

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

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Reference: RPT/0023/03/17

Property: 77 Derlwyn Street, Philipstown, New Tredegar, NP24 6AZ

Applicant: Mr Gbolahan Oki

Respondent: Caerphilly County Borough Council (1)
Mr Joseph Evans (2)

COMMITTEE: Chairman Jack Rostron
Surveyor Kerry Watkins
Lay Member Juliet Playfair

APPEARANCES FOR APPLICANT:
Mr Gbolahan Oki

APPEARANCES FOR RESPONDENT (1):
Ms Susan Ede Solicitor
Mr Ian D Burgess Environmental Health Officer
Ms Claire Davies Principal Officer
Mr Kenyon Williams Private Sector Housing Manager

APPEARANCES FOR RESPONDENT (2):
Mr Joseph Evans

ORDER

The Tribunal orders the appeal against the Demolition Order is dismissed.

REASONS AND DECISION OF RESIDENTIAL PROPERTY TRIBUNAL

1. This is an appeal by the freeholder Mr Gbolahan Oki (the Applicant) against a Demolition Order (the Order) which was served on 26 January 2017 by the local housing authority, Caerphilly County Borough Council (the first Respondent) in respect of the property known as 77 Derlwyn Street, Philipstown, New Tredegar, NP24 6AZ (the Property).

RESPONDENTS (1) STATEMENT OF CASE

2. On the 26 January 2017, following an inspection and survey of the Property the Order was served by the first Respondent on the Applicant stating *inter alia*;

... “The Caerphilly County Borough Council (the Authority) is satisfied that there exist category 1 hazards in the dwelling house known as 77 Derlwyn Street, Philipstown NP24 6AZ...

The Authority having regard to guidance given by the Welsh Government under section 9 of the Housing Act 2004, are satisfied that the most appropriate course of action in relation to the hazard for the purposes of section 5 of the Housing Act 2004 is to make a demolition order...

The authority order that the dwelling house known as 77 Derlwyn Street, Philipstown, NP24 6AZ shall be:-

- (a) Vacated within the period of 28 days from the date on which this order becomes operative, and
- (b) Demolished within the period of 6 weeks after the end of that period or, if it is not vacated before the end of that period, within the period of six weeks after the date on which it is vacated...

In the opinion of the authority there exists in the dwelling house the following category 1 hazards:

- Damp and Mould Growth
- Excess Cold
- Lighting
- Food Safety
- Personal Hygiene, Sanitation & Drainage
- Falling
- Electrical Hazards
- Structural Collapse and Falling Elements...”

3. The rationale behind the making of a demolition order is described in the skeleton argument as follows:

“In considering whether or not the Demolition Order was the most appropriate course of enforcement action the first Respondent took into account the scale of the works identified as evidenced in the schedule of works..., the feasibility of the costs involved in any renovation, the low valuation of properties in the area...the lack of demand for housing in the area, the past, present and future impact on the local area and the community that the property will cause, the continuing deterioration of the property, the past inaction of the Applicant in relation to carrying out repairs and the financial feasibility of the Applicant to carry out such repairs...

The Demolition Order was made...by the first Respondent...because it was considered to be the most effective and appropriate means for dealing with the hazards identified in the property. Other enforcement actions were considered as follows: -

- (i) A Hazard Awareness Notice was considered but the significant nature of the hazards and the risks posed to the neighbourhood, occupiers and visitors would not warrant the service of such a Hazard Awareness Notice.
- (ii) The service of a Prohibition Order was not considered as the property was empty and could be demolished.
- (iii) Even though there are serious hazards encountered at the property the repairs are so extensive and the property is vacant so the service of an Emergency Remedial Action or the making of an Emergency Prohibition Order were not considered appropriate.
- (iv) Declaring a Clearance area was not considered appropriate in view of the hazards at the property, its location and the general condition of other properties in the area.
- (v) It was considered by the first Respondent that carrying out any remedial works to remove the hazards...was inappropriate due to economic factors, therefore the service of an Improvement Notice was not appropriate.
- (vi) The first Respondents were of the opinion that no good reasons were known to the first Respondent that would warrant considering serving a suspended Improvement Notice or a suspended Prohibition Order for a period of time...

The health and safety rating calculation details the existence of category 1 hazards at the property, the property is not a flat and a management order...is not in force...Therefore the Local Authority...made a Demolition Order”.

4. The first Respondent believes that the property if brought up to a standard comparable to similar properties in the area, would be valued at £50,000.

RESPONDENTS (2) STATEMENT OF CASE

5. The second Respondent lives at 75 Derlwyn Street which adjoins the Property. His witness statement and statement of case raise the following salient points regarding the physical state and management of the Property: -
 - (i) The Applicant lacks professional competence to maintain and repair the Property.
 - (ii) There have been breaches in securing access points to the Property.
 - (iii) There has been a fire at the Property.
 - (iv) There has been noise disturbance with youths kicking and hammering the screening off the doors and windows to gain entry to the Property.
 - (v) Attempts by the Applicant's builder to make the property water tight failed and exposed his property to the elements.
 - (vi) Concerns for the Applicant's builder's safety and placing his home in jeopardy.

