

## PRIVATE RENTED HOUSING PANEL FOR SCOTLAND

### **Decision and reasons for decision of the Private Rented Housing Committee in the application by Dr Simon Harbinson in respect of 9 Royal Gardens, Stirling FK8 2RJ ("the house"), the landlord being Mr Colin Daniel Cameron.**

#### *Introduction*

1. On 2 June 2009, the Committee adjourned its hearing on the motion of the landlord's agent Mr Gibson to enable Mr Cameron, one of the joint landlords, to make representations in person to the Committee. The decision and reasons in respect of the proceedings on that day have already been intimated to the parties and should be read together with this statement of the decision of the Committee and its reasons.
2. The Committee met once more on 7 July 2009 in Stirling for the adjourned hearing. Present at that hearing in addition to the Committee and its Clerk were the tenant, Mr Cameron, ("the landlord") and said Mr Gibson.

#### *Inspection*

3. The Committee first records the results of its inspection of the house. These results form the tribunal's findings in fact as regards the house and its condition. In so far as this Committee finds that any particular window was defective, that finding followed visual inspection and efforts by each member to operate that window. The landlord's agent was present throughout the inspection. The windows in the property are numbered W1 upwards. Reference is made to the accompanying plan which indicates the location of each which forms part of these reasons and findings.

4. The property comprises a substantial two storey Victorian end terraced house built around 1880 with a single storey rear projection. The main external walls are of traditional sandstone construction and the roof is hipped and slate covered. The dwelling is designated as a listed building. The prospective life of the house is considerable and in excess of 50 years. This property forms part of an attractive and well established residential district in the King's park area of Stirling. The locality is built up with similar style substantial Victorian houses and is a Conservation Area. The front of the house is approximately north-west facing and has the benefit of an attractive open outlook over parkland, originally utilised as royal gardens when the adjacent Stirling Castle was a Royal palace. The property is conveniently located for nearby facilities and services in Stirling city centre.
5. The ground floor comprises an entrance hall, lounge, dining room and kitchen in the main building with a scullery and shower room within the rear projection. Three bedrooms and a bathroom are contained upstairs. The lounge and front bedroom above are particularly spacious, being the full width of the house and although fully furnished considerable circulation space remains. The size of bedroom 1 is similar to the combined area of bedroom 2 and bedroom 3. The fire escape provision is by means of the existing windows and doors. The windows are of older timber sash and casement single glazed style with the exception of UPVC windows in the single storey rear projection. There is also additional secondary double glazing.
6. The entrance hall has no window provision. The lounge windows W1, W2, W3 do not open and both sash cords are missing or broken in each window. In the dining room W4 opens but does not remain open, has one

broken sash cord and is unsafe to ordinary user. W5 does not open. Within the kitchen W6 does not open. Upstairs in bedroom 1, W7 and W8 do not open and in W8, the cords are both broken. W9 opens and can stay open. W10 in the bathroom opens but both cords are broken, does not remain open in ordinary use and is unsafe to ordinary user. In bedroom 2, W11 does not open and both sash cords are broken. W12 in bedroom 3 opens but has one broken sash cord and is unsafe to ordinary user.

7. In addition to the aforementioned window defects, external window pointing was also in poor condition, and paintwork to window timbers externally was weathered. Internally the rooms were hot and the temperature in bedroom 2 was recorded as 25 degrees Celsius. Outside, the temperature was somewhat cooler.
8. Furthermore, even those windows which could be opened were defective in that the sash and case mechanism was in all cases broken (with the exception of W9 which operated reasonably satisfactorily, though not perfectly). They were not in proper working order and posed (with the exception of W9) a safety risk to ordinary user. Further, those windows which could not be opened at all were not in any kind of working order, still less proper working order. The condition of the windows was the same at the start of the tenancy.
9. The house did not in all respects provide suitable provision for ventilation, sanitation, reasonable comfort, health, safety and good housekeeping suitable for the type of use for which the house was designed that is residential accommodation for a family. The combined effect of the defects noted was that the house was not in all respects reasonably fit for human habitation both at the start of the tenancy and at the date of inspection.

