

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)
LEASEHOLD VALUATION TRIBUNAL

Reference: qA1031821/1

In the Matter of Ty Newydd, Mill Road, Porthdafach, Holyhead, Anglesey LL65 2LW

In the matter of an Application under Section 11 & 12 of the Housing Act 2004

APPLICANT	Andrew Edward Ford
RESPONDENTS	Isle of Anglesey County Council
TRIBUNAL	AVS Lobley - Chair C Williams FRICS - Surveyor B Brereton - Lay Member
DATE OF HEARING	20 th November 2012

DECISION

BACKGROUND

1. This is an appeal against two improvement notices (the Notices) served by the Respondent, Isle of Anglesey County Council (the Council) on 31st July 2012 pursuant to Sections 11 and 12 of the Housing Act 2004 (the Act) in respect of a property known as Ty Newydd, Mill Road, Porthdafach, Holyhead, Anglesey LL65 2LW (the Property), owned by Mr. Ford.
2. By an agreement dated 5th March 2009 (page 28 of the Council's bundle), Mr Ford let the Property to Mr and Mrs Reeves for a fixed term of five years from 1st October 2009 at a monthly rent of £750. The tenants were responsible for keeping the drains and gutters clear and to keep the interior decorations and appliances in good repair and condition. By a schedule to the agreement it was agreed that included in the demise are two static caravans situated on the property together with all outbuildings. The tenants agreed to maintain and keep in good condition and repair the static caravans, garage, outbuildings and land to the same condition as they existed at the date of the commencement of the tenancy (fair wear and tear excepted). One room in the outbuildings was excluded from the tenancy. At the commencement of the tenancy, Mr. Ford was to maintain the driveway to the property so the tenant could drive his Audi TT in but thereafter, the tenant was responsible for the maintenance of the driveway.

3. The service of the Notices (together with a hazard awareness notice which was not the subject of this appeal) followed a long period of correspondence between Mr. Ford and Mr and Mrs Reeves, which is included in the Council's bundle. Eventually the tenants complained to the Council and the Council carried out an inspection in November 2011 and on 16th November 2011, wrote to Mr Ford setting out the hazards it considered existed at the property (page 2 of the council's bundle). The Council commissioned a building survey report from Mr. S Pritchard in February 2012 (page 131 of the Council's bundle). Mr. Ford commissioned his own survey from Mr M Jones on 17th August 2012 (page 307 of the Council's bundle). Mr. Jones agreed with almost all of the Council's findings and recommendations but considered their proposals would not rectify the basic problems which would return. He considered the property needed a full renovation and that the Property was not fit for occupation.
4. Mr. Ford appealed to the Tribunal on 14th August 2012, on the grounds that the Notices contained material defects, that an alternative course of action was the best course of action or that other persons ought to take the action concerned or contribute to the costs of rectifying the defects. Mr. Ford also asked for the appeal to be deferred as mediation with the Council and the tenants was underway.

THE LAW

5. The Act introduced a new housing, health and safety rating system (HHSRS) for Councils to deal with the condition of housing in their area. A local authority has to consider the effect on the health and safety of occupiers and then decide whether the conditions impose a hazard and, if so, whether these hazards constitute a category 1 or 2 hazard and decide what action is required (an improvement notice, a prohibition notice, hazard awareness notice, a clearance or demolition notice). Pursuant to part 3 of the Act, a person on whom an improvement notice has been served may appeal to a residential property tribunal and an appeal may be made on the grounds that one or more persons, as owner or owners of the specified premises, ought to take the action concerned or pay the whole or part of the cost of taking that action.
6. Pursuant to paragraph 12 of the schedule to the Act, an appeal may also be made on the grounds that another course of action is the best course of action, in other words, a prohibition order, hazard awareness order or demolition order. A prohibition order may be made, under regulation 21, where a category 2 hazard exists and prohibits the use of any premises specified in the notice. By paragraph 15, an appeal to the residential property tribunal is by way of rehearing and may be determined by reference to matters of which the authority was unaware. The Tribunal has the power to confirm, quash or vary the improvement order.

THE INSPECTION

7. The Tribunal inspected the Property on 20th November 2012. Mr and Mrs Reeves kindly allowed the Tribunal access. Ms Hartin and Mr Owen attended on behalf of the Council. Mr Ford also attended.
8. The Property is a two storey house, approached from Holyhead up a long unmade road, shared with other houses up to the drive way to the Property. It has the benefit of a large garden and has an attached garage, a lean-to utility area and one outbuilding, the electricity to which had been disconnected as the roof is leaking. There are two static caravans, one of which is in very poor condition. The roof of the property is slated with the majority of it overlaid with a cement render, an essentially temporary repair not uncommon on Anglesey. The interior has a hall with bathroom off, a kitchen and living room downstairs and two bedrooms upstairs, approached via an open staircase with no banister or rails and open risers. The condition of the interior generally was good, except for the kitchen and bathroom. There was rising damp in the kitchen and the pantry was damp, there being very little ventilation in the kitchen. One of the light switch sockets was coming loose from the wall. Some of the electrics did not work and the kitchen vent did not work. Some of the floor tiles in the bathroom had lifted and there was rising damp. The taps in the bathroom were defective. The windows were in poor condition and the roof is in need of repair. There was some damp in the main bedroom.

