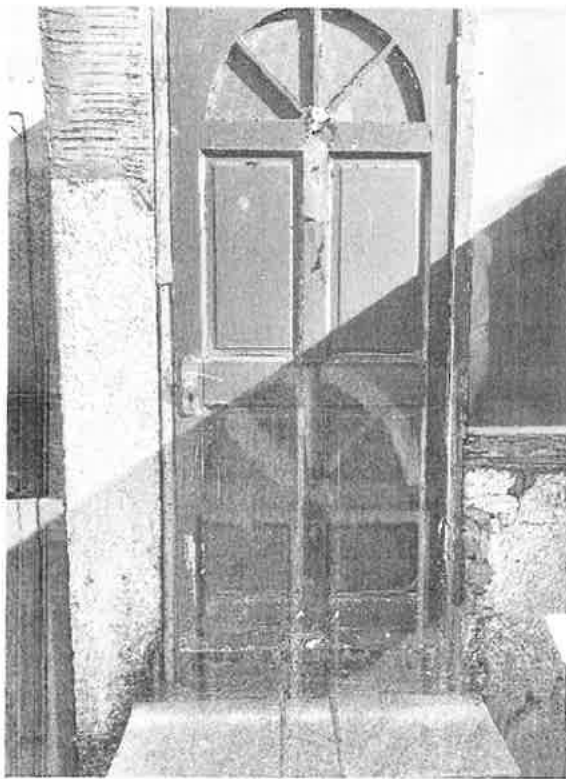


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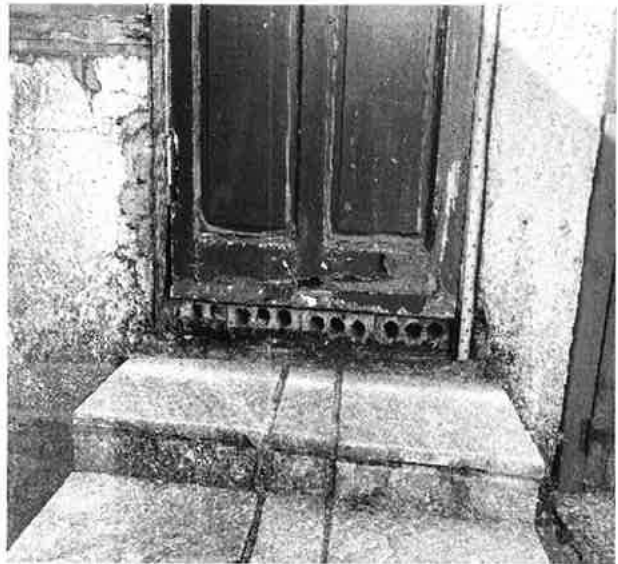


6.

Photographs 5 & 6 – Low level “broken” window at utility area.

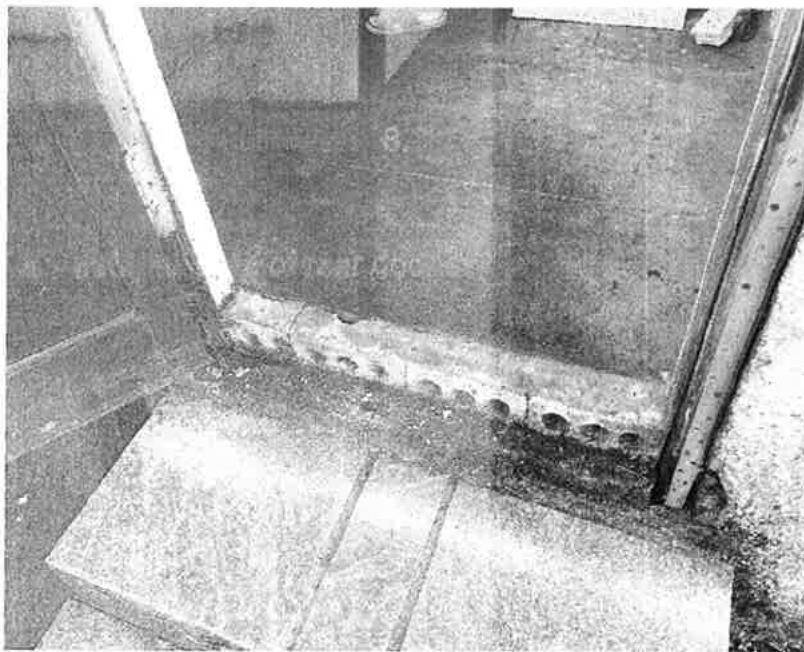


7.