*The law*

10. In terms of section 14(1) of the Housing (Scotland) Act 2006 ("the Act"), the landlord has a duty to ensure that the house meets the repairing standard both at the start of the tenancy; and throughout the course of the tenancy (once notified of the need for repair). The repairing standard is defined by section 13(1). A house meets the repairing standard if *inter alia*, (a) "...the house is in all other respects reasonably fit for human habitation" and (b) "the structure and exterior of the house are in a reasonable state of repair ... and in proper working order". Where either of those conditions is not met, the house does not meet the repairing standard.
11. Where the committee finds that the house does not meet the repairing standard, in terms of section 24(2) it may make a repairing standard enforcement order ("RSEO") requiring 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 work is made good. In other words, the landlord must put right any damage consequential on the works being carried out.
12. The Act sets out the various steps that may be taken by the Committee, and others, in the event that the RSEO is not complied with. These include: service of notice on the local authority, the making of a rent relief order by which the rent payable under the tenancy may be reduced by up to 90%. In addition, it is a criminal offence to fail to comply with a RSEO without reasonable excuse.

*Hearing*

13. The tenant reiterated his view that the majority of the windows in the house could not be opened and that while he accepted the house was old, he considered that at least one window in each room should be in proper working order. He had asked a number of times for repairs to be carried out, the landlord's agents had acknowledged his requests but refused to carry out repairs. This application to the PRHP was a last resort. There were in the papers a number of documents evidencing his request and the landlord's agent's replies.
14. The landlord was frank in his admission that a number of windows in the house did not open at all and had been painted shut many years before. The condition of the house as the Committee saw it was the same at the date of the commencement of the tenancy. He knew this and had known this for many years and certainly knew of this at the commencement of the tenant's tenancy. He maintained however that there was no need for all windows to be openable and that there were sufficient windows that were capable of being opened in the house to meet his obligations as a landlord. He accepted however that of those windows which did open, they had to be capable of being safely operated.
15. He told the committee why he had deliberately not ordered repairs to be carried out. The reason was cost. He has many other properties which he lets out including properties of a similar age in Belfast. From that experience, his opinion was that such windows deteriorate over time. He was also of the view that the current state of the windows was such that it would not be possible simply to remove the paint and carry out simple repair work. That would result in the wood of the frame and window

being damaged to such an extent that complete replacement would be necessary. He said that he was given similar advice by a well-known local painter and decorator in around 1996. He could not remember the name of the person who he said gave him that advice. Nor could he remember the name of the firm he worked for. As far as cost of replacement windows was concerned, that would be very costly. He claimed that it cost him £2000 in the late 1990's to replace a small sash and case window in the scullery with a PVC equivalent. Windows at the front of the property, if replaced, would have to be replaced by custom made wooden (not PVC) sash and case windows because the house is in a conservation area.

16. Although he had no estimate for the cost of replacement in those terms, he claimed that at one time, unspecified, he was given an estimate for replacement of each sash and case window at the front of the building by Stirling Glazing of between £7,000 and £8,000, making the cost of replacing a bay window area in the region of £21,000 and £24,000. He simply could not afford the cost of such replacement and so did nothing. He could not provide any further details of this estimate and produced no documentary evidence to support any of his submissions.
17. The committee, he said should take account of the cost of repairs and cost effectiveness of carrying out repairs. Although this consideration was not found expressed anywhere in the Act, it was implicit he said and he urged the committee to take that consideration on board.
18. Mr Cameron also submitted that the committee had to take account of the age, character, prospective life and locality in reaching a decision as to whether the house met the repairing standard in section 13 of the Act. So, he submitted, given the age of the house, and its character, no-one could reasonably expect that all the windows would be in proper working order.

This house did have some in proper working order and that was sufficient to meet the repairing standard.

