

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

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

Reference number: FTS/HPC/RP/22/3634

Re: Property at Flat 3/1 55 Friarton Road, Glasgow, G43 2PP ("the Property")

Title No: GLA88722

The Parties:

Ms Natasha Vrachliotis, residing at Flat 3/1 55 Friarton Road, Glasgow, G43 2PP ("the Tenant")

Newlands Property Holdings Ltd, a company incorporated under the Companies Acts and having their registered office at 1 Merrylee Road, Newlands, Glasgow, United Kingdom, G43 2SH ("the Landlord")

Tribunal Members:

P: Doyle (Legal Member)

A: McFarlane (Ordinary Surveyor Member)

Decision

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 Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence provided, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. On 23 August 2022 the applicant submitted Form A asking for a Repairing Standard Enforcement Order on the basis that the property fails to meet both the Repairing Standard and the Tolerable Standard.

2. The applicant says that the respondent has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that:-

- (a) The house is wind and watertight and in all other respects reasonably fit for human habitation, in terms of Section 13(1)(a) of the 2006 Act;

and

- (b) 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 terms of Section 13(1)(b) of the 2006 Act;

and

- (c) The house meets the tolerable standard, in terms of Section 13(1)(h) of the 2006 Act.

3. By letters dated 16 November 2022 the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the Act to a tribunal. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

4. Following service of the Notice of Referral neither the Landlord nor the Tenant made any written further representations.

5. On 21 December 2022 the tribunal issued a minute of continuation because it was believed that the tenant was moving out of the property on 05/01/2023. The tenancy continued beyond 05/01/2023, and the lease endures today, so the tenant is still a party to proceedings.

6. Tribunal members inspected the Property at 10am on 18 January 2023. The Tenant was present. The Landlord was neither present nor represented. During the inspection on 18 January 2023, the surveyor member took photographs of the property. A schedule of those photographs is annexed hereto.

7. Following the inspection of the Property the Tribunal held a hearing by telephone conference at 2pm on 18 January 2023. The Tenant was present and represented by Ms W Malloy of Govan Law Centre. The respondent was neither present nor represented.

Summary of the issues

8. The issues to be determined are

- (i) Does the property meet the tolerable standard (as defined in S.86 of the Housing (Scotland) Act 1987)?

(ii) Does the property meet the repairing standard (as defined in s.13 of the Housing (Scotland) Act 2006)?

Findings of fact

9. The tribunal finds the following facts to be established:-

(a) The landlord is the heritable proprietor of Flat 3/1 55 Friarton Road, Glasgow, G43 2PP ("the property"). The landlord let the property to the tenant on 01/07/2020.

(b) The property is a three bedroomed flatted dwellinghouse situated on the corner of the top floor of a four-storey block of flats, built in the mid 20th century. A common stair leads to the front door of the property, which opens onto a central hallway. The property has three bedrooms, a bathroom (with a three piece sanitary suite), a living room, with a small balcony, and a kitchen (which is entered from the living room). The property benefits from gas central heating and has double glazed windows.

(c) The roof of the larger building, of which the property forms part, is pitched and finished with profiled concrete interlocking tiles. The external walls are cavity construction with blockwork external finish.

(d) The exterior walls of the dwellinghouses entered from adjacent stairs in the larger building have had the external cladding and insulation added. The exterior walls of this property (and the neighbouring properties on the same stair) have not been refurbished or renovated in (at least) the last three decades.

(e) To the front of the property, a downpipe has become disconnected. Debris has collected in the gutters serving the property. There are signs damp staining from overflowing gutters and downpipes on the outside walls of the property. The downpipes serving the property are rusted and show signs of unsuccessful temporary repairs.

(f) There are significant patches of damp staining from water ingress in the hall, living room and two (of the three) bedrooms in the property. There are three cupboards off the hall. Two of them show signs of significant water damage. A smell of damp lingers in the air when either of those two cupboards is opened. In the bedroom to the right of the hallway (viewed for the front door) there is water staining and cracked and peeled wallpaper on the wall.

(g) Wallpaper is peeling off the wall in the central hallway, disclosing damp staining on the wall and ceiling.