THE HEARING

9. This took place at Holyhead Town Hall immediately after the inspection. Ms Hartin and Mr Owen attended and were represented by Mr. Dunn, solicitor for the Council. Mr. Ford represented himself. Mr. Reeves was also in attendance.
10. Mr. Ford conceded at the hearing that he no longer contended that due to material defects in the improvement notices they should be withdrawn and served again. He accepted there would be no purpose in that course. Mediation had taken place but had been ineffective (page 476 of the Council's bundle).
11. Mr. Ford also conceded that the Tribunal could not make an order against the tenants under paragraph 11 of part 3 to the schedule to the act, as Mr and Mrs Reeves were not owners of the Property.

ISSUES FOR DETERMINATION

12. The issues for determination by the Tribunal were therefore whether the Notices should be confirmed, quashed or varied, whether those notices should include the static caravans and whether some other course of action, such as a prohibition notice, was more appropriate.

DECISION

13. Having heard submissions from the parties, the Tribunal confirmed the orders, save as varied as set out below.

FIRST IMPROVEMENT NOTICE

Item 1 electrical hazards

14. The Tribunal confirmed the hazard and the remedy. The independent electrical report showed immediate remedial work required in respect of 3 items (dimmer switch in kitchen not fixed, pendant in hall live terminus exposed and cable to outbuilding no MCB protection). 3 other items noted were potentially dangerous and needed remedial action and in respect of 4 items improvement was recommended (page 220 of the Council's numbered bundle of documents). The Tribunal confirmed that an inspection by a competent electrical engineer should be arranged.

Item 2 falling hazard

15. This item related to the tiles on the ground floor bathroom. The slate tiles had lifted in places so that the floor was uneven and represented a tripping hazard. The Tribunal confirmed that the floor and slated finish should be taken up and re-laid leaving the floor sound and level. The Tribunal did not consider a damp proof membrane to be necessary and varied the notice in respect of item 2 to this extent.

Item 3 falling on stairs

16. The Tribunal confirmed that a hazard existed and that this should be remedied to the extent that a handrail was needed and the stair risers should be closed. The Tribunal did not accept a carpet was necessary and varied the notice to this extent.

Item 4 personal hygiene, sanitation and drainage

17. The Tribunal accepted the taps in the ground floor bathroom were defective and confirmed the remedy (arrange for a competent plumber to visit).
18. The Tribunal had heard evidence at the hearing that the water supply to the static caravan had been cut off. The Tribunal did not confirm this remedy was still necessary and varied the notice to this extent.
19. The Tribunal confirmed the notice in respect of drainage of the cesspit serving the static caravan and replacing the cover to the septic tank serving the main property and fixing the uPVC soil and vent pipe to the rear of the property to the main wall. It was not accepted the waste water pipe from the washing machine should be fixed so that it drained into the septic tank serving the property and the Tribunal varied the improvement notice to this extent.

Item 5 water supply

20. There had been insufficient water pressure at the Property. Mr. Reeves confirmed that the pressure was now acceptable as a stop cock had been replaced. The Tribunal did not accept that this hazard still existed and varied the notice to this extent. The Tribunal did not consider a pump was necessary.

Item 6 food safety

21. The Tribunal accepted that this hazard existed. There was clearly damp in the kitchen pantry and kitchen cupboards, due to rising, penetrating dampness and condensation. The remedy was confirmed.

Item 7 un combusted fuel gas.

22. There was no evidence of regular testing and servicing of gas boiler and appliances to the static caravans. One had been used by the tenants' guests on occasion but the other was not used and was in danger of structural collapse. The remedy (testing by a gas safe registered engineer) was confirmed by the Tribunal.

SECOND IMPROVEMENT NOTICE

Item 1 excess cold

23. The under floor heating to the bathroom has been disconnected and the Council considered the heating provision in the bathroom to be inadequate. This was by means of a radiator. The Tribunal did not accept this to be inadequate and varied the Notice to this extent.
24. The Council had assumed that the loft did not contain the required 275mm of insulation to the Property as there was no loft hatch to the main pitched roof. Photographs provided (page 485 of the Council's bundle) showed this assumption to be incorrect. The Tribunal did not accept this hazard existed and varied the Notice to this extent.
25. The Council asserted that the exposed external walls are not adequately insulated to prevent excessive heat loss. The external walls have no cavity wall insulation or internal dry lining or cladding. The rear utility is of single breezeblock, insufficient to prevent excessive heat loss. The remedy suggested by the Council was to supply a dry lining insulated system. The Tribunal considered this to be an improvement rather than remedying a defect and varied the Notice to this extent.
26. Most of the windows are single glazed and in disrepair and with no draught proofing. The front door was warped. The Tribunal accepted the hazard existed and confirmed the remedy, varied to the extent that replacement with double glazing was not appropriate.

