

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Ref: RPT/0018/10/15

In the matter of s.134 of the Housing Act 2004

In the matter of Flats 1, 2, 3 Dedwyddfa, New Road, Llandysul SA44 4QJ

Tribunal: Andrew Sheftel
Paul Lucas
Bill Brereton

Applicant: Ceredigion Council
Represented by: Maggie Hughes

Respondent: John Rheinallt Evans

DECISION

The decision in summary

1. For the reasons set out below, the application for an Interim Empty Dwelling Management Order under s.134 of the 2004 Act is dismissed.

Background

2. This is an application made by Ceredigion Council (the "Council") for authorisation to make an Interim Empty Dwelling Management Order ("Interim EDMO") under s.134 of the Housing Act 2004 in respect of the Flats 1, 2, 3 Dedwyddfa, New Road, Llandysul SA44 4QJ (the "Property").
3. On the morning of the 20 June 2016 the Tribunal inspected the Property in the company of the Respondent only. Following the inspection, the Tribunal held an oral hearing which was attended by both sides.

4. The Council had prepared a bundle of documents, including evidence in support of the application and addressing the matters as to which the Tribunal must be satisfied under the 2004 Act as further set out below. In addition, Ms Hughes made oral submissions in support of the Council's application.
5. The Respondent, Mr John Rheinallt Evans, provided a written statement in response to the application and also attended the oral hearing at which he made various submissions.

The Property

6. The Property comprises a 3-storey detached house which was converted into 3 self-contained flats some years ago.
7. There is no dispute that it has remained unoccupied since around 2011.
8. On inspection the Tribunal found various individuals purportedly engaged in works to make the Property habitable. As further set out below, although a number of works have already been completed, the Property is still some way from being suitable for occupation.

The law

9. An Interim EDMO is an order that enables a local housing authority to take steps for the purpose of securing that a dwelling becomes and continues to be occupied and is potentially a significant power. However, legislation provides numerous requirements that must be satisfied before a Residential Property Tribunal may authorise a local authority to make an Interim EDMO.
10. The relevant law is contained in Sections 133-134 and Schedule 7 to the 2004 Act, The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (Wales) Order SI 2006 No 2823 (the "Regulations") and the Housing (Management Orders and Empty Dwelling Management Orders) (Supplemental Provisions) (Wales) Regulations SI 2006 No 2833.
11. In accordance with s.133(1) of the 2004 Act a local housing authority may make an Interim EDMO in respect of a dwelling if (a) it is a dwelling to which s.133 applies, and (b) on an application by the authority to a RPT. Section 133(1) applies to a dwelling if (a) the dwelling is wholly unoccupied, and (b) the relevant proprietor is not a public sector body. "Wholly unoccupied" means that no part is occupied, whether lawfully or unlawfully.

12. Pursuant to s.133(3), before determining whether to make an application to a RPT for an authorisation under section 134, the local authority must make reasonable efforts (a) to notify the relevant proprietor that they are considering making an Interim EDMO in respect of the dwelling under this section, and (b) to ascertain what steps (if any) he is taking, or is intending to take, to secure that the dwelling is occupied. In addition, by s.133(4) of the 2004 Act, in determining whether to make an application to a RPT for an authorisation under section 134, the authority must take into account the rights of the relevant proprietor of the dwelling and the interests of the wider community.
13. The local housing authority must then satisfy itself that that none of the prescribed exceptions applies as set out in the Regulations. Article 3 of the Regulations sets out various exceptions including so far as is relevant to the present case:
 - (b) where it is used as a holiday home (whether or not it is let as such on a commercial basis) or is otherwise occupied by the relevant proprietor or his guests on a temporary basis from time to time;
 - (h) it is prevented from being occupied as a result of a criminal investigation or criminal proceedings.
14. The Regulations also set out what detailed information the Applicant has to provide to the Tribunal to satisfy it that the Applicant has complied with section 133(3).
15. In accordance with s.134 of the 2004 Act, the Tribunal may authorise a local housing authority to make an Interim EDMO in respect of a dwelling to which section 133 applies if the Tribunal is satisfied as to the matters mentioned in section 134(2) of the Act, and is not satisfied that the case falls within one of the prescribed exceptions. The matters as to which the tribunal must be satisfied are
 - (a) that the dwelling has been wholly unoccupied for at least 6 months or such longer period as may be prescribed,
 - (b) that there is no reasonable prospect that the dwelling will become occupied in the near future,
 - (c) that, if an interim order is made, there is a reasonable prospect that the dwelling will become occupied,
 - (d) that the authority have complied with s.133(3); and
 - (e) that any prescribed requirements have been complied with.
16. By virtue of s. 134(3) in deciding whether to authorise a local housing authority to make an interim EDMO in respect of a dwelling, the tribunal must take into account (a) the interests of the community, and (b) the effect that the order will have on the rights of the relevant proprietor and may have on the rights of third parties.

17. In addition, s.134(4) provides that on authorising a local housing authority to make an Interim EDMO in respect of a dwelling, the Tribunal may, if it thinks fit, make an order requiring the authority (if they make the EDMO) to pay to any third party specified in the order an amount of compensation in respect of any interference in consequence of the order with the rights of the third party.