(h) The water staining and damp throughout the property is caused by the poor condition of the roof of the larger property. This is a corner property,

and the roof has a range of junctions and intersections, with flashings to adjacent roofs and some areas of flat roofing. The roof is compromised by broken and blocked gutters and valleys, loose, missing, and damaged roof and ridge tiles, and damaged pointing. Only temporary repairs have been carried out. In the attic roof space above the property, polythene sheets have been laid to catch water drips coming through the roof.

(i) Inspection of the cupboard in the centre of the hall confirmed that the ceiling of the cupboard has been replaced after collapsing due to water damage. The roof has been neglected for years and is in need of significant repair or replacement.

(j) On 24 May 2022 Professor Tim Sharpe prepared a report into the cause of water penetration in the property and the condition of the roof, following his own inspection of the property. In his report he concludes

Given the condition of the roof, piecemeal repairs will not be effective, and the required solution would be to replace the roof finishes, including the flat roofed areas, and the rainwater goods. Internal finishes damaged by exposure to water penetration should be dried and repaired. The loft insulation should be replaced. Given the internal moisture loads caused by water penetration I would recommend that humidistat-controlled extract fans are fitted in the kitchen and bathroom.

(k) The bathroom in the property has a double glazed window which opens, but it has neither trickle ventilation nor a mechanical extractor fan.

(l) The kitchen in the property has a double glazed window which opens, but it has neither trickle ventilation nor a mechanical extractor fan.

(m) The original fixed ventilation serving the bathroom and kitchen has been covered over in contravention of Building Standards Regulations.

(n) The defects in the roof have allowed water penetration for years. The gutters and downpipes are broken, corroded, and filled with debris. The property is not watertight. The ventilation in the bathroom and kitchen is inadequate. For those reasons the property fails to meet either the tolerable standard or the repairing standard.

Reasons for the decision

10. (a) Tribunal members inspected this property at 10:00am on 18 January 2023. It was a damp, cold, winter, morning. The tenant welcomed tribunal members into the property and allowed tribunal members to inspect the property.

(b) As soon as tribunal members entered the property they could see damage to wall coverings obviously caused by water ingress, and could smell damp. Inspection of two hall cupboards and one bedroom cupboard revealed damp staining, damage to decoration, and the pervasive smell of damp. The walls in two of the bedrooms bore the marks of water ingress, with damage to

decoration obviously caused by water penetration. The same was found in the living room.

(c) The kitchen and bathroom only have ventilation provided by a window which is capable of opening and closing. From outside the property, tribunal members could see the original ventilation system. Inspection of the interior clearly revealed that the original trickle ventilation system for reach of the kitchen and bathroom has been covered over.

(d) Inspection of the roof void (through a hatch in the common stair) confirmed that polythene sheets had been laid in the attic space in an attempt to stem the flow of water coming through the roof.

(e) It was obvious from examination of the exterior of the property that the gutters are choked with debris, downpipes are cracked and disconnected, and have been leaking. Damp staining on the outside fabric of the property adjacent to gutters, and downpipes confirms that water has been overflowing and running down the exterior of the building.

(f) Prof Sharpe's report dated 24 May 2022 is expert evidence of the condition of the roof. What Prof Sharpe reports is consistent with the observations of tribunal members. There is no countervailing evidence.

(g) Prof Sharpe's report and tribunal members observations lead us to the conclusion that the roof is in such a poor state of repair that water has been flowing into the property for years. The remedy is to replace the roof finishes, including the flat roofed areas, and the rainwater goods, and thereafter dry out, repair and redecorate interior finishes.

(h) there is neither trickle ventilation nor mechanical ventilation in the kitchen and bathroom. Tribunal members could see the original ventilation system on the outside wall of the property. In the course of internal refurbishment work, the ventilation system has been covered. That is a breach of Building Regulations.

(i) We find in fact that the gutters and down pipes are defective. That means the property cannot meet the requirements of s.13(1)(b) of the Act. We find that the property is not watertight, so the property does not meet s.13(1)(a) of the Act.