Item 2 mould and damp growth

27. Rising and penetrating damp was affecting the Property as described in the Notice (page 238 of the Council's bundle). The remedy suggested by the Council (employment of a damp and timber specialist to attend the Property) was a reasonable remedy. Once a report was obtained further consideration should be given to the remedy to be adopted.

Item 3 structural collapse and falling element.

28. This item related to the main roof, outbuilding and the static caravan to the rear of the Property. The Council's structural engineer considered the roof to be beyond repair (page 247 of the Council's bundle). However, Ms. Hartin did not consider there to be an imminent risk to health so that a prohibition notice was not appropriate. The improvement notice sets out substantial works necessary to the roof which the Tribunal accepted were necessary. The remedy suggested by the Council was reasonable (employ a qualified structural engineer to assess the condition and structural stability of the roof and prepare a report). The interim measures suggested were also reasonable and confirmed by the Tribunal (undertake remedial works to the roof to the main entrance to the property to prevent tiles slipping off. Repair defective fascia boards and examine and overhaul all rainwater goods and repair the loose floorboard in bedroom one). The Tribunal confirmed the rear right static caravan should be demolished.

Static caravans

29. Several items in the notices relate the static caravans. The Council submitted to the Tribunal that outbuildings and the static caravans were covered under the Act as they had water and electricity and were linked to the cesspit. Mr. Ford had raised this point with the Council in January 2012 (page 121 of the Council's bundle) in light of the terms of the agreement with the tenants, which put responsibility for the maintenance of the static caravans upon the tenants.
30. Mr. Ford accepted responsibility for the outbuildings and cesspit but asserted the caravans were the responsibility of the tenants, in accordance with the lease. He had no funds to carry out any of the works and his mortgagees were repossessing the Property. He had been informed that the tenants had no legal right to remain in those circumstances.
31. The Council had taken legal advice and wrote to Mr. Ford about this on 2nd April 2012 (page 157 of the Council's bundle). The Council had regard to the Act and HHSRS operational guidance as well as the Landlord and Tenant Act 1985. Section 11 of the latter obliges a landlord, in a lease for less than seven years, to keep in repair the structure and exterior of the dwelling house including drains, gutters and external pipes and to keep in repair and proper working order the installations for the supply of water, gas and electricity, sanitation and space and water heating. Section 38 defines, for the purposes of this act, a dwelling as meaning a building or part of a building occupied as a separate dwelling together with any yard, garden, outhouses and appurtenances belonging to the house or usually enjoyed with it. Section 1 of the Act uses the same expression in defining a dwelling.

32. The Council had concluded that Mr. Ford, as Landlord, was responsible for the caravans and outbuildings as they were part of the tenancy and that the schedule attached to the lease was void under Section 11 of the Landlord and Tenant Act 1985
33. Clearly the Landlord had sought to shift responsibility for maintenance of the caravans and outbuildings to the tenants and as pointed out by the Council, this exclusion may not have been effective (as between Mr. Ford and his Tenants). The Tribunal took the view that, notwithstanding the contractual arrangements between Mr. Ford and Mr and Mrs. Reeves, the Council had taken the correct action in including the outbuildings and static caravans in the improvement notices served on Mr. Ford, having regard to the scheme of the HHSRS rating system and the operational guidance. There was no question that Mr Ford was the owner.

APPROPRIATE COURSE OF ACTION

34. Mr. Ford contended that a prohibition notice was a more appropriate course of action (see his statement of case, page 479 of the Council's bundle). Ms. Hartin submitted that though substantial works were required under the terms of the improvement notices, these were not to the extent that the Council considered it needed to prohibit the use of the Property. She gave examples of cases where she did consider a prohibition order to be appropriate: where there was no toilet, no water supply, no roof or there was an electrical safety issue. Mr. Owen added his view that a prohibition notice would be appropriate where there existed a serious risk to health or of death. Mr. Ford said that the survey reports concluded that so much work was necessary to the Property there had to be a question of whether there could be economic repair (aside from his own financial situation) and to him that was prohibition. Mr. Dunn in response pointed out that Mr. Ford's financial situation was not relevant and there was nothing the Council could do which otherwise would comply with its statutory duties. Mr. Dunn also pointed out the Property had been put on the market for sale at £275,000 (although this figure had since been reduced to £219,950) and no figures had been produced which suggested it was uneconomic to carry out the repairs required to the Property.
35. From its inspection, it appeared to the Tribunal that notwithstanding the extensive works needed, the Property was habitable. The living room and bedrooms were not of a condition which suggested there was any risk to the tenants' health and the tenants were using both the kitchen and the bathroom. The Tribunal concluded that the service of improvement notices was the appropriate course of action and confirmed those notices save as varied as set out above.

Dated this 11th day of December 2012



CHAIRMAN