6. Concerns regarding the physical state and management of the Property have been made by way of witness statements of; Julie Evans [wife of Respondent 2], Jenny Jones [neighbour to Property], and Maria Blunt [neighbour to Property].
7. The witness statements mentioned above have been supplemented by an e petition which reiterates the concerns made by the second Respondent *et al.*
8. A brief report dated 20th April 2017 has been submitted in support of the concerns of the second Respondent *etal* prepared by David Crean BSc (Hons) MCIOB MRICS a Chartered Building Surveyor which suggests the works required to the Property. The costs are estimated at £34,000 and above.

APPLICANTS STATEMENT OF CASE

9. The Applicant states..."That, the root cause of the situation and appeal is my neighbour, Mr Evans at No 75. They seem to have their target of demolishing the last two properties including mine for personal reasons and gain, and not necessarily for common interest...That the aggressive attitude of my neighbour has slowed down the pace of work significantly".
10. He further states..."That the council section responsible for granting me access frustrated my efforts to carry out increased pace of works when it looked like I had become active on my house. They frustrated Wickes building materials delivery, and builders and myself gaining entrance. Purchase/proposed delivery receipt has been previously sent" That the council's Building Regulations Department subsequently visited the property and told me that I was not able to access the property again".
11. The Applicant states *inter alia* that he is addressing the hazards and circumstances as follows; -
 - (i) Started addressing the hazards with a structured plan.
 - (ii) Building engineer/architect has started work and he has met up with council staff and is communicating with them to sort things out.
 - (iii) That his time, money and effort has significantly changed from his initial acquisition of the property and he is now able to undertake the necessary works.
 - (iv) That he has considerable experience in property development (20 years) and can handle the scale of work required to be done to the property.
 - (v) That the estimated value of the property is grossly underestimated. He estimates the value of the property when renovated at £75,000.

THE LAW

12. A demolition order is made under sections 265 and 267 the Housing Act 1985 as amended by the Housing Act 2004 which states: -

265

- (1) If_
- (a) The local housing authority are satisfied that a category 1 hazard exists in a dwelling or HMO which is not a flat, and
- (b) This subsection is not disapplied by subsection (5), making a demolition order in respect of the dwelling or HMO is a course of action available to the authority in relation to the hazard for the purposes of section 5 of the Housing Act 2004 (category 1 hazards : general duty to take enforcement action).
- (2) ...
- (3) ...
- (4) ...
- (5) None of subsections (1) to (4) applies if a management order under Chapter 1 or 2 of Part 4 is in force in relation to the premises concerned.

267

- (1) A demolition order is an order requiring that the premises-
- (a) be vacated within a specified period (of at least 28 days) from the date on which the order becomes operative, and
- (b) be demolished within six weeks after the end of that period or, if it is not vacated before the end of the period, after the date on which it is vacated or, in either case, within such longer period as in the circumstances the local housing authority consider if reasonable to specify.

5

””

(Housing Act 2004)

- (1) If, a local housing authority consider a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.
- (2) In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated...
-
- (f) making a demolition order under subsections (1) or (2) of section 265 of the Housing Act 1985

RESULT OF INSPECTION

13. The inspection took place at 10.00am 14 June 2017 in the presence of Ms Susan Ede, Mr Ian D. Burgess, Ms Claire Davies, and Mr Kenyon Williams. There was no attendance by Mr Gbolahan Oki or Mr Joseph Evans.
14. The Property is a mid-terraced house which forms part of a long sloping terrace of similar types and ages of property, constructed circa 130 years ago, in Philipstown, a suburb of the town of New Tredegar. Local amenities are a little limited although there is a primary school and post office nearby, with more comprehensive facilities being available in New Tredegar Town which is a short distance away.
15. The Property itself occupies a steeply sloping site and comprises a two-storey front section, with a two-storey rear addition, at the same level and a further

two storey rear addition at a lower level due to the sloping nature of the site. The front of the Property fronts onto a public footpath. There is a small very steep rear garden.

16. The front elevation has a painted rendered wall and painted brick reveals around the window and door openings. The windows, where seen are of the painted softwood type, the remainder were boarded over at the time of inspection. There is a timber front door and frame with glazed fanlight above. The main roofs are of simple pitched design, with that to the lower rear section having a single mono pitched roof. At the time of inspection, the covering to the front roof slope is missing due to a fire in the adjoining property, with only charred roof timbers being visible. The roof slope to the rear section has a covering of interlocking concrete tile. Due to the steeply sloping site it was not possible to establish the coverings to the rear additions. The rear elevations are again of a rendered finish. Guttering where seen throughout the property is of the PVCu type being secured to timber fascias.

