

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

First Floor, West Wing, Southgate House, Wood Street, Cardiff, CF10 1EW.
Telephone 0300 025 2777. Fax 0300 025 6146. Email: rpt@wales.gsi.gov.uk

Reference: RPT/0008/09/16
Property: 84 Abergele Road, Colwyn Bay, Conwy, LL29 7PP
Applicant: Ms Geraldine Thompson
Respondent: Conwy County Borough Council

TRIBUNAL: Chairman Jack Rostron
Surveyor David Jones
Lay Member Eifion Jones

APPEARANCES FOR APPLICANT: None

APPEARANCES FOR RESPONDENT:

Julia Longworth, Principal Solicitor
Huw Williams, Principal Environmental Health Officer
Sarah Heywood. Housing & Pollution Officer

REASONS AND DECISION OF RESIDENTIAL PROPERTY TRIBUNAL

1. This is an appeal by the leaseholder Ms Geraldine Thompson (the Applicant) against a Notice of an Emergency Prohibition Order (the Notice) dated 10 August 2016 which was served along with an Improvement Notice by the local housing authority, Conwy County Borough Council (the Respondent) in respect of the property known as 84 Abergele Road, Colwyn Bay, Conwy, LL29 7PP (the Property).
2. The subject Property consists of the upper two floors of a three-storey semi-detached building on the main shopping street of Colwyn Bay. The ground floor is occupied by a retail unit. It is built of masonry covered by render and believed to be built in the mid to late Victorian period. The roof was of slate construction. The Property consists of lounge, dining room, kitchen and bathroom on the first floor. On the second floor, there are two bedrooms and a store. It is accessed directly from Abergele Road via an enclosed staircase. There is no off street parking.

RESPONDENTS STATEMENT OF CASE

3. On the 10 August 2016, the Respondent inspected the Property. As a result of this the Notice was served by the Respondent on the Applicant stating inter alia;

... “the premises are in such a poor condition as to present a potential risk of serious harm. The best course of action is considered to be the service of an Emergency Prohibition Order.

This means that you can no longer occupy the building until such time as the works required by the Housing Act 2004 section 11 Improvement Notice served on Stephen John Jones (see enclosed copy) have been carried out...

The enclosed Improvement Notice dated 10 August 2016 stated: -

The Conwy County Borough Council (“the Authority”) GIVE NOTICE that they consider that [a] category 1 hazards exist on the residential premises namely: -

84 Abergele Road, Colwyn Bay, Conwy, LL29 7PP

And that no management order is in force in relation to the premises under Chapter 1 and 2 of Part 4 of the Housing Act 2004.

The Authority therefore serves this Improvement Notice under section 11 (Housing Act 2004)”

4. The Applicant appealed to this Tribunal.
5. The Tribunal inspected the Property on 11 January 2017 and was accompanied by the Respondent’s representatives.
6. The hazards identified by the Respondent and the remedial action necessary in the Notice were as follows: -

“Nature of hazards: -

- (1) Damp and mould growth.
- (2) Structural collapse and falling elements.

The deficiencies giving rise to the hazards: -

- (1) Lack of maintenance to the roof, chimney stack(s), associated rainwater goods.
- (2) Lack of maintenance to the fabric of the building leading to structural cracking.

Remedial action which the authority considered would, if taken in relation to the hazards, result in their revoking the notice: -

All works specified in the Housing Act 2004 section 11 Improvement Notice served on Stephen John Jones on 10 August 2016 to be carried out”.

7. The Respondent in determining the seriousness of the hazards used the Housing Health and Safety Rating System scoring methodology which produced a score of 1413 leading to identification of a category 1 hazard.
8. The remedial action specified by the Respondent was: -
 - (1) “Employ the services of a suitably qualified structural engineer to examine the building and carry out all works necessary to remedy the structural movement.
 - (2) Employ the services of a suitably qualified person to examine the roof, chimney stack(s) and rainwater goods and carry out all works necessary to prevent the dampness from occurring.

The date on which the remedial action is to be started is: -

7 September 2016

The period within which the remedial action is to be completed or the periods within which each part of it is to be completed: -

9 January 2017”.

9. The statement of reasons given by the Respondent for the service of the Notice were:

“The authority is satisfied that hazards exists at the above premises (the Property) and that action should be taken in respect of those hazards.

