



**REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee**

RE: Property at 69 Avonbank Crescent, Hamilton ML3 7PB more particularly described in Land Certificate Title number LAN62076 (hereinafter referred to as “the House”)

The Parties:

Ann Mitchell, 69 Avonbank Crescent, Hamilton ML3 7PB (hereinafter referred to as “the Tenant”)

JMK (2005) Limited, 13 Glasgow Road, Uddingston G71 7AU (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/16/0041

NOTICE TO JMK (2005) LIMITED

WHEREAS in terms of their decision dated 14 June 2016 the Committee determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...

...(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed...”

The Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular, the Committee requires the Landlord:

- 1 To repair the shelf in the upstairs hall cupboard such that it fits properly and is able to be used as intended.
- 2 To repair or replace the toilet seat such that it is secured and functions as intended.
- 3 To produce an Electrical Installation Condition Report prepared by a qualified electrician who is, or whose employer is, registered with NICEIC, SELECT or NAPIT, which confirms that the electrical installations within the House are in safe, working order. The Report should, in particular, address the sockets adjacent to the entrance hall cupboard.
- 4 To repair/replace the outside tap such that it is secured to the building and can be operated by hand.
- 5 To put the plaster above the back door into reasonable condition such that it is not cracked or flaking.
- 6 To repair or replace the garage door and its surround such that there is a properly functioning garage door capable of being opened and closed and locked.
- 7 To fit an appropriate handle to the opening section of the kitchen window.
- 8 To investigate the causes of dampness within the kitchen wall and to carry out any repairs required to address water leaks and/or ingress such that the wall is reasonably free of damp and to redecorate same (such redecoration to include the removal of any mould or staining).
- 9 To repair or replace the loft hatch such that it may be secured without risk of opening unexpectedly.
- 10 To make the loose driveway slab reasonably secure such that it does not move excessively when weight is applied to it.

The Committee orders that the works specified in this Order must be carried out and completed within two months from the date of service of this Notice.

A landlord or tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of the decision.

Where such an appeal is made, the effect of the decision and 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.

IN WITNESS WHEREOF these presents typewritten on this and the ^{two} preceding pages are signed by John Miller McHugh, Chairperson of the Private Rented Housing Committee at Edinburgh on the fourteenth day of June Two Thousand and Sixteen in the presence of the undernoted witness:

J. MCHUGH

Chairperson
G. MCHUGH

Witness *GILLIAN MCHUGH*

c/o 65 HAYMARKET TERRACE, EDINBURGH

Witness Address

Witness Occupation *STATISTICIAN*



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

**Property at 69 Avonbank Crescent, Hamilton ML3 7PB (hereinafter referred to
as “the House”)**

**Ann Mitchell, 69 Avonbank Crescent, Hamilton ML3 7PB (hereinafter referred
to as “the Tenant”)**

**JMK (2005) Limited, 13 Glasgow Road, Uddingston G71 7AU (hereinafter
referred to as “the Landlord”)**

PRHP REFERENCE PRHP/RP/16/0041

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter “the Act”) in relation to the House, and taking account of the written documentation attached to the application and the representations by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 16 February 2016 (hereinafter “the Application”), the Tenant applied to the Private Rented Housing Panel (hereinafter “the PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...
...(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,...
...(g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”*

The Tenant complained of a number of defects in the House.

By letter of 4 April 2016, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson
Ian Murning, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Committee inspected the House on 13 June 2016. The Landlord was represented by its letting agent, Matt Stretton. The Tenant was present.

Following the inspection, the Committee held a hearing at Brandon Gate, Hamilton. Both Mr Stretton and the Tenant attended.

Submissions at the Hearing

The Tenant confirmed that repairs had been carried out to her satisfaction in relation to the shower and to the broken step and she withdrew these from her application.

Insects

The Tenant complained of having seen insects which seemed from description to be “slaters”. None were present during the inspection.

Upstairs Cupboard

There was a space where a shelf was absent. The Tenant advised that that shelf had never been in place during the tenancy. A second shelf was present but was ill fitting. Mr Stretton indicated that the Landlord would be prepared to repair/replace the ill fitting shelf and would consider replacing the “missing” shelf.

Toilet Seat

The toilet seat was ill fitting and had fallen off. The Tenant advised that a previous repair had not been successful. Mr Stretton accepted that the matter required to be addressed. He had been unaware that the earlier repair had failed.