THE HEARING

17. The Applicant stated the first Respondent was over reacting to pressure from the second Respondent in issuing a demolition order. He believed they were uncooperative in assisting him in the rehabilitation of the Property. In particular he felt the first Respondent boarded up the Property which meant he could not take delivery of building materials necessary to undertake the required works.
18. The Applicant referred the Tribunal to his proposed method statement and timetable for undertaking the various stages of the rebuilding works. He stated completion of the works would meet the detailed requirements of the first Respondent.
19. The Applicant said the Property was insured and he was considering making a claim. However, as the insurance policy covered several other properties he was concerned that making a claim would increase his future insurance premiums. He informed the Tribunal he would forward a copy of the insurance policy, which was subsequently received.
20. The Applicant said he was an experienced property developer with over twenty years' experience in renovating and letting out houses. Whilst he had no professional qualifications he had employed an architect and had a team of builders available to undertake the rebuilding works necessary.
21. The Applicant said one of the reasons he had not carried out the works on the property were due to historical financial difficulties. However, these problems had been resolved and he believed he could carry out the necessary works for an estimated £10,000 - £15,000.
22. The Applicant whilst not currently a registered landlord in Wales would apply to be registered. This he did and a subsequent certificate of registration was received by the Tribunal.

23. The first Respondent said they were not taking action purely because of the complaint raised by the second Respondent. They said they have a statutory duty to undertake enforcement action when category 1 hazards are identified.
24. Concerning the Applicant's alleged lack of co-operation from them they pointed out that they were still waiting for a set of plans and specifications to be received by the Building Control Department of the first Respondent. They said they had for several years attempted to encourage the Applicant to carry out the necessary works. They referred the Tribunal to the fact that they had written to the Applicant on 4 February 2013 asking him to complete an empty dwelling questionnaire and offering him potential assistance by way of loans and management assistance.
25. Following a series of requests by them to the Applicant asking when the Property would be renovated he had on 3 August 2015 responded saying he now had funds and was looking for a builder and should commence work within one month. No such work was carried out to any meaningful level.
26. On the 3rd March 2016 they wrote to the Applicant concerning his absence from a scheduled meeting to discuss progress on the necessary building works. He replied that work would commence within two weeks.
27. The first Respondent said they have identified numerous category 1 hazards in the Property and had a duty to take enforcement action under the provisions of the Housing Act 2004. They felt that, especially following the fire on 26 December 2016 which resulted in extensive damage, the only appropriate course of action was to serve a demolition order.
28. The second Respondent who lives at 75 Derlwyn Street stated that the Property, which was next door to his home had been in a very poor state of disrepair since 2010. The fire had caused approximately £32,000 worth of damage to his home. He felt that because of the serious state of disrepair at number 77 Derlwyn Street coupled with a similar situation at the end terrace number 79 Derlwyn Street that they should both be demolished.

DECISION

29. The Tribunal in coming to its decision, firstly, considered whether a management order was in place, secondly, the level of hazards identified, and thirdly, the appropriateness of the enforcement action taken.
30. Dealing with the first issue, there was no management order in place at the property.
31. Concerning the second issue, the hazards identified by the first Respondent were contained in the detailed analysis dated 24 January 2017. The Tribunal was satisfied that the Housing Act 2004 Housing Health and Safety Rating System had been correctly applied and the results were accurate.

32. Regarding appropriateness of the enforcement action taken, the tribunal considered this in terms of the level and extent of the hazards identified and the feasibility of alternative enforcement measures available.
33. The number and extent of hazards identified at the Property by the first Respondent was considered to be extremely high. It considered that the amount and nature of building work necessary before the fire could have been dealt with by way of an Improvement Notice. Following the fire, the extent of works necessary had increased to such an extent the Tribunal considered it was not realistic to remedy the hazards by way of an Improvement Notice. Following the fire, the first Respondent had estimated the costs of remedying the hazards at £53,961.19. The Applicant believed the necessary works could be carried out for approximately £10,000-£15,000. The Tribunal accepted the first Respondents estimate as accurate and the Applicants as wholly unrealistic.
34. The Tribunal was not provided with professional valuations as to the open market value of the Property after necessary works had been carried out. It had only been supplied with information about local sales of similar properties in the locality. The Tribunal felt that the costs of remedying the identified hazards was more likely than not to exceed the value of the Property when the necessary works had been carried out.
35. The Tribunal were also conscious of the fact that the feasibility of carrying out repair of the Property was to a considerable extent dependent on the situation at the end terrace number 79 Derlwyn Street. This latter property was in the view of the Tribunal in at least a similar state of disrepair as number 77 Derlwyn Street.
36. Taking account of the above circumstances, the Tribunal unanimously considers it appropriate that the Demolition Order should be confirmed and the appeal dismissed.

COSTS

37. Neither party made an application for an order for costs.
38. Either party may appeal this decision to the Upper Tribunal. An application for permission to appeal should in the first instance be made to this Tribunal within 21 days of the date upon which this decision was made.

DATED this 15th day of August 2017



J Rostron
CHAIRMAN

THE LAW & APPEAL TO THE UPPER TRIBUNAL

1. Section 231 of the Housing Act 2004 allows a party following a refusal to appeal from the Residential Property Tribunal to seek permission from the Upper Tribunal.
2. Regulation 38 of the Residential Property Tribunal Procedures and Fees (Wales) Rags, 2012 explains the appeals procedure.
3. Part 3 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.1. 2010 No. 2600 (L.15) as amended explains the process for making an application to appeal.
4. You must apply for permission to appeal in writing to be received by the Tribunal no later than 14 days after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal to the Applicant.

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