8.

Photographs 7-8 – external face of rear door and timber surround



9.





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Photographs 9-10 – base of rear door with “gap” circled in red.



11 – Protimeter reading in utility area.

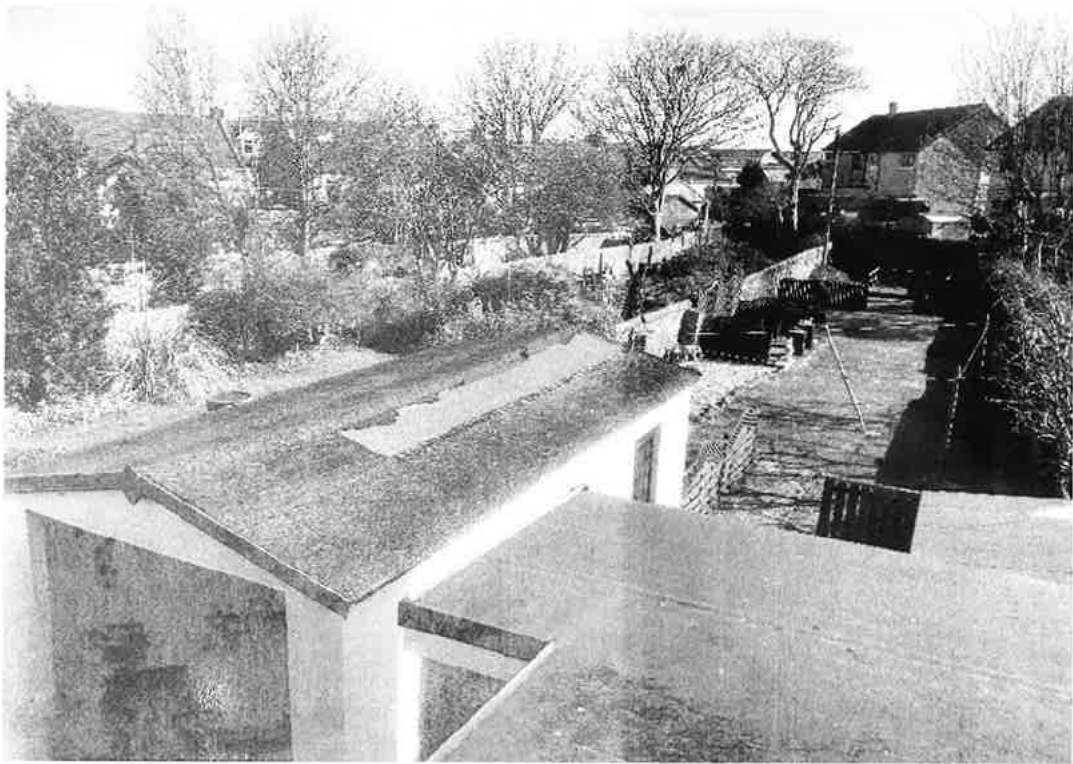




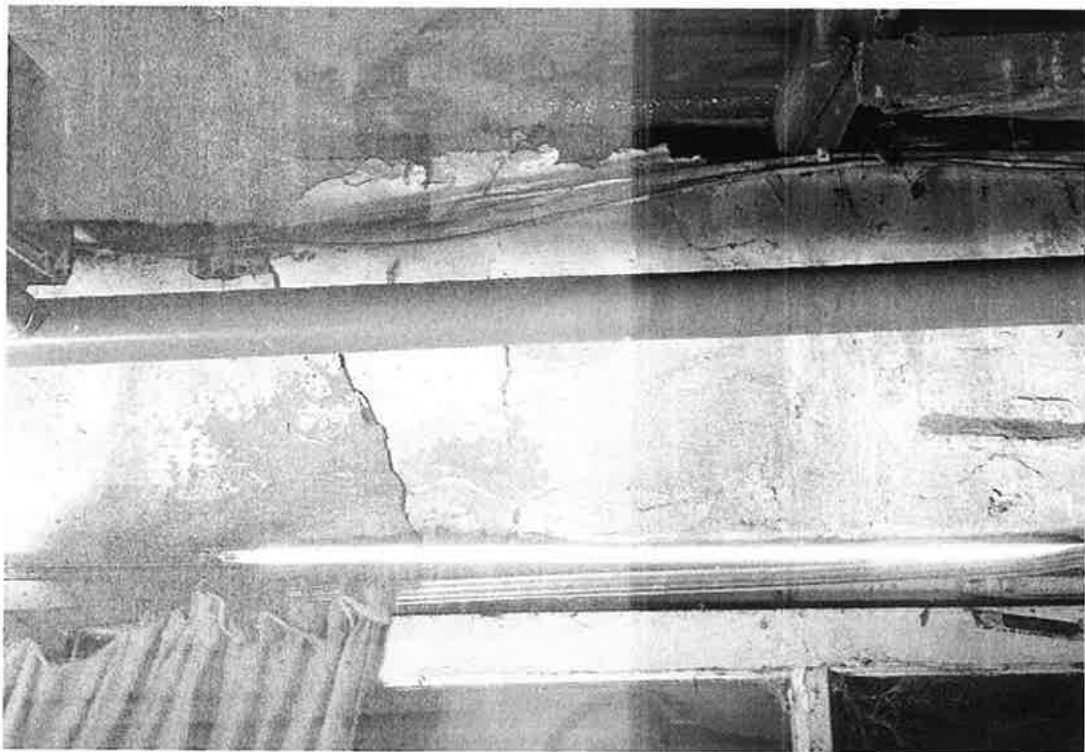
12 – “Protimeter” reading in utility area