In determining the most appropriate action regard has been given to the following; -

The views of the person in control/owner/manager/licensee etc.

Views of the occupier(s).

Impact course of action would have on the local environment.

Consideration of Listed Building status.

[Views of North Wales Fire and Rescue Service (NWFRS)].

The following actions were considered before the authority made its decision;

It is considered that the service of an Emergency Prohibition Notice is the most appropriate course of action to deal with a category 1 hazard identified in the premises and restrict those areas with immediate effect.

The significant nature of the hazards and the risks they pose to occupiers and visitors to the property would not warrant the service of a Hazard Awareness Notice. This is because advising the person responsible of the existence of hazards and not requiring remedial action is not considered appropriate.

It is reasonable to restrict the areas identified within the premises with immediate effect due to the existence of category 1 hazards. Therefore, the making of an Improvement Notice requiring remedial action is not considered appropriate in this case.

The hazards encountered pose a serious threat to the health and safety to the occupiers and visitors to the property. It is considered unreasonable, inappropriate and impractical for Emergency Remedial Action or making a Prohibition Order in this case.

There are no good reasons known to the authority that would warrant considering serving a Suspended Improvement Notice or a Suspended Prohibition Order in this case.

The buoyant state of the housing market and sustainability of the dwellings in this neighbourhood and the demand on available units of accommodation within the area would deem that demolition and clearance is not the most appropriate course of action.

DECISION

The decision is to serve an Emergency Prohibition Order which is considered to be the most effective and appropriate means of dealing with the hazards identified in the premises.”

10. The Respondent had previously served a Notice under Public Health Act 1936 section 83 as amended by section 35 of Public Health Act 1961 requiring the remediation of what they considered to be filthy or unwholesome conditions as to be prejudicial to health.

APPLICANT’S STATEMENT OF CASE

11. The Applicant has presented very limited written evidence or statement of case which is contained in the application form and is as follows: -

“Please set out briefly why you believe that the Tribunal should make the order requested [appeal against Emergency Prohibition Order]. [Answer] Because I was in the middle of getting the repairs done myself (paying for the repairs)”

“Please let us know if there is a particular urgency for determination in this case and if so why? [Answer] I want to get my home repaired! To sell it! A.S.A.P”

12. It is perhaps important to note that on 22 July 2016 the Respondent wrote to the Applicant advising that they had been informed that because of the Applicant’s state of health she may be unable to undertake the works necessary in response to the notice served under the Public Health legislation. The Respondent advised that in such circumstances they could undertake the works in default and any reasonable costs incurred would be recovered from her.

13. It is also perhaps important to note that the Respondent has written to the Tribunal on the 12 October 2016 informing it that due to concerns for the Applicant's safety the police broke into the Property and secured it afterwards. Similarly, the Respondent wrote to the Applicant on 10 August 2016 suggesting she contact the Respondent's Housing Advisory Team or Shelter Cymru who may be able to assist with housing until the section 11 Improvement Notice served on the freeholder Stephen John Jones has been carried out.
14. The Applicant has produced a copy letter of 6 June 2016 from her to the occupier of 82 Abergele Road asking if they have the contact details for the person who was acting for Stephen John Jones the recipient of the Improvement Notice whom she has not been able to contact whilst he is in prison.

THE LAW

15. An Emergency Prohibition Order is made under section 43 of the Housing Act 2004 which states: -
 - (1) If-
 - (a) The local housing authority is satisfied that a category 1 hazard exists in any residential premises, and
 - (b) They are further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any occupier or those of any other residential premises, and
 - (c) No management order is in force under Chapter 1 or 2 of Part 4 in relation to the premises mentioned in paragraph (a),
 Making an emergency prohibition order under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).
 - (2)
16. An Improvement Notice is made under section 11 of the Housing Act 2004 which states: -
 - (1) If-
 - (a) The local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
 - (b) No management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,
 Serving an improvement notice under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).
 - (2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3)

17. An appeal against an Emergency Prohibition Order can be made under section 45 of the Housing Act 2004. The appeal is made to a Residential Property Tribunal.