Electrical/Entrance hall cupboard

The Tenant had complained about a loose wire and sparking sockets. She reported that a repair had been carried out by persons accompanying the Landlord's maintenance man who she had presumed to be electricians. The repairs had removed the loose wire although the Tenant was unhappy with the finish of the repair which was unsightly. The repair had involved power being disconnected from the adjacent sockets. Mr Stretton agreed that the necessary decorative finishing works would be undertaken. He was unaware as to whether the property had a current Electrical Installation Condition Report (EICR).

Outside Tap

The outside tap was detached from the building. The Tenant could not remember whether it had been attached at the beginning of her tenancy. Mr Stretton thought that it had been but accepted that its detachment was as a result of age/wear and tear. The tap is missing the required section to turn it on and off by hand although it can still function using pliers. Mr Stretton accepted that repairs should be carried out to the tap.

Plaster to the lintel above the back door

The plaster is cracked and flaking and in need of repair. Mr Stretton accepted this.

Garage Door

The garage door has been taken down and is on the floor of the garage. Its wooden frame remains in place but is in poor condition. The Tenant reports that the Landlord's maintenance man had taken it down and had intended to replace it but has not done so. Mr Stretton accepts that a new door is necessary and advised that the Landlord has obtained quotations for this. He was unaware of the Landlord having accepted any quotation.

Kitchen window

The handle is missing from the kitchen window. Mr Stretton acknowledged that this was a security issue and would be replaced as soon as possible.

Kitchen walls

Staining/mould was observed in a top corner of the exterior internal wall of the kitchen. The damp meter indicated high moisture readings in this area. The parties agreed that a few months ago plumbers had investigated the cause of the dampness, it having been suspected that there may be a leak from the bathroom plumbing. No leak was identified and the area was repainted. Mould and staining has reappeared recently. The Tenant has not observed any water dripping but remains concerned that there may be a leak from the plumbing.

In the centre section of the side facing kitchen wall there was an exposed section where the parties reported that the paint had bubbled and peeled away. The

exposed section was generally dry on the damp meter but a small section showed high readings. The parties agreed that this area had been the location of the previous boiler and that the, now apparently redundant, flue remained in place in the area where the dampness was observed.

Loft Hatch

The Tenant reported that the loft hatch had previously fallen open and the ladder had hit her son on the head. A repair had been carried out but the loft hatch was still prone to falling open and, as a result, she now keeps it permanently open. Mr Stretton advised that he had been unaware that the repair was unsuccessful but acknowledged that the issue should be addressed.

Driveway slab

The Tenant was concerned about a particular slab at the top of the driveway where it meets the public pavement. It is loose and, she says, causes difficulty when driving her car in and out. Mr Stretton acknowledged this and advised that that the slab would be rebedded securely.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy Agreement in respect of the House on or around 11 August 2015.

The Landlord was recorded on the Lease as Jim Kirkland of Urban Sales and Rentals Ltd, although, in fact, he is the Landlord's agent.

JMK (2005) Limited is the registered owner of the House and is the Landlord.

The Tenant took possession of the House from 11 August 2015 and remains in occupation.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by email of 31 August 2015.

The inspection on 14 June 2016 revealed:

The House is a semi-detached property in generally reasonable condition.

No insects were observed.

In the upstairs cupboard, one shelf is missing and a second is ill fitting.

The toilet seat lid has fallen off.

In the entrance hall cupboard, no wires are evident. A repair has been carried out but the surfaces are rough and unfinished/undecorated.

The outside tap is detached from the building. The tap is missing the required section to turn it on and off by hand.

Plasterwork to the lintel above the back door is cracked and flaking.

The garage door has been taken down and is on the floor of the garage. Its wooden frame remains in place but is in poor condition.

The handle is missing from the kitchen window.

Staining/mould was observed in a top corner of the exterior internal wall of the kitchen. The damp meter indicated high moisture readings in this area.

In the centre section of the same wall the exposed section was generally dry on the damp meter but a small section, which is believed to be the location of an old flue, showed high readings on the damp meter.

The loft hatch was found in an open position. It was able to be closed and secured by its latch.

A slab at the top of the driveway adjacent to the public pavement moves excessively and is poorly bedded in.

A schedule of photographs taken by the Surveyor Member at the inspection is appended to this Determination.

Reasons for the Decision

Insects

No insects were observed during the inspection. We identify no breach of the repairing standard.

Upstairs Cupboard

There was a space where a shelf was absent in the cupboard. The shelf had never been in place during the tenancy. A second shelf was in use but was ill fitting. As the “missing” shelf had never been present during the tenancy, we identify no breach of the repairing standard. We do, however, consider the condition of the ill fitting shelf to be a breach of the repairing standard.

Toilet Seat

The toilet seat was ill fitting and had fallen off. A previous repair had not been successful. We consider this item to constitute a breach of the repairing standard.

