

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)

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DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL
Application under paragraphs 10,11 and 12 of Part 3 of Schedule 1 of Housing
Act 2004

Premises: 120, Bronwydd Road, Carmarthen, Carmarthenshire, SA312AR ("the premises")

RPT Ref: **RPT/0060/12/18**

Hearing: 26th April 2019

Applicant: **Gavin Millar**

Respondent: **Carmarthenshire County Council**

Tribunal: Mr JE Shepherd – Judge Chairman
Mr P Lucas FRICS - Surveyor member
Mrs J Playfair - Lay Member

Order:

The Improvement Notices served by the Respondent on 20th November 2018 are confirmed save for minor variations.

Background

1. This is an appeal brought by Gavin Millar (The Applicant) against 3 Improvement Notices served by the Local Authority (The Respondent) in relation to premises at 120 Bronwydd Road, Carmarthen, SA312AR ("The premises"). The appeal is dated 17th December 2018. The Improvement Notices were served on 20th November 2018. They were served pursuant to Section 11 of the Housing Act 2004. The notices consist of the following:

- An Improvement Notice in relation to prescribed Hazard No 29 (HHSRS Operating Guidance) - Structural Collapse & Falling Elements. In summary the notice states: *Structural cracking to the front side one storey extension. Loose slipped and falling slates to rear roof of main dwelling, and to the one storey side extension. Rotten timber window and door lintels with signs of dry rot. Structural cracking to left hand side chimney with upper brickwork course appearing loose. Rotten and collapsing 1st Floor timber joists and floor boards to main dwelling and side annexe. Loose rain water guttering to rear elevation. Partially collapsed brickwork shed to rear garden.* Works to rectify the defects are specified in Schedule 2 to the notice and were to be completed within 16 weeks.
 - An Improvement Notice in relation to prescribed Hazard No 12 (HHSRS Operating Guidance) - Entry by Intruder. In summary the notice states: *Defective and rotten timber frame to the front door. The lack of a door to the opening at first floor level. An opening to the rear of the side annexe. Boarded up window to the rear ground floor window.* Works to rectify the defects are specified in Schedule 2 to the notice and were to be completed within 8 weeks.
 - A Suspended Improvement Notice which would only take effect when there was a change of ownership, or the premises become occupied. This notice concerned various Category 1 hazards relating to the fact that the premises were currently uninhabitable because amongst other things there was no form of central heating; no proper kitchen; a dated electrical system; a lack of hot water supply to the bathroom; no hand rail to the external steps and no guarding to the rear garden. There were also Category 2 Hazards identified including damp and mould growth, falls on the level, domestic hygiene, lack of fire detection and risk of carbon monoxide poisoning. Again works were specified in Schedule 2 of the notice. The works were to be completed within 12 months of the notice being activated.
2. In his statement of reasons of appeal the Applicant summarises his appeal against the notices under 10 paragraphs. In summary he says:
- i. The hazards don't exist.
 - ii. Some of the works have been actioned.
 - iii) The premises are uninhabitable
 - iv) The Improvement Notices addressed unrealistic scenarios.
 - v) He intended to make the premises habitable but the Improvement Notices would deter potential tenants /purchasers.
 - vi) The Notices are unnecessary and counterproductive.
 - vii) His timescale for carrying out the works was 12-24 months with recognised potential dangers being remedied within 6 months.

viii) The notices are unrealistic and disproportionate once one takes into account the potential value of the premises.

ix) He has found it difficult to rent the premises due to a boundary dispute and difficulties presented by the location of the premises.

x) No risks are posed to third parties or intruders because risks have been rectified.