*Decision*

19. The tribunal was entirely satisfied that the house did not meet the repairing standard in section 13 of the Act, taking account of the provisions of the whole of that section including section 13(3) and the rest of the Act. In particular, the Committee was satisfied that the windows W1, W3, W4, W6, W7, W9, W10, W11, W12 were not in a reasonable state of repair and in proper working order within the meaning of 13(1)(b), *separatim* that the house was not in all respects reasonably fit for human habitation within the meaning of section 13(1)(a) of the 2006 Act in that the windows W1, W3, W4, W6, W7, W9, W10, W11, W12 were not capable of being opened and used safely, contrary to the landlord's duty in terms of section 14(1)(a) and (b) of the Act. The Committee therefore makes a repairing standard enforcement order (RSEO) which accompanies this statement. The landlord has two months to comply from the date of service of that order.

*Reasons*

20. It was not in dispute that the majority of the windows in the house were not openable at all. Mr Cameron did not accept however that certain of the windows (for example W11) was not openable. However, the Committee inspected and tested all windows and is satisfied that the results of its inspection noted above are correct; that inspection forms the basis of its findings in fact. Moreover, of those windows which did open, only one (W9) was in proper working order. That is, the sash cords were

intact, the window opened and closed in the manner in which it was designed and could be operated without any significant risk to the safety of the occupants. The other windows which could be opened (W4, W10 and W12) had one or both of the sash cords broken and did not have any satisfactory means to stop the window falling closed. W10 could only be kept open by placing an object in the aperture. Those windows posed a significant risk of injury to the occupants of the house in that the window might easily fall trapping a part of a person's body in it and perhaps causing the window pane to shatter posing an obvious risk to the safety of the occupants. In any event, as regards those windows which were openable, they could not be said to be in *proper* working order. They were obviously defective given the lack of sash cords and the associated apparatus for opening and closing windows in the manner in which the windows were designed to be used.

21. These windows had been in that condition at the inception of the tenancy and throughout.
22. The Committee then required to consider the terms of section 13, the repairing standard. It first considered section 13(1)(b) the terms of which are noted above. The windows, including the panes, the frames holding the panes, the casement in which the frames sit are all part of either the structure or the exterior in the view of the Committee and fall within section 13(1)(b) of the repairing standard. Most of the windows did not open at all. Those were obviously not in proper working order. Of those that did open, they were not (with the exception of W9) in proper working order for the reasons given above. Therefore, at first sight, the section 13 (1)(b) standard was not satisfied in respect of all those windows.



23. However, before making any conclusion as regards the extent to which the windows did or did not meet the repairing standard, the tribunal had to have regard to the terms of section 13(3) of the Act. The tribunal accepted that due to the age of the house, it would not be reasonable to expect each and every window to be in proper working order. Given the passage of time, even in reasonably well-maintained houses, some windows may fall into disrepair. The Committee accepts given that factor, some leeway must be given as to the standard of repair. However, the Committee considered that the character of the house, the locality as well as the prospective life of the house was all factors that indicated a higher rather than lower standard of repair.
24. Having regard to all those factors, the Committee conclude that while not all windows in this particular house need to be in proper working order to comply with the repairing standard, as a minimum, at least one of the windows in each room should be in that condition. The exceptions to that conclusion are bedroom 1 (the main bedroom) and the lounge. Both are very large rooms, each with a 3 part bay window. They are the same size, being roughly equivalent in size to bedrooms 2 and 3 combined. Both are likely to be occupied for large parts of the day. In the view of the Committee, two of the three windows (the two smallest) must meet the repairing standard for those reasons. The result of that conclusion is that the Committee does not make a RSEO in respect of W2, W5 and W8 even though they do not work.
25. As regards the extent of the work that required to be done, the Committee note that the requirement of the repairing standard is "proper working order" not just working order. Thus, it is not enough that the windows may be capable of being opened and kept open with an object or held in

place by friction. Proper working order means, in the view of the Committee that the windows work in the way in which they were designed to do. Sash and case windows are designed to work with a system of counter-balanced weights attached to two sash cords running over two pulleys attached to the window to allow the window frame to be raised and lowered within the casement with reasonable ease and allowing the windows to remain in place, whether open or closed, without the need for an external object to be used. Unless the windows are put into that condition once more, they are not in *proper* working order.