(j) The tenant says that the property does not meet the tolerable standard. S.86 of the Housing (Scotland) Act 1987 defines the Tolerable Standard as follows

(1) Subject to subsection (2), a house meets the tolerable standard for the purposes of this Act if the house—

(a) is structurally stable;

(b) is substantially free from rising or penetrating damp;

- (c) has satisfactory provision for natural and artificial lighting, for ventilation and for heating;
- (d) has an adequate piped supply of wholesome water available within the house;
- (e) has a sink provided with a satisfactory supply of both hot and cold water within the house;
- (f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house;
- (g) has an effective system for the drainage and disposal of foul and surface water;
- (h) has satisfactory facilities for the cooking of food within the house;
- (i) has satisfactory access to all external doors and outbuildings;
- (k) On the facts as we find them to be, the property suffers penetrating damp and does not have satisfactory provision for ventilation. The property therefore fails to meet the tolerable standard, and, because it fails to meet the tolerable standard, the property fails to meet the repairing standard set out in section 13 of the 2006 Act.
- (l) We therefore find that the landlord has not complied with the sections 13 & 14 of the 2006 Act. A repairing standard enforcement order is therefore necessary.

11. The tribunal makes a repairing standard enforcement order requiring the landlord to

- (a) Replace the roof finishes, including the flat roofed areas, and the rainwater goods.
- (b) Dry and repair Internal finishes damaged by exposure to water penetration.
- (c) Replace the loft insulation.
- (d) Install humidistat-controlled extract fans in the kitchen and bathroom.
- (d) Redecorate the inside of the property to remove the signs of water staining.

All within 4 months of service of this order.

12. Because the repairs to the roof might involve reaching agreement with neighbouring proprietors for a common repair scheme, we allow a period of four months to complete the works required by the RSEO.

13. The decision of the tribunal was unanimous.

Right of Appeal

14. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Effect of section 63

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

Signed
Legal Member



19 January 2023

Housing and Property Chamber

First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Street view / Front elevation

Property Flat 3/1 55 Friarton Road Glasgow G43 2PP

Ref No: FTS HPC RP 22 3634

Tribunal members Paul Doyle (Legal Member) and Andrew McFarlane (Ordinary Surveyor Member)

Purpose of inspection

The purpose of the inspection is to prepare a record of the position at the property, specifically as it relates to the items raised in the application and any issues arising therefrom.

Access

The above Tribunal Members attended the property at 10:00 on 18 January 2023. Also in attendance was Ms Natasha Vrachliotis (Tenant)

Al McFarlane FRICS
Ordinary (Surveyor) Member

First-Tier Tribunal for Scotland
18 January 2023

Appendix 1

Schedule of photographs taken during the inspection on 18 January 2023.
(28No in total)



1. Hallway looking towards cupboard at stair.



2. Hallway looking towards Bathroom.



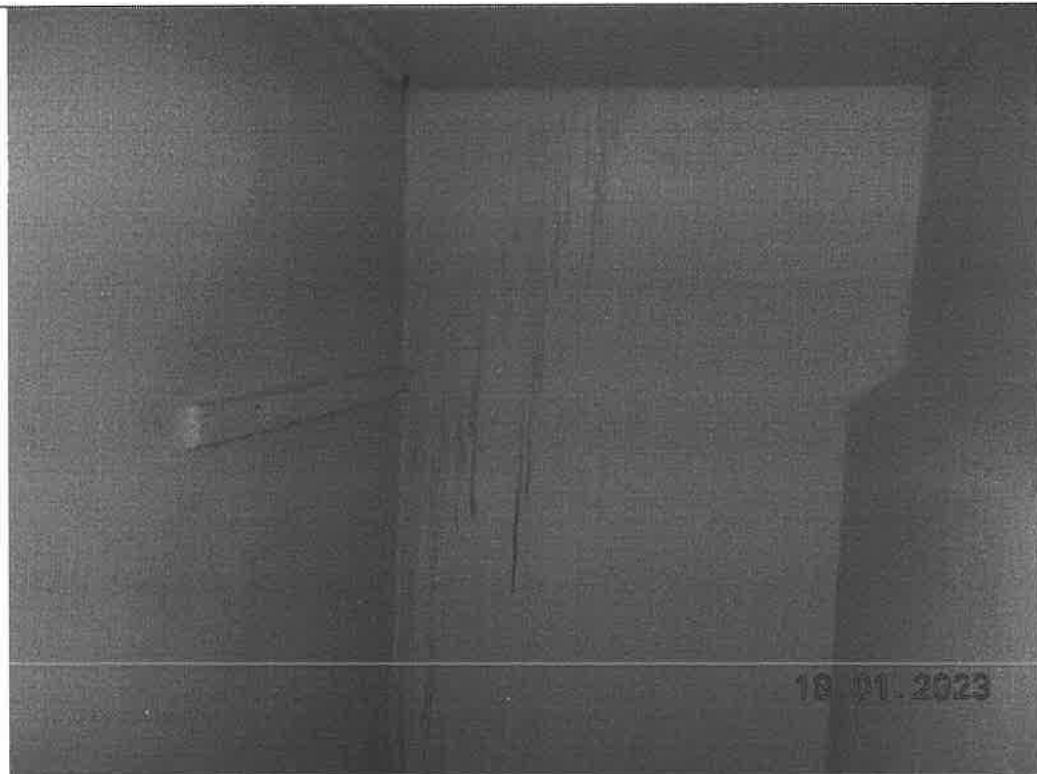
3. Hallway at Bathroom and adjacent Cupboard.