3. The Applicant expanded on his grounds of challenge in a witness statement dated 19th February 2019. In summary he considered the notices to be "excessive and unnecessary". Attached to the statement was a priced schedule of works prepared by Phill Davies a building contractor who had priced the works in the various Improvement Notices at £57559.07. The Applicant proposed instead to carry out partial works by 31st August 2019 including removing the chimney stack and capping off at roof level; carrying out remedial works detailed in paragraph 1 of the Schedule 2 of Hazard 29 - new roof (in fact during the hearing he clarified that he only intended to remove loose slates and fix existing slates); boarding up any open doors and windows and removing the bridge at the rear of the premises.
4. The Applicant also relied on a witness statement of Adam Coster dated 19th February 2019. Mr Coster was previously carrying out works at the premises. It was agreed between the Applicant and him that he would renovate the premises and would be allowed to live there for a peppercorn rent. In the event by the date of the hearing this plan had been abandoned and Mr Coster was no longer involved. According to the Applicant the service of the notices had brought the works to an end.
5. In his statement in relation to Hazard 29 - Structural Collapse and Falling Elements Mr Coster said he had removed all loose and slipped slates from site; had removed defective and loose guttering and intended to remove the left hand chimney stack. The remaining works would be carried out once the premises had been made watertight. The works in the notice were "premature". In relation to Hazard 12 - Entry by Intruders Mr Coster said he had boarded up the first floor rear opening and the front door was lockable and was secure. The remaining works would be done once the premises were watertight.
6. The Respondent opposed the appeal. In their statement of reasons they make a number of points. These include:
 - a) The fact that they had identified 13 separate hazards out of 29 possible hazards at the premises, 8 of which had been Category 1 Hazards for which they were compelled to take enforcement action. The hazards in relation to structural collapse and falling elements and entry by intruders were best dealt with by Improvement Notices and could not be properly dealt with by any other means of enforcement.

b) The remaining 6 Category 1 Hazards and 5 Category 2 Hazards identified at the premises were not considered necessary until the premises were occupied or there was a change of ownership - hence the Suspended Improvement Notice. Again an Improvement Notice was considered the best available enforcement option.

c) The allegation that the Improvement Notices dealt with hypothetical and unrealistic scenarios was challenged. The HHSRS assessment dealt with likely occurrences and probable spread of harms and the assessment had been properly carried out.

d) The potential sale or letting of the premises did not affect the decision to serve the notices as any future purchaser would have to carry out the works in any event.

e) The timescales for the works in the notices were reasonable.

f) Whilst paragraph 1.18 of the HHSRS Operating Guidance stated that the feasibility cost or extent of remedial action was irrelevant to assessment, it being solely based on risks to Health and Safety, another premises on Bronwydd Road (No 116) had recently sold for £82500 making the Applicant's potential financial commitment reasonable.

g) The Respondent had been adopting an informal approach for a period of seven years in seeking to encourage the Applicant to carry out the works but this had not worked and therefore enforcement action had become necessary.

h) The boarding up works carried out by the Applicant referred to in the statement of Adam Coster were temporary works which did not meet the requirements of the Improvement Notices. In this regard Paragraph 5.5 of the HHSRS Enforcement Guidance was relied upon which states:

Authorities should try to ensure that any works required to mitigate a hazard are carried out to a standard that prevents building elements deteriorating. It would be a false economy to allow work which only temporarily reduces a category 1 hazard to say a band D category 2 hazard. It is worth bearing in mind that a duty on the authority may arise again should conditions deteriorate. Authorities should avoid taking enforcement action which results in "patch and mend" repairs.

7. The Respondent provided witness evidence from Yana Thomas the Environmental Health Officer who served the notices and Leighton Evans an Empty Property Adviser. They had carried out an inspection of the premises on 7th November 2018. This was the pre-cursor to the service of the notices on 20th November 2018. A further visit was attempted on 8th January 2019 but access was refused.
8. Amongst the exhibits to the Respondent's statements was a summary background of activity at the premises. This confirmed that the premises had been empty since 12th October 2009; that complaints had first been received

about the condition of the premises in August 2012 and that after that repeated attempts had been made by the Respondent to deal with the condition of the premises informally before enforcement action had been taken some six years later.