The submissions

18. Ms Hughes, on behalf of the Council, very helpfully sought to set out in detail how, in the Council's submission, the above provisions had been satisfied. In particular, she covered how the Council had, for some time, taken all reasonable steps to notify and engage the Respondent regarding the Property. She also made reference to impact on the community and the current waiting list for social housing. However, the primary focus of dispute between the parties was in relation to the continuing delay in bringing the Property back into a habitable condition.
19. As early as March 2012, the Council contact the Respondent to discuss options to bring the Property back to use. The hearing of this application was adjourned on two separate occasions in the first half of 2016 to allow the Respondent further time to complete the works. However, despite promises by the Respondent, the Property is still some way from being habitable.
20. By way of supplemental witness statement dated 31 May 2016, Ms Sarah Williams on behalf of the Council, provided a schedule of works completed and works outstanding. This showed some progress since the previous inspection in April 2016, including: drylining to the top flat; damaged flooring timbers; plasterboard applied to the ceiling and internal wall to the rear bedroom; and partial floor repairs to the rear bedroom. However, the schedule also identified a number of works still to do. This supplemental statement was made approximately 3 weeks prior to the Tribunal's inspection and followed a visit to the Property by Ms Williams on 25 May 2016. At the Tribunal's inspection, it appeared to the Tribunal that works were ongoing and works had been carried out since the date of Ms Williams's statement having regard to the schedule she provided. Nevertheless, it was apparent that the works were still some way off completion.
21. The Council's position was that the Respondent had been given more than enough chances and that it could not be said that there was a reasonable prospect that the Property will become occupied in the near future. In the Council's submission, previous promises for completion of works had not been adhered to and there was no reason why things would be different this time.

22. The Council indicated that if the Tribunal were minded to make the order sought, there was budget available for the Council to complete the works, notwithstanding that there would have to be a determination of what outstanding works were required and the job put to internal tender.
23. In response, the Respondent sought to provide various reasons for the past delay, but in any event noted that many of the works had now been done – in particular, the drylining, which meant that other works could now proceed more rapidly. He contended that this was not just a last ditch attempt to avoid the consequences. For example, he stated how he had engaged a firm to carry out external works which subsequently collapsed and this could explain at least some of the delay.
24. The Respondent made reference to the fact that there had been a previous arson attack at the Property, contending that for a period of time he had been unable to do works because of a police investigation – impliedly suggesting that the case fell within Article 3(h) of the Regulations as referred to above. This was disputed by the Council who provided evidence that there was no information to show that any request had been made for the scene to be preserved. Moreover and in any event, even on the Respondent's case, the question of the Property being preserved as a crime scene ceased to be an issue and therefore had not been an impediment to works from July 2014, almost two years prior to the hearing. Accordingly, it could be said to have little if any impact on the state of the Property now.
25. The Respondent gave a firm commitment that the remaining works could be completed within a period of a further 10 weeks. He also stated that although there had been funding issues in the past, he would be able to finance the remaining works.
26. At the hearing, the Respondent indicated that he intended to make the Property (i.e. the flats therein) into holiday lets. As noted above, Regulation 3(b) provides an exception where a property "*is used as a holiday home (whether or not it is let as such on a commercial basis)...*". While there is no further elaboration on what is meant by "used as a holiday home", in the Tribunal's view, the Property could not be so described in its current state. Indeed, in the Tribunal's view, this exception will only be capable of being satisfied once the works are complete, the Property is available for letting and, as a minimum, the property is being advertised as available for letting. In the Tribunal's view, this statutory exception cannot be satisfied simply by claiming an intention to use for holiday letting where such intention could not at that time be brought about due to the condition of the dwelling.

Conclusion

27. Save in one respect, the Tribunal is wholly satisfied that the Council has demonstrated every element required by the legislation for the purposes of the Tribunal making an Interim EDMO.
28. The Tribunal is, however, not satisfied that there is no reasonable prospect that the Respondent will occupy the dwelling in the near future as required by section 134(2)(b) of the 2004 Act. To require there be “no reasonable prospect that the dwelling will become occupied in the near future” (emphasis added), provides a high threshold.
29. While the Tribunal is somewhat sceptical of the Respondent’s claims with regard to finishing the works within 10 weeks, the Tribunal does not go so far to hold that there is ‘no reasonable prospect’ that the Property will be occupied in the near future. Notwithstanding the clear and lengthy delay in the past, a number of works have now been done and many of those remaining a cosmetic rather than structural. The Tribunal accepts that if the works were completed and the Property available for holiday letting within 10 weeks, this would amount to the ‘near future’ for the purposes of section 134(2) of the 2004 Act.
30. For this reason, the Tribunal dismisses the Application, although in doing so makes no criticism of the conduct of the Council.
31. As a postscript, the Tribunal notes that on the same day as the Tribunal finalised this decision, but before it was sent to the parties, the Tribunal received a letter from the Respondent dated 18 July 2016 in relation to these proceedings. In view of the amount of time that had passed since the hearing and the fact that the Tribunal had not invited any further submissions following the close of the hearing, the Tribunal has disregarded the letter for the purposes of this decision. Indeed, it would not have been proper to have regard to the letter without giving the Council an opportunity to respond, but for the reasons just stated, the Tribunal determines that it is not appropriate to open the matter up to further submissions.

Dated this 20th day of July 2017



ANDREW SHEFTEL
CHAIRMAN