13- “Protimeter” reading at window sill rear bedroom



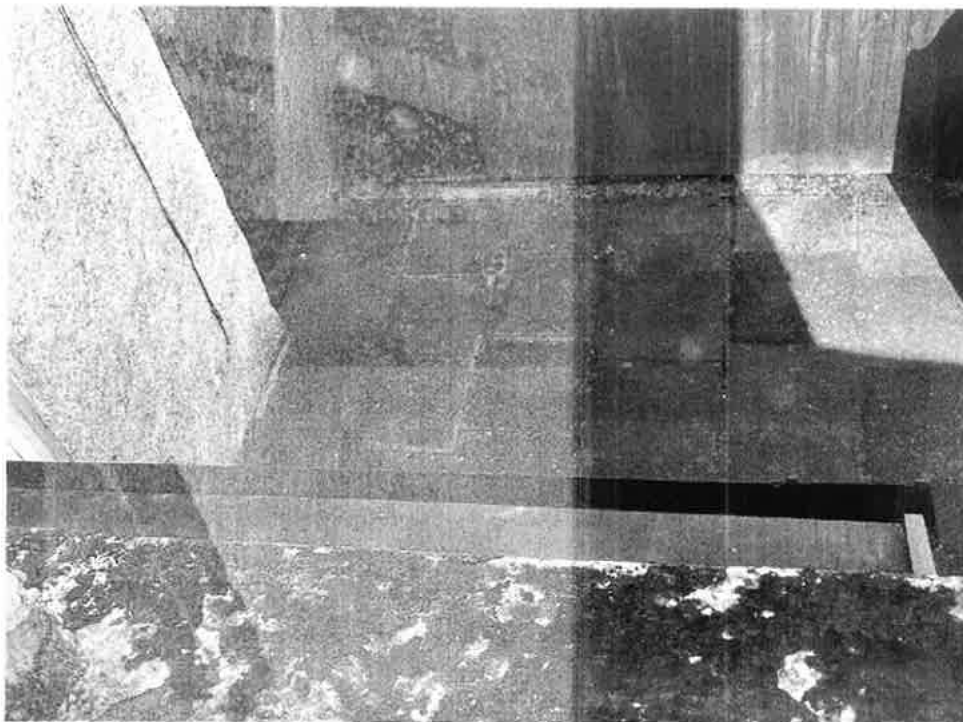
14- Garage Roof



15- Garage roof frame and "cracking" at lintol

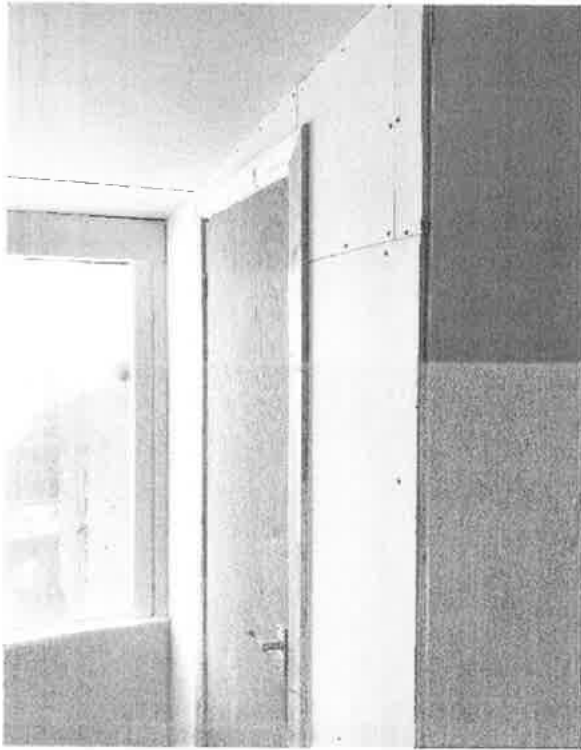


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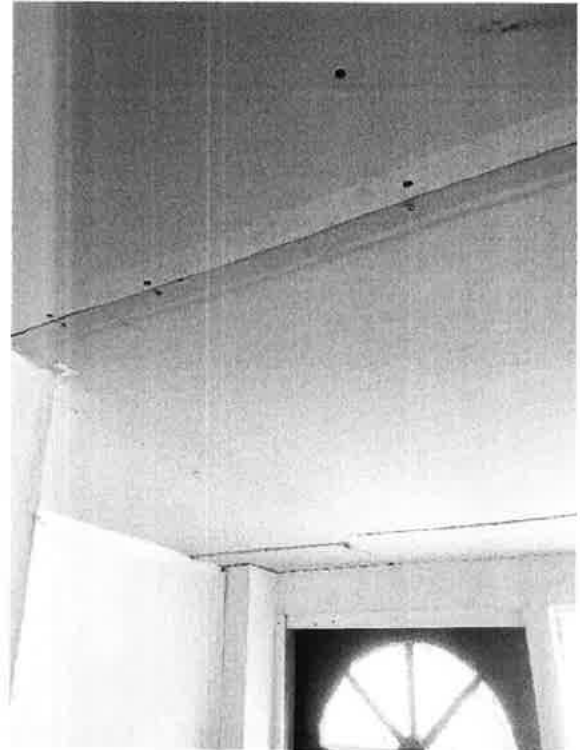


17

16 – 17 View of rear guttering from ground level and from first floor rear bedroom