4. Hallway at cupboard in 3 above.



5. Cupboard at Stair ceiling.



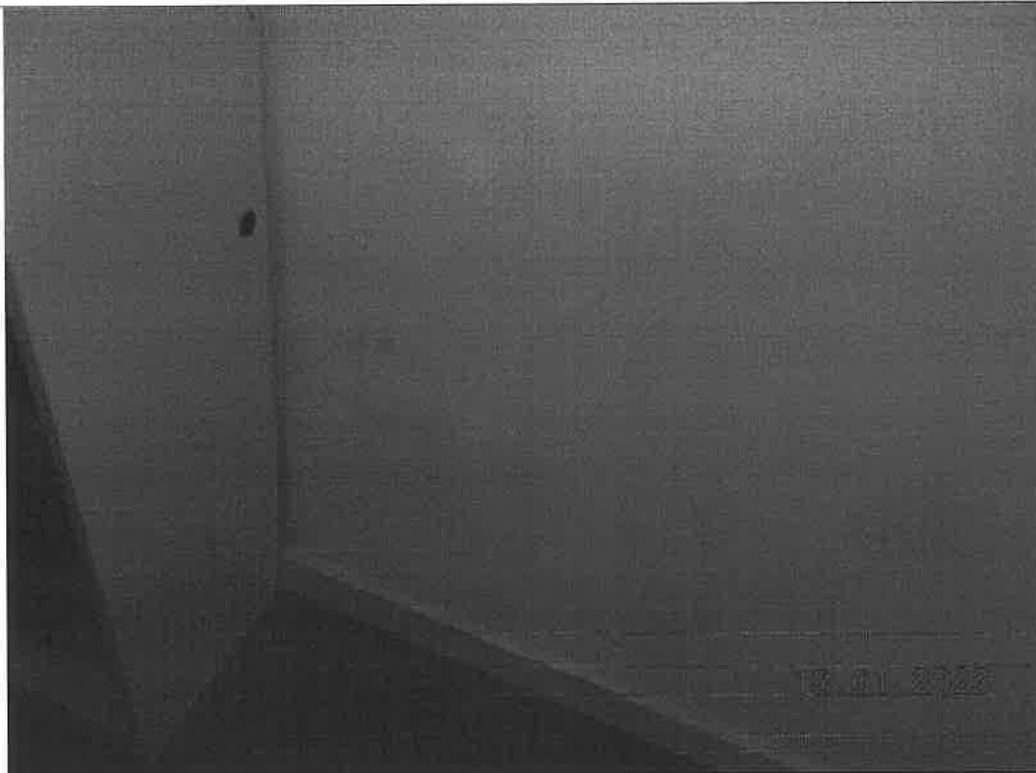
6. Cupboard at Stair wall.