26. Furthermore, in the view of the Committee, a window which is not capable of being used without significant risk to the safety of the occupants of the house (which may, as in this case, include young children) is not in proper working order. Therefore the RSEO requires that the sash cord and associated design mechanism for the operation of the sash and case windows be reinstated for all the windows specified which will obviate that risk.
27. In reaching these conclusions, the Committee considered carefully the central contention of the landlord that he should not be required to carry out any work to the windows because (a) repair was not feasible, only replacement and (b) the cost of replacement was prohibitive. The Committee was not persuaded by these arguments for the following reasons.
28. First, there is no provision in the Act for the cost of repairs to be taken into account when deciding whether the repairing standard is met. It is irrelevant. If the Scottish Parliament had intended that the Committee take account of cost of repairs, cost-effectiveness or the passing rent, it would

have said so. If the Committee had taken account of the claimed cost of meeting the repairing standard, it would have been in error of law.

29. Second, in any event, the Committee, as an expert body, was wholly unconvinced by the landlord's assertions that mere repair as opposed to replacement was not possible. The landlord's evidence for that conclusion was based on mere assertion and on the remarks of an unidentified painter/decorator in 1996. There was therefore no sound evidence whatsoever supporting the landlord's assertions in that regard.
30. Furthermore, as an expert body, and after having inspected the house, the Committee did not accept the landlord's assertions. In the view of the Committee, it is very likely that work of repair rather than replacement would be capable of putting the windows into a state that meets the section 13 standard. In any event, even if the landlord was correct that the windows could only be made to comply with section 13 of the Act by replacement, that factor plays no part in the decision of the Committee as to whether the section 13 standard is met. Whether mere repair or replacement is required to put the house into a section 13 compliant state does not affect the Committee's conclusions on whether the house meets the repairing standard. The landlord is entitled to choose the most cost effective means of complying with his statutory obligations. The RSEO entitles the landlord to do either so long as the required end result is achieved.
31. Third, the Committee, again as an expert body, was quite unconvinced by the assertions of the landlord as regards the cost of replacement. Again, he provided no documentary evidence or any other satisfactory evidence to support his assertions. The figures quoted by him were substantially in excess of what the Committee believes would be a true competitive cost

for carrying out replacement of the windows. In any event, as the Committee records above, cost is irrelevant and even if the Committee had been persuaded that the landlord's submissions had any real substance, the result would have been the same.

*In all respects reasonably fit for human habitation*

32. The Committee considered also whether any other requirement of the section 13 repairing standard was not met. The Committee concluded that the windows did not meet the standard set by section 13(1)(a) in that the house was not in all respects reasonably fit for human habitation in its present state.
33. In the view of the Committee, for reasons of ventilation, sanitation, reasonable comfort, health and good housekeeping, the house should have in each room at least one window which is capable of being opened and closed safely. In the case of the lounge and bedroom 1, for the reasons given above, the two smaller windows should meet that standard. In order for a window to be capable of being opened and closed safely, it should be operable and operated in the manner designed, as described above. Some of the windows opened but posed a safety risk. Most did not open at all. The house is therefore not in all respects reasonably fit for human habitation in the view of the Committee.
34. In reaching that conclusion, that Committee had regard to its own expert knowledge. It also had regard to the obviously defective nature of the windows that were openable (bar W9) and the risks that they posed to the occupants, to the design and character of the house and to the reasonable needs of those who the house was originally designed to house: a family. The Committee also took into account that on its inspection, the

temperature in bedroom 2 had reached 25 degrees Celsius on a sunny day when the temperature outside was considerably less. It was in the view of the Committee quite unacceptable that the room should not have a window in proper working order.

