

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**Repairing Standard Enforcement Order: Housing (Scotland) Act 2006 section 24(2)**

**Chamber Reference: FTS/HPC/RP/18/3305**

**Sasines Description: Blair Atholl Railway Station which subjects form part of ALL and WHOLE that plot or area of ground extending to 1.61 hectares or thereby lying partly in the Parish of Blair Atholl and partly in the Parishes of Logierait and Little Dunkeld in the County of Perth being the subjects more particularly described in, and shown outlined and coloured red on the plan annexed and signed as relative to Notice of Title in favour of Railtrack recorded in the Division of the General Register of Sasines for the County of Perth on 31<sup>st</sup> December 1996.**

**House address: Station House, Blair Atholl Railway Station, Blair Atholl, by Pitlochry ('the House')**

## **The Parties**

**Mr Edward Morrow residing at Station House, Blair Atholl Railway Station, Blair Atholl, by Pitlochry ('the Tenant')**

**Abellio Scotrail Limited, 5<sup>th</sup> Floor, Culzean Building, 36 Renfield Street Glasgow, G2 1LU, c/o Amey Consulting and Network Rail Infrastructure Limited, 58 Buchanan House, 58 Port Dundas Road, Glasgow, G4 0LQ ('the Landlords')**

## **NOTICE TO**

**Abellio Scotrail Limited, 5<sup>th</sup> Floor, Culzean Building, 36 Renfield Street Glasgow, G2 1LU**

**and**

**Network Rail Infrastructure Limited, 58 Buchanan House, 58 Port Dundas Road, Glasgow, G4 0LQ**

Whereas in terms of their decision dated 28<sup>th</sup> February 2019, the First-tier Tribunal for Scotland (Housing and Property Chamber) has determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that:

The House is wind and water tight and in all other respects reasonably fit for human habitation;

The structure and exterior of the House (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

The Tribunal 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 Tribunal requires the Landlords to:-

1. Repair the porch to ensure that it is suitably wind and watertight;
2. Produce a satisfactory electrical safety certificate from a suitably qualified and registered SELECT or NICEIC electrical contractor on the installation within the House for the supply of electricity.
3. Repair or replace the soffits to ensure that they are in a reasonable state of repair and in proper working order;
4. Ensure that the moss is cleared from the roof and roof valley, thus ensuring that the gutters are put into proper working order.

The Tribunal order that the works specified in this Order must be carried out and completed within a period of 6 weeks from the date of service of this Notice.

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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.

**Please note that in terms of section 28(1) of the Act, a Landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A Landlord (and that includes any Landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents typewritten on this and the preceding two pages are executed by Helen Forbes, solicitor, chairperson of the Tribunal at Inverness on 19<sup>th</sup> April, Two Thousand and Nineteen before this witness:

Helen Forbes

M Forbes

\_\_\_\_ chairperson

\_\_\_\_ witness

Margaret Forbes  
67B Glenurquhart Road  
Inverness  
IV3 5PB

# Housing and Property Chamber First-tier Tribunal for Scotland

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

**STATEMENT OF DECISION: Housing (Scotland) Act 2006 section 24(1)**

**Chamber Reference: FTS/HPC/RP/18/3305**

**Sasines Description: Blair Atholl Railway Station which subjects form part of ALL and WHOLE that plot or area of ground extending to 1.61 hectares or thereby lying partly in the Parish of Blair Atholl and partly in the Parishes of Logierait and Little Dunkeld in the County of Perth being the subjects more particularly described in, and shown outlined and coloured red on the plan annexed and signed as relative to Notice of Title in favour of Railtrack recorded in the Division of the General Register of Sasines for the County of Perth on 31<sup>st</sup> December 1996.**

**House address: Station House, Blair Atholl Railway Station, Blair Atholl, by Pitlochry ('the House')**

## **The Parties**

**Mr Edward Morrow residing at Station House, Blair Atholl Railway Station, Blair Atholl, by Pitlochry ('the Tenant')**

**Abellio Scotrail Limited, 5<sup>th</sup> Floor, Culzean Building, 36 Renfield Street Glasgow, G2 1LU, c/o Amey Consulting, and Network Rail Infrastructure Limited, 58 Buchanan House, 58 Port Dundas Road, Glasgow, G4 0LQ ('the Landlords')**

## **Tribunal Members**

**Ms Helen Forbes (Legal Member)**

**Mrs Debbie Scott (Ordinary Member)**

**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 Landlords have complied with the duty imposed by Section 14(1)(b) in relation to the House, determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

## Background

1. By application received in the period between 7<sup>th</sup> December 2018 and 4<sup>th</sup> January 2019, the Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').