RESULTS OF INSPECTION

18. The Tribunal and representatives from the Respondent assembled at 10.00am to undertake an inspection of the Property. The Tribunal was informed by the Respondent's solicitor that she had been informed by Gwen Roberts, the Applicant's advocate that access to the Property was denied.
19. The Tribunal undertook an external inspection only. It did this by viewing the front, side and rear elevations. It was disappointed that access was denied because it could not view directly the hazards identified and any works which may have been carried out to remediate the hazards identified.

THE HEARING

20. The hearing was attended by representatives of the Respondent. The Applicant or a representative did not attend. The Respondents solicitor informed the Tribunal that she had been informed that the Applicant was not well enough to attend the hearing.
21. The Respondents solicitor offered a synopsis of their statement of case which is summarised in paragraphs 3 – 10 above.
22. The Respondent stated that the Local Authority had served a notice under the Public Health Act 1936 in 2013 because of the verminous conditions in the property. The Local Authority had carried out the necessary cleansing and in undertaking this determined that at that time it was not necessary to take any action under the provisions of the Housing Act 2004.
23. The Respondent had to issue proceedings in 2016 under the Public Health Act 1936 section 35 and the Housing Act 2004 sections 43 because of the serious deterioration of the Property resulting in a category 1 hazard as per the Housing Health and Safety Rating System. The Respondent became aware of the state of the Property by notification from the police who had concerns about the Applicant's safety.
24. The Respondent stated they served an Improvement Notice under section 43 of the Housing Act 2004 on the landlord Mr Stephen John Jones requiring works to be carried out by 9 January 2017. If the necessary works had been carried out the Emergency Prohibition Order would have been withdrawn. The Respondent said that as far as they were aware no works had been carried out.
25. The Respondent said that as the necessary works required under the Improvement Notice had not been completed it felt the Emergency Prohibition Order should continue. They would attempt to persuade the Landlord to carry

out the necessary improvements but indicated that they would probably not be able to undertake such works in default, the reason for this being that the likely costs of the required works would exceed the value of the property precluding the Respondent recouping its expenditure.

26. The Respondent's solicitor emphasised that they were aware of the Applicant's state of health and concerned that she may not be fully aware of the implications of the proceedings and the continued deterioration of her home. The Respondents had enquired if the Applicant had a Deputy or Power of Attorney but none existed.
27. The Respondent's solicitor said they would not be making an application for any form of costs with regard to the Tribunal proceedings concerning the Application.
28. On 10 January 2017 a letter was received at the Tribunal from the Applicant requesting an adjournment for personal reasons of which the Respondent and the tribunal were made aware.
29. Whilst sympathetic to the Applicant's circumstances on balance it felt because of the short notice and deteriorating state of the Property it was inappropriate to postpone the hearing. It considered the best course of action was to hear the Respondent's evidence at a hearing and write to the Applicant requesting that she submit any evidence in writing by 13 February 2017. No evidence was submitted.

DECISION

30. The limited external inspection confirmed as far as possible the reasons for existence of the hazards and the lack of implementation of the Improvement Notice by the required date 7 January 2017.
31. The Tribunal agreed with the Respondent that the hazards identified fully justified the serving of the Emergency Prohibition Order. It also agreed that the Respondents proposed required remedial action in the Improvement Notice was appropriate.
32. At the date of inspection the Tribunal had no evidence before it that any of the required remedial works specified in the Improvement Notice had been carried out. As a consequence, the Tribunal considered it was appropriate that the Emergency Prohibition Order should continue until the works in the Improvement Notice are completed.
33. The Tribunal was aware that the recipient of the Improvement Notice was or had recently been in prison. As no attempt, had been made to comply with the Improvement Notice the Tribunal considered it unlikely he would comply within a reasonable timescale or at all. The Applicant has stated that she had tried to carry out repairs but no evidence was given in support.

34. Taking account of the above circumstances the Tribunal therefore considers it appropriate that the Emergency Prohibition Order should continue.

ORDER

35. The Tribunal dismisses the appeal against the Emergency Prohibition Order.

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 22nd day of February 2017

A handwritten signature in black ink, appearing to be 'Jack Rostron', written over a circular scribble.

Jack Rostron
CHAIRMAN