Electrical/Entrance hall cupboard

The repair carried out to deal with the tenant’s complaint of a loose wire have left the walls unfinished and in unsightly condition. The nearby sockets now do not work. There is a legitimate concern as to matters of electrical safety in these circumstances and we find there to be a breach of the repairing standard in these respects.

Outside Tap

The outside tap was detached from the building and is missing the required section to turn it on and off by hand. We consider these matters to constitute a breach of the repairing standard.

Plaster to the lintel above the back door

The plaster is cracked and flaking and in need of repair and is likely to fall onto those passing under it. We consider this to constitute a breach of the repairing standard.

Garage Door

The garage door has been taken down and is on the floor of the garage. Its wooden frame remains in place but is in poor condition. We consider these matters to constitute a breach of the repairing standard.

Kitchen window

The handle is missing from the kitchen window and this creates both a practical difficulty for the user as well as a security risk. We consider this to constitute a breach of the repairing standard.

Kitchen walls

We consider the staining/mould and damp areas to constitute breaches of the repairing standard.

Loft Hatch

The loft hatch appears to continue to present a risk of opening unintentionally to the potential injury of those below. The catch appears old and unreliable. We consider this to constitute a breach of the repairing standard.

Driveway slab

The driveway is slabbed and the quality of the driveway is generally poor with large gaps between the slabs. The particular slab in which there is excessive movement is considered by us to represent a breach of the repairing standard.

Repairing Standard Enforcement Order

Having decided to make a Repairing Standard Enforcement Order, the Committee considered the length of time which should be provided for compliance. The Committee elected to impose a period of two months. In setting this length of time, the Committee took into consideration that it may take some time to arrange the replacement of the garage door.

Observations

It was apparent that the Landlord's representative had relied upon its maintenance man to carry out repairs and had (wrongly) assumed that repairs allocated to him had been carried out satisfactorily. It would be sensible for the Landlord's agent to consider implementing a system for the inspection of repairs or for obtaining the Tenant's confirmation of satisfaction with repairs. Such a system would be likely to avoid the likelihood of similar applications to the present in future.