35. The fact that the house is presently occupied does not in the view of the Committee affect its conclusions as regards section 13(1)(a). A house may be occupied and yet still fall below that standard. Mere occupation does not denote that the house is reasonably fit for human habitation. The test is objective and for the reasons given, this house does not meet that test in the respects set out above.
36. In reaching that conclusion, the Committee also considered the terms of section 13(3) and took account of the factors in that subsection reaching the same conclusions as it did on the section 13(1)(b) issue.

*Time for work to be done*

37. The Committee, applying its knowledge and experience of matters of repair, considering the extent of the works required, and considering that it is likely that repair rather than complete replacement will be required of the windows, allowing a reasonable time for the obtaining of estimates and the booking of suitably qualified trades people to carry out the work, considers that the work can reasonably be completed within two months of the date of the service of the RSEO.

*Conclusion*

38. The Committee concludes that not only does the house not meet the repairing standard as described in section 13(1)(b), *separatim*, it does not

meet the standard in section 13(1)(a). The work required to be done to meet the repairing standard is the same in each case.

# D O'Carroll

**Derek O'Carroll, Advocate**

**Convenor of the Private Rented Housing Committee**

**17 July 2009**

## **NOTE**

A landlord or tenant who is aggrieved by the decision of a 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 order is suspended until the appeal is abandoned or finally determined. Once the appeal is finally determined or abandoned, the decision and order will be treated as having effect from the day of that event: sections 63 and 64 of the Housing (Scotland) Act 2006.

**REPAIRING STANDARD ENFORCEMENT ORDER**

**ORDERED BY THE PRIVATE RENTED HOUSING COMMITTEE**

**RE: 9 Royal Gardens, Stirling FK8 2RJ ("the house"); Title Number STG11090**

**LANDLORD: Colin Daniel Cameron, Ptarmigan Lodge, Gryon, Switzerland**

**TENANT: Dr Simon Harbinson, Royal Gardens, Stirling FK8 2RJ**

**NOTICE TO THE LANDLORD**

Whereas in terms of its decision dated 13 July 2009, the Private Rented Housing Committee determined that the Landlord has failed to comply with the duties imposed by section 14(1)(a) and (b) of the Housing (Scotland) Act 2006 ("the Act") and in particular the landlord failed to ensure that the windows identified as W1, W3, W4, W6, W7, W9, W10, W11, W12 on the plan attached were not in a reasonable state of repair and in proper working order within the meaning of 13(1)(b), *separatim* that the house was not in all respects reasonably fit for human habitation within the meaning of section 13(1)(a) of the Act in that said windows W1, W3, W4, W6, W7, W9, W10, W11, W12 were not capable of being opened and used safely, contrary to the landlord's duty in terms of section 14(1)(a) and (b) of the Act.

The Private Rented Housing Committee now requires the Landlord to carry out such works as are necessary to ensure that the house meets the Repairing Standard in section 13 of the Act and to ensure that any damage caused by the carrying out of work in terms of this Order is made good: and all that without any charge or expense to the tenant in respect of such work and making good.

In particular, the Private Rented Housing committee requires the landlord to:

Carry out such works of repair and/or replacement to the following windows, identified on the plan attached hereto.

- (a) In respect of windows W1, W3, W6, W7 and W11 (which are at present completely incapable of being opened): carry out such works of replacement and/or repair as are necessary to permit the windows to be opened and closed with reasonable ease and safety, such works to include putting into proper working order the mechanism for the opening and closing of the windows, (that mechanism comprising both sash cords, pulley, counterweights, the window and window frame and any other necessary associated apparatus);
- (b) In respect of windows W4, W10, and W12 (which are presently capable of being opened and closed but which are not in proper working order): carry out such works of replacement and/or repair as are necessary to put into proper working order the mechanism for the opening and closing of the windows, (that mechanism comprising both sash cords, pulley, counterweights, the window and window frame and any other necessary associated apparatus).

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of **two months** from the date of service of this Order.