The Law

9. Chapter 1 of the Housing Act 2004 provides a means of assessing housing condition through the Housing, Health and Safety Rating System (HHSRS). Operating Guidance assists Environmental Health Officers in assessing hazards. The guidance lists 29 different types of hazard. Under section 5 of the Act local authorities are compelled to take enforcement action where Category 1 hazards are identified following an assessment of Hazard Score. The Enforcement Guidance assists officers in identifying the best enforcement option. In the present case the Respondent decided to serve Improvement notices pursuant to Section 11 of the Act which states the following:

11 Improvement notices relating to category 1 hazards: duty of authority to serve notice

(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,

servicing 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 as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(3) The notice may require remedial action to be taken in relation to the following premises—

(a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;

(b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;

(c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a) that the deficiency from which the hazard arises is situated there, and

(b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) The remedial action required to be taken by the notice—

(a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but

(b) may extend beyond such action.

(6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(7) The operation of an improvement notice under this section may be suspended in accordance with section 14.

(8) In this Part “remedial action”, in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

10. Section 14 of the Act allows the local authority to serve a suspended notice.
11. Paragraph 10 of Schedule 1 to the Act gives a general right of appeal to the Tribunal against an Improvement Notice. Under Paragraph 14 any appeal must be brought within 21 days from the date the notice is served. Under Paragraph 15 (3) the Tribunal are given power to confirm, quash or vary the Improvement Notice.

The inspection

12. The property comprises a 2-storey end of terrace dwelling house set in a row of 3 properties directly fronting the main A484 trunk road between the County town of Carmarthen and the Town of Cardigan. The property faces north-east overlooking the Afon Gwili Valley.
13. The dwelling directly fronts a busy road and is on the edge of a mixed residential / rural area approximately 1½ miles from Carmarthen Town Centre and within 2 miles or so of all main County Town amenities including local schools, Glangwili General Hospital and major shopping and employment facilities.
14. Local bus stops are within reasonable walking distance. The property itself has a very steep sloping garden upwards away from the rear of the dwelling.
15. The property is of pre-20th Century construction having solid stone walls with dressed stone work to the front elevation incorporating brickwork surrounds to the main windows. The main roof is of slate with 2 chimney stacks serving the dwelling. Attached to the flank of the property is a lean-to building of mainly brick and stone construction under a slate roof.
16. To the front of the property is a narrow pull-in parking area for 1 or possibly 2 small vehicles. A short flight of steps leads to a raised narrow terrace and access through the front door to the interior. The ground floor comprises a living room, kitchen and lean-to store.

17. From the living room a staircase rises to the first-floor small landing area with shower recess, hand basin and low flush w.c. Adjacent is a bedroom which leads through to a further first floor room which at one stage provided an external gallery access to the rear garden. Immediately to the rear of the property is a narrow alley whilst adjacent, a flight of steps leads up to the main garden area which slopes steeply upwards and away from the dwelling.
18. Information has been supplied to the effect that the property is connected to mains drainage. There is a mains electricity supply. An old multi-fuel room heater was located in the living room.

Condition

19. No detailed survey of the dwelling was undertaken although its condition was noted to be inferior to the photographic and further evidence provided in the original evidence submitted to the Tribunal. Suffice to say, that the building is currently in very poor and uninhabitable condition.
20. There would appear to be no dispute between the parties relating to the condition of the property but as a summary, the dwelling is in extremely poor order. A seriously faulty chimney stack was noted at roof level together with a significant number of cracked or missing roof slates. Guttering and downpipes are either missing or in a decayed state. Many windows and doors suffer from wood rot attack.
21. Internally evidence of rising damp, penetrating damp, wet rot and dry rot together with woodworm infestation was noted throughout. In places ceilings and floorboards are missing and first floor joists – particularly above the kitchen area are in a severely rotting and unsafe condition.
22. Electricity cables are loose throughout the dwelling and are of an older vintage as is the plumbing system leading to very limited sanitary and kitchen fittings.
23. As a result of the overgrown nature of the grounds it was not possible to accurately identify the boundaries. However, the tribunal was advised that a boundary dispute existed between the owner of the subject property and an adjoining neighbour. Part of the boundary dispute relates to a pedestrian access leading from the lean-to storage area to the front of the property.