18

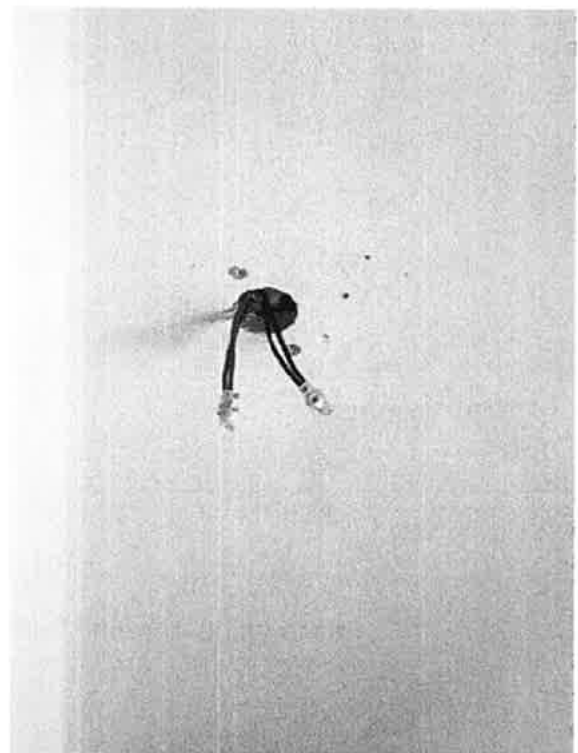


19

18-19- Unskimmed plasterboard lining in utility area.

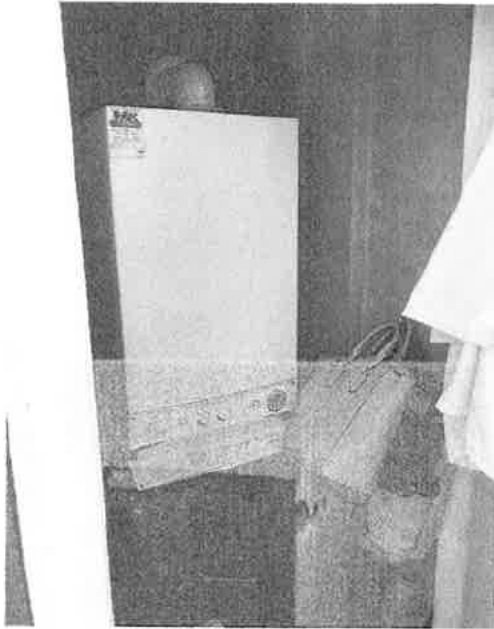


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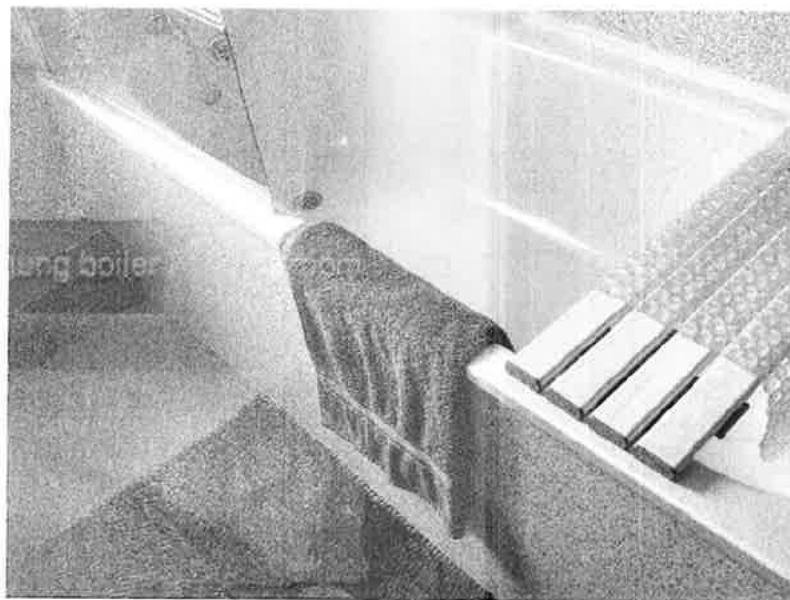
20-21 – Diningroom ceiling and "hanging wires"



22. Gas wall hung boiler in diningroom



23. Electric consumer unit front entrance



24. Bath side panel – same material and design as wet wall lining.

**This schedule of photographs was taken during an inspection of the property by the First-tier Tribunal for Scotland, Housing and Property Chamber, on Tuesday 21<sup>st</sup> April 2023 in connection with a Repairing Standard application under consideration.**

Donald Wooley MRICS

21 April 2023