In witness whereof, these presents typewritten on this and the preceding pages are executed by Derek O'Carroll, Advocate, Advocates Library, Edinburgh EH1



1RF, Convenor of the Private Rented Housing Committee, at Edinburgh on 14 July 2009 before the witness undernoted.

Derek O'Carroll                      **D O'Carroll** .....

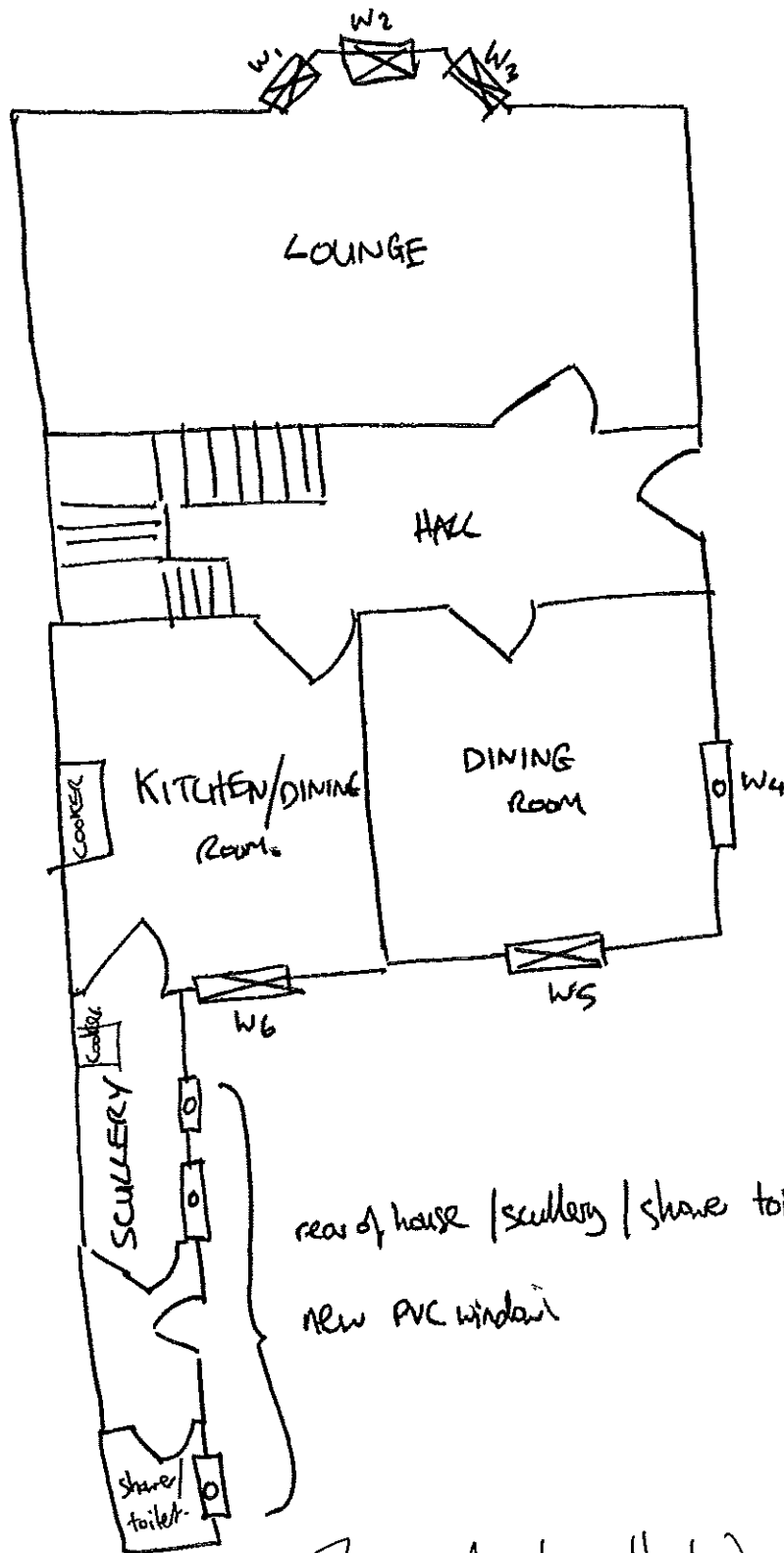
Witness name ..... *JULIA MCGUIRE* .....