7. Bedroom at Friarton Road/Ashmore Road corner ceiling.



8. Bedroom at Friarton Road/Ashmore Road corner wall to Ashmore Road.



9. Bedroom at Friarton Road/Ashmore Road corner wall to Friarton Road.



10. Lounge wall to balcony.



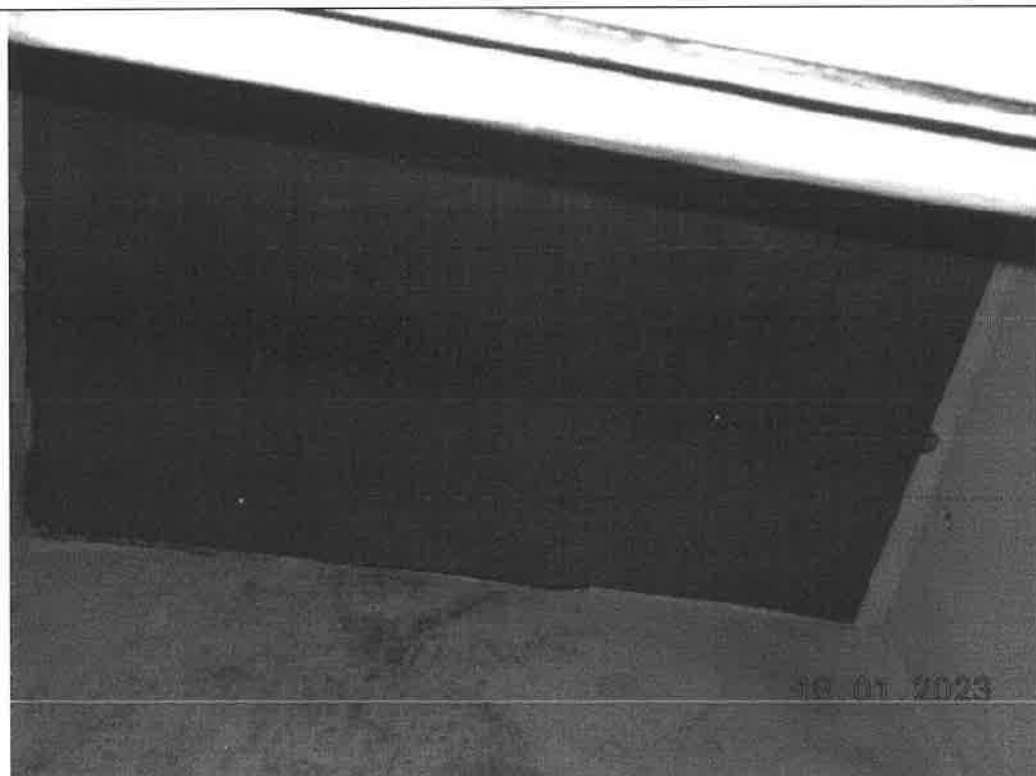
11. Unconnected downpipe at balcony off Lounge.



12. Downpipe taking discharge from flat roof area over balcony off Lounge.



13. Gutter to roof at Ashmore Road.



14. Repaired ceiling to cupboard off hall next to Bathroom.



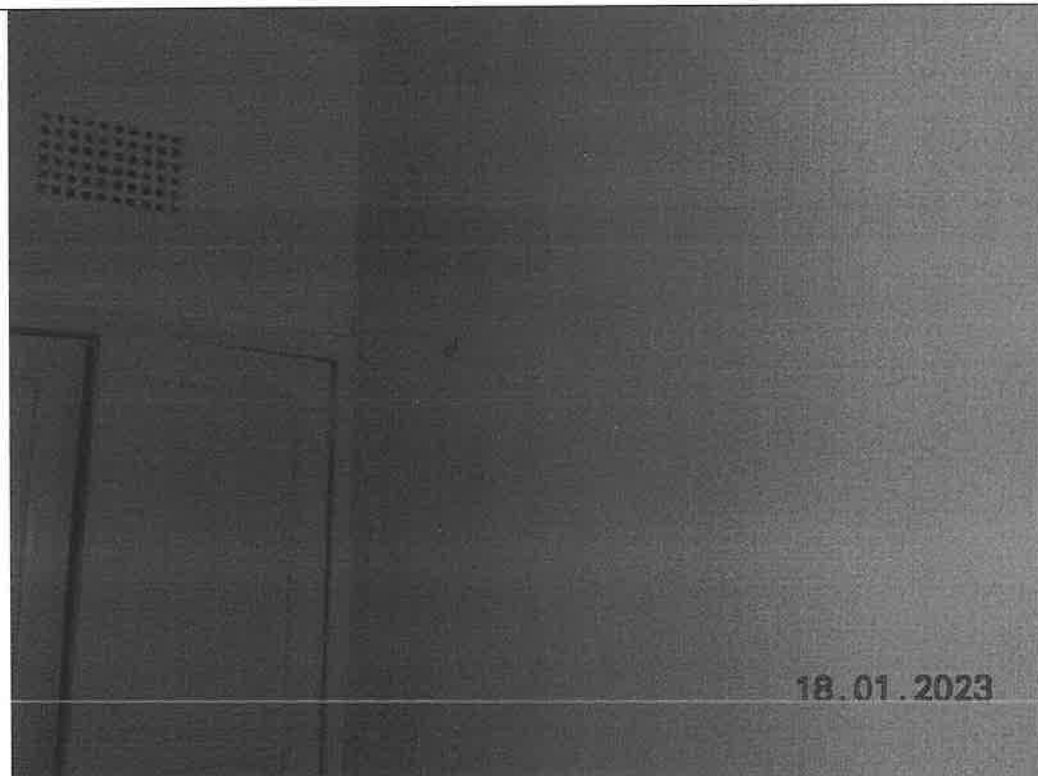
15. Wall to cupboard off hall next to Bathroom.