Decision

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

J. MCHUGH

John McHugh
Chairperson

Date: 14 June 2016

Front Elevation of House



Front & Side Elevations of House



Rear Elevation of House



Rear Elevation of House



WC with Seat Cover at Side



Hall Press with Missing Shelf



View of Shower Over Bath



Loft Hatch Door



View through Open Hatch to Loft



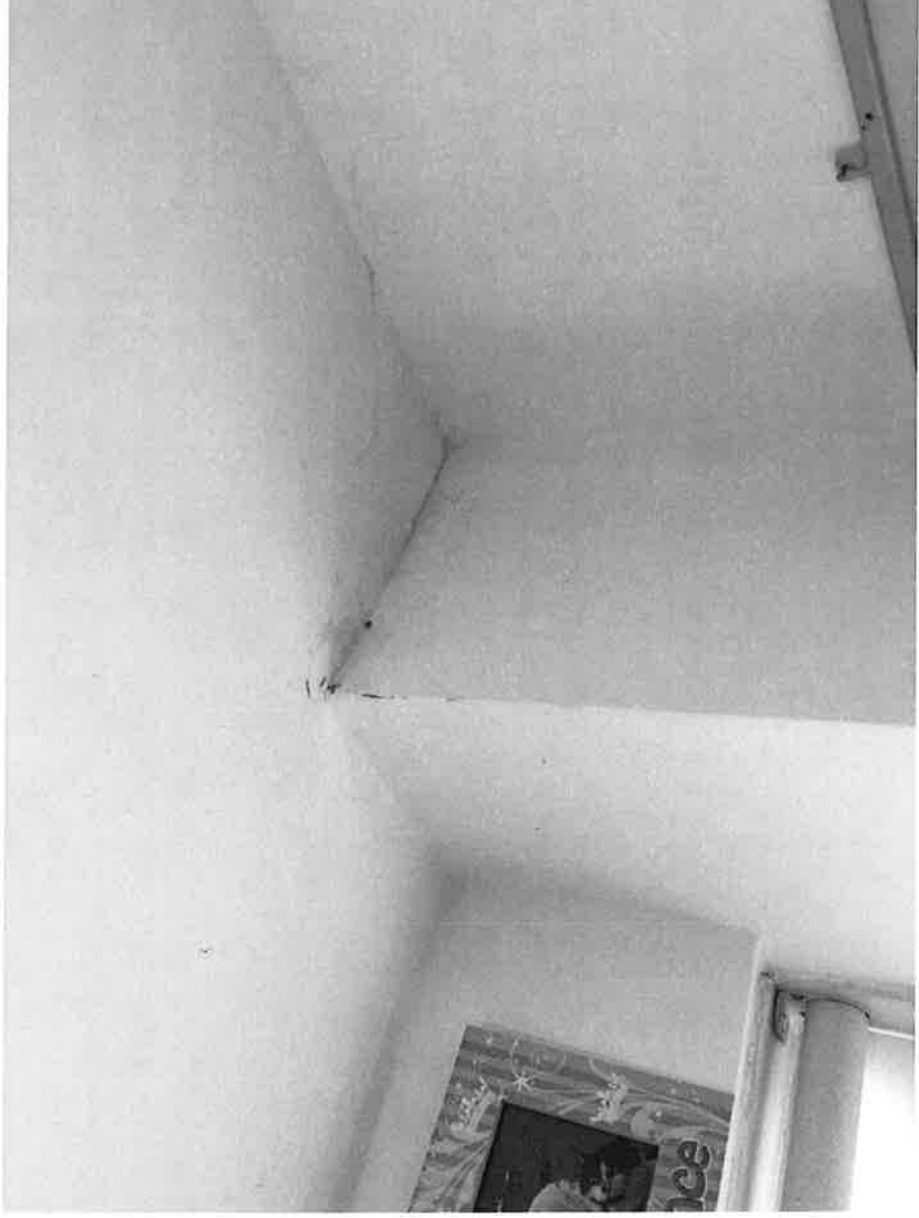
Ceiling of Hall Cupboard showing Repair



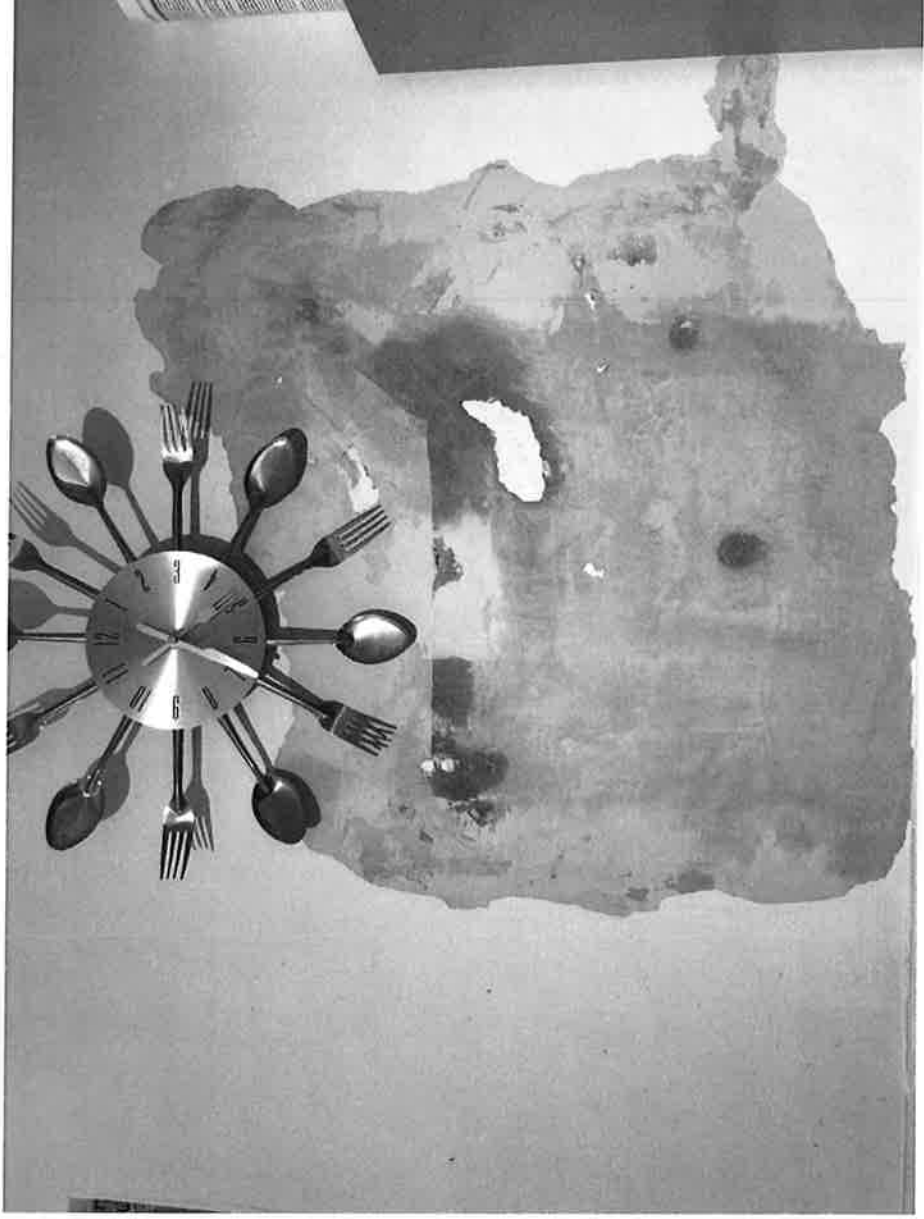
Roughcast falling away from Rear Door Lintel