Witness occupation ..... *COACH* .....

Witness signature .. **J McGuire**

Witness address.... *PUBSEAL MASONRY, 139 ROYAL MOUNTAIN BRIDGE,*  
*EDINBURGH EH3 9QG.*

Downstairs

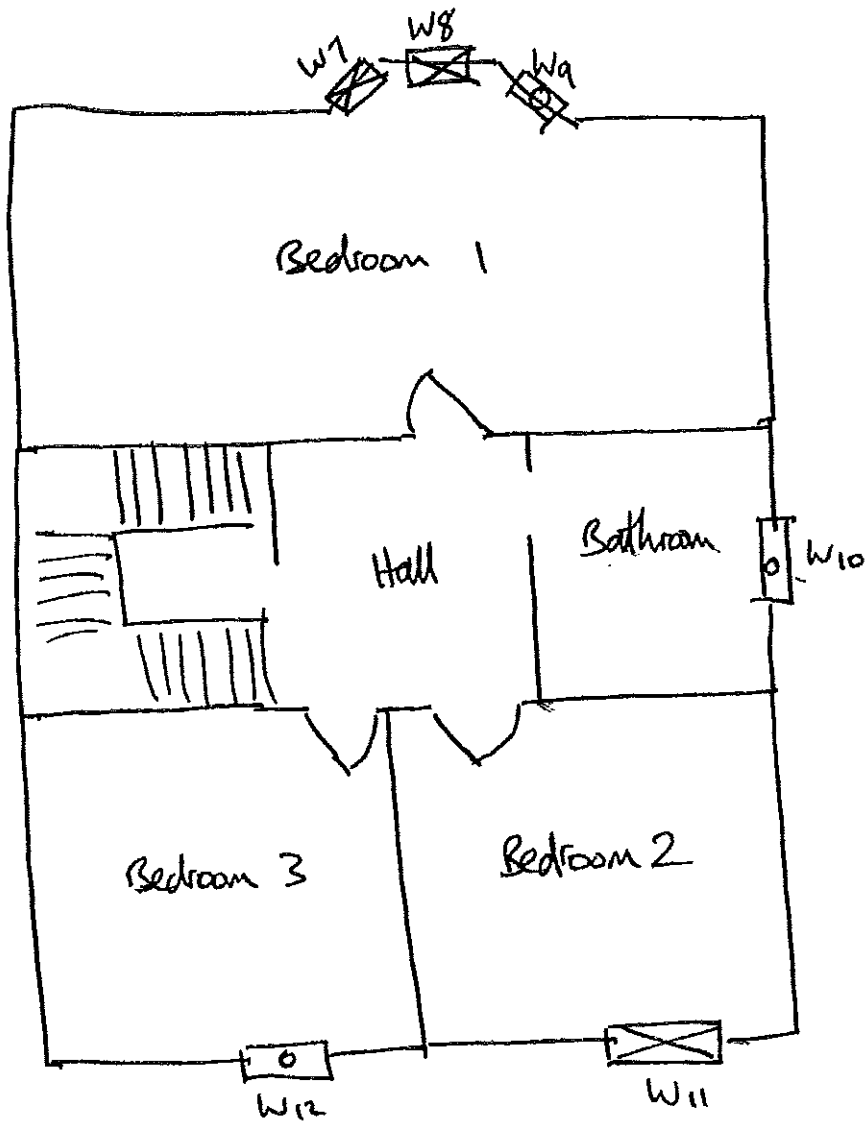


This is the plan attached referred to in the Repairing Standard Enforcement Order dated 13 July 2009, comprising two pages only.

**D O'Carroll**

18

Upstairs



D O'Carroll