16. Wall to cupboard off hall next to Bathroom.



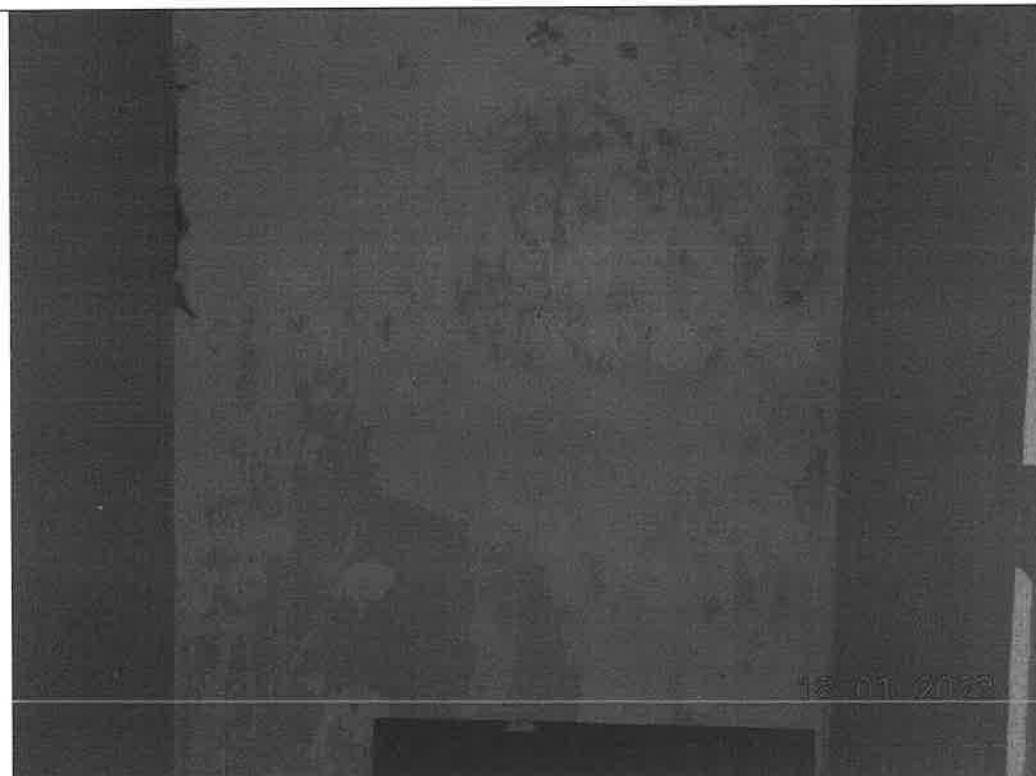
17. Rear gutter and downpipe from rear Bedroom.



18. Wall between rear Bedroom and Bathroom.



19. Wall and ceiling of cupboard off rear Bedroom.



20. Wall of cupboard off rear Bedroom.



21. Wall of cupboard off rear Bedroom.



22. General view of roof void over property.



23. Water staining and polythene sheeting in roof void over property.



24. Rear elevation of the building.



25. Rear elevation of the building.



26. Street view of building.



27. Upper level of Ashmore Road elevation.



28. Upper level of Ashmore Road and Friarton Road elevations.