Analysis

24. At the commencement of the hearing the Tribunal were informed by Ms Oram for the Applicant that the Applicant's neighbour, Andrew Jones had expressed an interest in purchasing the premises. Apparently the neighbour's son planned to carry out works. Ms Oram said that this was a relevant development because the Applicant believed that Mr Jones was the main complainant in relation to the condition of the premises. The Applicant provided no documentary evidence of this potential sale. Further the Applicant had previously expressed an interest in selling the premises at auction with

the assistance of the Respondent but then had not followed through with this course of action. In the circumstances the Tribunal did not consider that this new evidence affected the validity of the Improvement Notices which is what the appeal was about.

25. Ms Oram focussed her submissions on seeking to persuade the Tribunal that the alleged hazards at the premises do not exist because there was no significant foreseeable risk of harm as a result of the condition of the premises. The risk, she said, was remote. The front door was locked and boarding up works carried out by Adam Coster would prevent access to the premises.
26. The Tribunal was unimpressed by the suggestion that there were no hazards or risks of harm at the premises. The Applicant presented no expert evidence to support such a conclusion. In contrast the Respondent relied on the evidence of a qualified Environmental Health Officer, Ms Thomas who had an integral knowledge of the condition of the premises. She had been trying for some time to get the Applicant to address the issue of the condition of the premises without having to take enforcement action. Indeed the Applicant accepted during the hearing that the Respondent had reached the end of the line in relation to informal action. Accordingly he must have anticipated enforcement action. The Tribunal rejects the suggestion that the action brought was disproportionate. The premises are patently in a hazardous condition and have been for some time.
27. Neither does the Tribunal consider that the works carried out by the Applicant through Mr Coster have addressed the Improvement Notices. The Tribunal accepts the Respondent's contention that "patch and mend" works are insufficient to meet the requirements of the notices (applying para 5.5 of the HHSRS Enforcement Guidance). The boarding up of the openings and the removal of some loose tiles on the roof does not address the overall condition of the premises which remains poor and hazardous as evidenced above.
28. Further the Tribunal derives no real comfort from the limited works proposed by the Applicant as an alternative to the works contained in the notices (see paragraph 3 above). The limited works are premised on the suggestion that the notices are disproportionate in extent. The Tribunal does not accept this proposition. In addition the Applicant repeatedly suggested that because he was going to sell the premises he should not have to carry out all of the works contained in the notices. There is no guarantee that the sale to Mr Jones will proceed and even if it does the Respondent remain rightly concerned about the condition of the premises no matter who owns them.
29. The Applicant suggested that the real motive behind service of the notices was not to address risk but a strategic decision to address housing needs. Again the Tribunal does not accept that in the present case the notices were served for any other reason than the premises were found in a hazardous condition. In any event it is a laudable aim of any local authority to bring disused accommodation back into use.

30. The Applicant argued that the suspended Improvement Notice would tie the hands of any purchaser of the premises because he would be required to carry out works exactly in conformity with the notice. The works in the suspended notice are very generally specified. There is considerable latitude for compliance. Moreover the Respondent was clear that they were open to discussion as to the means of compliance. The Tribunal considers that the suspended notice is necessary in order to ensure that habitable accommodation is provided for any future occupiers of the premises.

Summary

31. The Tribunal confirms the three Improvement Notices served by the Respondent on 20th November 2018.

Minor variations

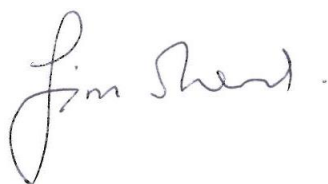
32. On discussion with the parties it was accepted by the Respondent that certain minor variations in the Improvement Notices were appropriate:

Paragraph 6 of Schedule 2 to the Improvement Notice in relation to Hazard No 29 is varied to read: *Demolish existing left hand chimney and cart from site. Cap off where chimney was in situ.*

Paragraph 7 of Schedule 2 to the Improvement Notice in relation to Hazard No 29 is varied to read: *Safely seal fire place in the living room.*

Paragraph 10 of Schedule 2 to the Improvement Notice in relation to Hazard No 29 is varied to read: *Reduce height of brickwork shed to the rear garden making it safe for future use.*

Dated this 9th day of May 2019



CHAIRMAN