The Tenant stated that he considered the Landlords had failed to comply with their duty to ensure that the House meets the repairing standard, in that the House was not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order. In particular, it was stated:

1. *Porch roof leaking badly*
  2. *Soffit around house rotten and holes which is holding up cast iron gutters and pipes. There is a massive build up of moss on the roof causing gutters to be overloaded and blocked when there is heavy rain. Gutters are 26 feet from ground and next to railway*
2. The Tenant notified the Landlords of the defects by email during the period between 15<sup>th</sup> May 2017 and 21<sup>st</sup> November 2018.
3. As part of the Application to the Tribunal, the Tenant enclosed the tenancy agreement and emails between the parties from 15<sup>th</sup> May 2017 to 21<sup>st</sup> November 2018.
4. On 20<sup>th</sup> December 2018, a Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber), with delegated powers and having considered the application, referred the application under Section 23(1) of the Act to a Tribunal.
5. The Tribunal members were Helen Forbes (Legal Member) and Debbie Scott (Ordinary Member).
6. Notice of Referral to a Tribunal under section 23(1) of the Act was sent to parties on 24<sup>th</sup> January 2019.
7. On 25<sup>th</sup> February 2019, the agent for Abellio Scotrail Limited lodged a report of a survey of the House carried out by Network Rail Infrastructure Limited ('Network Rail'), the owners of the House, on 12<sup>th</sup> February 2019.

## Inspection

8. The Tribunal attended at the House on 28<sup>th</sup> February 2019. The weather was dull, calm and dry. The House is a two-storey whinstone building built in 1869. The living accommodation is a first-floor flat with bedroom, dining room, living room, kitchen, box-room/cupboard and bathroom. There is also a toilet and a

laundry/storage room on the ground floor, and porch to the side of the Property. The building is situated adjacent to the railway platform. The House has a wet electric heating system and a wood-burning stove in the living room. The windows are single-glazed sash and case. The Tenant was present. Abellio Scotrail Limited's representative, Mr Scott Morrison, was present. There was no attendance on behalf of Network Rail. The Tribunal inspected the alleged defects and found as follows:

### **8.1 Porch**

There was no evidence of current water ingress, however, there was staining evident on the walls, door and blinds that tended to indicate recent water ingress. A wall-mounted electric heater had been covered up and was no longer in use. The Ordinary Member tested the walls with a damp meter and found evidence of damp in the top corner of the stonework to the left of the external door.

Externally, there was evidence of an area of stonework filled in with cement by the Tenant in an attempt to stop the water ingress.

### **8.2 Soffits and gutters**

The soffits were wooden. The paintwork had deteriorated in places, and there were holes between the roof verge and the soffits. There was evidence of rotting of the soffits and the gutter was not securely attached to the soffits.

There was evidence of moss in the gutters, and a heavy growth of moss on the roof and in the roof valley. Although there was no current overflowing, as the weather was dry, there was evidence of damp staining on the wall directly below the guttering on the car park side of the House, which tended to indicate that overflowing had taken place.

### **8.3 Additional concerns**

The Tenant pointed out additional concerns including cracks to the internal and external walls and lintels, uneven flooring, and bulging and cracks to internal ceilings. The Tenant rents the remainder of the ground floor, with the exception of the switch room, on a separate lease, and it is used for storage purposes. There was also evidence of cracks in the walls and ceilings in this area.

Photographs were taken during the inspection and are attached as a schedule to this report.

## **Discussion on the application**

9. Following the inspection, a hearing took place at the Atholl Palace Hotel, Pitlochry. The Tenant and the representative for Abellio Scotrail Limited were in attendance. There was no attendance on behalf of Network Rail.

## **Preliminary issues**

10.

10.1 The Tribunal noted that the survey lodged by Abellio Scotrail Limited had not been lodged timeously, in terms of the Rules. Mr Morrison said that the survey had been commissioned by Network Rail and it had been passed to him, at which point he had lodged it with the Tribunal. The Tenant indicated that he had no objection to the late lodging of the report. The Tribunal agreed to accept the late lodging of the report.