Ceiling in corner of Kitchen where Damp



Kitchen wall – site of Old Boiler - damp



Front elevation of Garage – door off



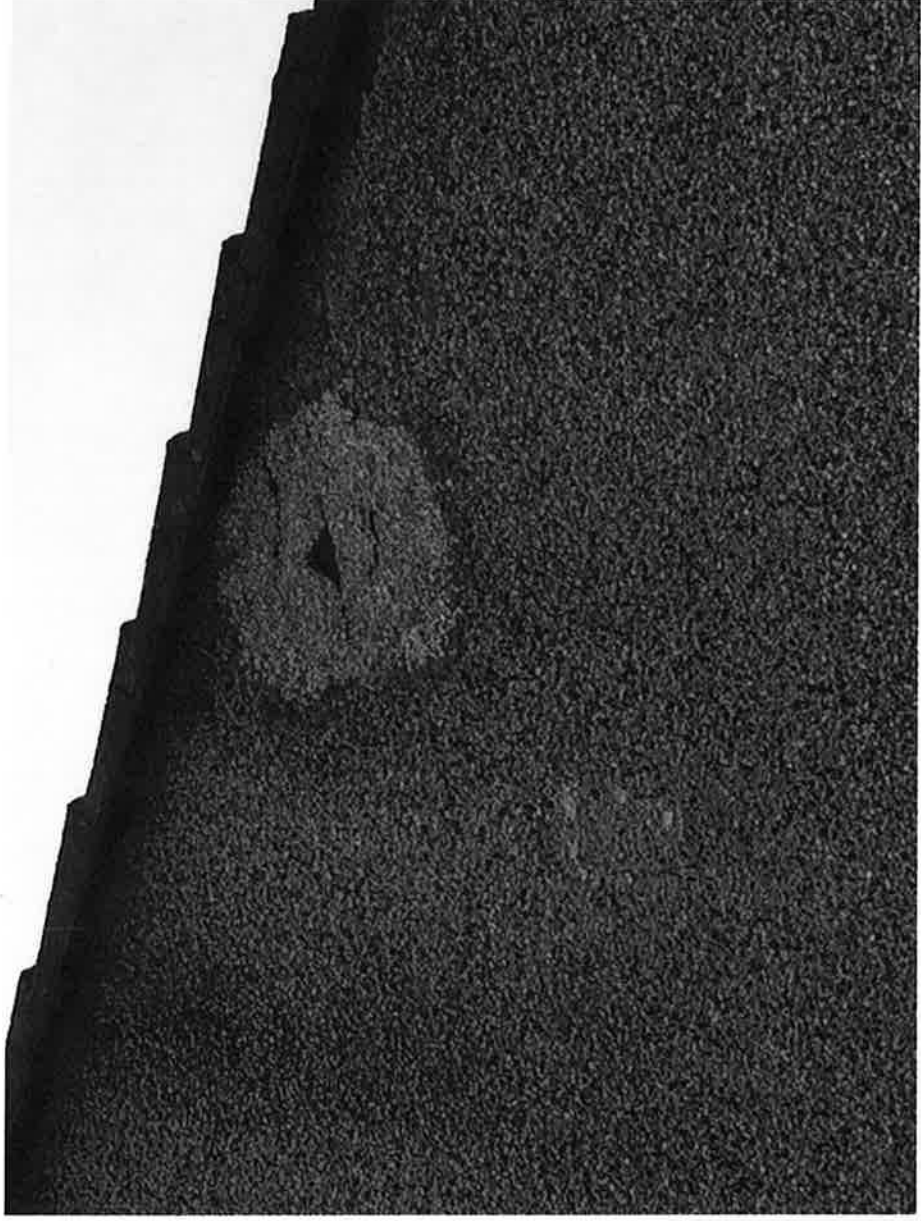
View along Driveway at side of House



Driveway at Public Footpath



Roughcast Repair – Former Overflow?



Redundant External Flue from Old Boiler



AICO Mains Smoke Detector



Smoke Detector Alarm



Back Door with installed Cat Flap