10.2 There was discussion about the relationship between Network Rail, the owners of the House, and Abellio Scotrail Limited. Mr Morrison said that Network Rail were the 'Superior Landlords', being the owners of the railway buildings, which includes the House. Abellio Scotrail Limited are the franchisee and the House is sub-let to them by Network Rail. Mr Morrison said he is employed by Amey Consulting and they are agents for Abellio Scotrail Limited.

10.3 The Tribunal informed the Tenant that they could only consider matters raised as part of the Application. The additional concerns mentioned during the inspection could not be considered by the Tribunal. The Tenant said he would consider raising a further application if the Landlords do not address the additional issues, some of which are addressed in the survey report carried out on behalf of Network Rail.

11. The Tribunal discussed the matters raised by the Tenant.

### **11.1 Porch**

#### **Representations by the Tenant**

The Tenant said that the porch began to leak on 30<sup>th</sup> July 2018. At that time, he emailed Mr Morrison and asked that the porch be checked. He was aware that the matter was reported by Mr Morrison to Abellio Scotrail Limited, and thereafter to Network Rail. Mr Morrison visited the House in August 2018 to inspect the problem. The Tenant was told that the Landlords required photographs of the problem. Photographs were supplied by the Tenant.

Emails continued between the parties, and on 17<sup>th</sup> October 2018, the Tenant was informed by Mr Morrison that Network Rail had decided that 'due to low maintenance the issue should sit with the tenant'. The Tenant was notified by email dated 5<sup>th</sup> November 2018 from Mr Morrison that Network Rail were

having their building engineer inspect the porch roof to address the water ingress.

The Tenant said the issue is worse during heavy wind and rain, when water pours down the walls. This blew the lights within the porch and the small wall-mounted heater no longer works. The Tenant uses buckets to collect the water, and a dehumidifier to dry out the porch.

The Tenant said he carried out an external patch repair in November 2018, by applying cement. The porch was last decorated three years ago.

### **Representations on behalf of the Landlords**

Mr Morrison said he had contacted Network Rail in order to try to sort out this problem but he has not received a satisfactory response. He explained the procedure, whereby a tenant contacts the Landlords' service centre to report a repairs concern. The matter is then triaged and, if the responsibility is deemed to lie with the Landlords, the matter will be passed to Network Rail to carry out repairs. In this case, Network Rail have not accepted they are responsible for the repair of the porch. Mr Morrison said there is a station lease between Abellio Scotrail Limited and Network Rail that incorporates structural matters, but he does not know the detail of this lease.

## **11.2 Soffits and gutters**

### **Representations by the Tenant**

The Tenant said that, although he keeps the gutters clear as much as he can, they are blocked by moss that gathers high on the roof, and in the roof valley, where he cannot access it. During heavy rain, water cascades over the guttering, particularly at the back of the House, which is in the shade. Although he cannot access the guttering at the railway side, that area gets more sun, which dries out the moss, and the guttering does not get blocked.

The problem with the soffits has been going on for years. The Tenant has carried out minor repairs to the soffit to try to patch it up. Four years ago, Network Rail came out to check the soffits and said they were rotten and required replacement. No work has since been carried out by Network Rail.

The soffits are connected to the heavy cast iron guttering, and there is a real concern that, if the soffits give way, the guttering will fall. This is a significant health and safety concern.

## **Representations on behalf of Abellio Scotrail Limited**

Mr Morrison said he did not have anything to add to what had been said by the Tenant in this regard.

### **Summary of the issues**

12. The issues to be determined are:

**12.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the Housing (Scotland) Act 2006).**

Whether the state of the porch means that the House is not wind and watertight or reasonably fit for human habitation.

**12.2 The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order (Section 13(1)(b) of the Housing (Scotland) Act 2006).**

Whether the soffits and guttering are in a reasonable state of repair and in proper working order.

### **Findings of fact**

13. (i) The current tenancy between the Tenant and Abellio Scotrail Limited commenced on 1<sup>st</sup> September 2016; however, there had been a previous tenancy in which the tenant was the son of the current Tenant. The Tenant took over that tenancy in 2010.
- (ii) Landlord Registration information indicates that the Landlord of the House is Network Rail Infrastructure Limited.
- (iii) The written tenancy agreement describes the tenancy as a Short Assured Tenancy.
- (iv) The House was let unfurnished.
- (v) Network Rail Infrastructure Limited are the heritable proprietors of the House.
- (vi) The Tenant has notified the Landlords and their representative of concerns in relation to the soffits, guttering and porch in recent years.
- (vii) The Landlords have delayed in carrying out repairs to the soffits, guttering and porch.

- (viii) There is water ingress to the porch during wet weather. This has affected the electrical supply to the porch, rendering it unsafe to use.
- (ix) The soffits are in poor repair. As well as having the propensity to cause structural damage to the House, should water penetration occur through the rotten soffits, the possibility that guttering may become detached due to the state of the soffits is a significant health and safety concern.
- (x) The guttering is prone to becoming blocked by moss that gathers on the roof and in the roof valley. The Tenant is unable to access the roof and roof valley due to the height of the House.

14. The Tribunal determined that:

**14.1 The House is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the Housing (Scotland) Act 2006).**

There is significant water ingress to the House in the porch area. This has affected the electrical supply to the porch area.

**14.2 The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order (Section 13(1)(b) of the Housing (Scotland) Act 2006).**

The soffits are not in a reasonable state of repair and in proper working order. The timber is rotten and there is potential for significant health and safety concerns to arise if the soffits were to detach from the cast iron guttering.

The guttering is not in proper working order. There is evidence of staining to the stonework below the guttering on the car park side of the House. This is caused by build-up of moss on the roof, which is not accessible by the Tenant.

## **Observations**

15. The Tribunal Members were extremely concerned at the delays on the part of the Landlords and their representative in dealing with repairs following early notification from the Tenant.

The Tribunal was concerned that there is the possibility of water penetration through the soffits. Although this has not yet manifested itself within the House, water may be gathering in the cavities and could cause structural damage.

The Tribunal noted the survey carried out by Network Rail addressed the structural integrity of the House. The Tribunal observed that monitoring may be required by the Landlords to detect whether there is significant movement of the House

The Tribunal noted that the Landlords have failed to ensure that the House has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of section 13(1)(f) of the Housing (Scotland) Act 2006. The Tenant has fitted two battery-operated smoke detectors in the hallway of the House, but there is no heat alarm in the kitchen and the smoke detectors are not hard-wired as required by legislation. This had not been notified by the Tenant to the Landlords, therefore, no Order was made in this regard; however, the Landlords would be advised to install smoke detectors and a heat detector in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 – Fire, sub-section 2.11 Communication.

### **Decision**

16. The Tribunal accordingly determined that the Landlords have failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
17. The decision of the Tribunal was unanimous.

### **Right of Appeal**

18. **In terms of section 46 of the Tribunals (Scotland) Act 2014, a party 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 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 decisions and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Helen Forbes

Signed

Legal Member and Chairperson

Date: 28<sup>th</sup> February 2019

Railway Station House, Blair Atholl, By Pitlochry, PH18 5SG  
FTS/HPC/RP/18/3305

*This is the schedule of photographs  
referred to in the foregoing Statement  
of Decision dated 28th February 2019*

**Railway Station House, Blair Atholl, By Pitlochry, PH18 5SG**  
**FTS/HPC/RP/18/3305**

*Helen Forbes*



Entrance Porch



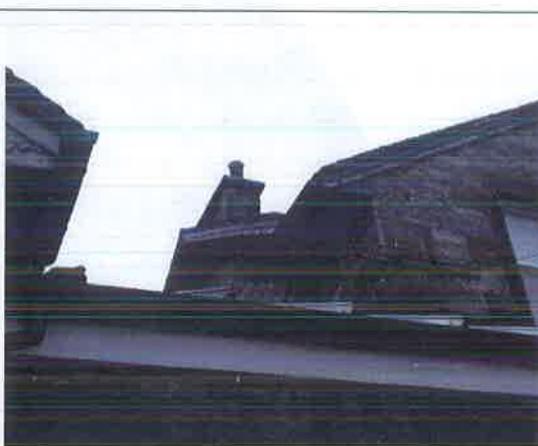
Damp staining in porch, high damp meter readings.



Porch ceiling



Porch Roof



Weathered and rotten soffits. Damp staining below on stonework



Damp staining below gutter and soffit



Patch repaired soffit



Crack in Lintel



Structural repair and monitoring dated 13/1/81



Plaster cracks adjacent to window.



Below window