

Y TRIBIWNLYS EIDDO PRESWL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0007/08/19.

In the matter of Baglan Farm, Trimsaran, Kidwelly, Carmarthenshire, SA17 4EN.

And in the matter of an Appeal against a Prohibition Order under section 27 and Schedule 2 Part 3 of the Housing Act 2004.

Applicant: Mrs. Suzanne Wadge
(Represented by Mrs. Julia Richards)

Respondent: Carmarthenshire County Council
(Represented by Mr. Gareth Williams)

Tribunal: Mr. Andrew Grant (Legal chairperson)
Mr. Paul Lucas (Surveyor member)
Mr. Eifion Jones (Lay member)

Decision

The Prohibition Order dated the 11th July 2019 is quashed.

Reasons

1. On the 11th July 2019, Carmarthenshire County Council (“the Respondent”) served a Prohibition Order dated the 11th July 2019 (“the Order”) on Mr. Russell Stephen Wadge and Mrs. Suzanne Margaret Wadge (“the Applicant”) in respect of the property known as and situate at Baglan Farm, Trimsaran, Carmarthenshire, SA17 4EN (“the Property”).
2. By way of an application to this tribunal dated the 7th August 2019, the Applicant appealed against the Order.
3. Directions were duly issued by this tribunal on the 28th August 2019 and the matter was listed for an inspection and hearing on the 21st November 2019.

Inspection

4. The tribunal inspected the Property at 09-45 on the 21st November 2019. The Applicant was represented by her solicitor, Mrs. Julia Richards. The Applicant was also present as too was her friend, Ms. Dee Jenkins. The Respondent did not attend the inspection and was not represented at it, although it had been informed of the same.

5. Baglan Farm comprises a small holding with farmhouse set in the heart of rural Carmarthenshire on the edge of the community of Trimsaran and 3 miles from the small town of Kidwelly. The main access to the site is via a single track road and the farmhouse itself is set well back and almost concealed from the road.
6. The Property is of historic traditional solid stone construction with rendered elevations under an interlocking concrete tiled roof. Attached and integral to the main property is a former cow shed which has been partly converted. The Property has coated double glazed sealed windows virtually throughout plus a single glazed hardwood framed window in part of the living area.
7. The accommodation briefly comprises – Overhanging entrance porch, Reception Hall, Sitting Room, Cloakroom and Bathroom at ground floor level. From the Reception Hall a staircase leads to the first-floor landing giving access to Bedrooms 1 and 2.
8. The outside area consists of poorly maintained grounds.
9. The Property is connected to mains water and electricity and has a private drainage system.
10. In general, the property is not in good habitable order and requires significant maintenance and repair. However, at the time of inspection it was noted that some repairs were underway and indeed the interior of the Property had been altered since the date that the Respondent had inspected the Property on the 9th July 2019.

The hearing

11. The Applicant was represented by her solicitor, Mrs Richards. The Respondent was represented by Mr Gareth Williams, who is an Environmental Health Officer employed by the Respondent.

The Applicant's evidence

12. Mrs. Richards submitted that the Prohibition Order has been issued at a time when the Applicant's husband had been arrested for being in possession of a large quantity of chemicals. Apparently, Mr. Wadge had been ordering the chemicals online and had ordered in such quantities that it had caused concern amongst the authorities that the purchase may have been related to terrorist activities. The Property was subsequently raided by the police and Mr. Wadge was arrested. Mrs. Richards submitted that at the time it caused a great deal of excitement in the local area (which was otherwise rather sleepy) and that in her submission the local council had been caught up in all of the excitement of the moment and had wrongly issued the Prohibition Order without giving the matter proper consideration.

13. It was submitted, on behalf of the Applicant, that the service of such an Order was wholly inappropriate in the circumstances. It was submitted that the Council had failed to provide the Applicant with proper notice of its intention to inspect the Property prior to issuing the Order, failed to properly engage with the Applicant thereafter and failed to follow the guidance issued alongside the Housing Health and Safety Rating System as regards enforcement of these issues. It was also submitted that the Order was inaccurate in a number of areas and for instance the Order made reference to 5 occupants residing at the Property whereas only 3 people occupy the property, namely the Applicant, her husband and their adult son, Gabriel. Furthermore, it was stated that many of the defects mentioned in the Order had been “made up” and were not accepted.
14. It was submitted that there had been no consultation at all with the family. It was said that attempts by the family at engagement with the Respondent had been ignored and that there had been a wholesale disregard for the kind of “fair and practical “enforcement envisaged in the guidance.
15. Mrs. Richards then took the tribunal through her comments upon each of the category 1 hazards listed in the Order.
16. She accepted that the external render was cracked but said there was cracked render on most properties and the Applicant proposed to repair the render.
17. It was submitted that there was no evidence of disrepair to either the chimney or the soffit boards and neither was there any evidence of penetrating damp at the Property.
18. As regards excess cold, it was submitted that the walls were not defective and the Order said as much. It was submitted that there was only one window that was single glazed and not 30% of the windows as alleged in the Order.
19. It was accepted that the log burner in the lounge was insufficient to heat the building but it was submitted that it was not intended to heat the entire building. A new burner had been purchased (and the tribunal saw this at the property during the inspection) and the Applicant had recently been successful in applying for a heating grant to update and install central heating at the Property under the “Nest Scheme”. The Applicant was currently awaiting a home assessment in that regard.
20. It was acknowledged that the roof insulation was poor but it was submitted that the at the time that the Order had been served, the property had been undergoing substantial works of improvement and this was one aspect that would have been updated amongst other things.
21. The Applicant denied that the Property was overcrowded as alleged by the Respondent. The Applicant said the Respondent had incorrectly stated the

Property was occupied by 5 people when it was only occupied by 3 people. The shower referred to in the Order had been removed by the time of the hearing and was no longer an issue. As regards, the landing area, it was stated that this was a temporary measure during the ongoing building work and was not designed to be a permanent feature.

22. As regards the electrical issues, the Applicant asserted that the electrics had been made safe by the Applicant's friend, Ms. Jenkins, who was also a qualified builder and electrician. It was accepted that further work was required and it was asserted that this would be done and a certificate of compliance would be provided in due course by an independent electrician.
23. In relation to the issue of fire safety, the Applicant stated that smoke alarms were present at the Property and that the other issues within this category in the Order had already been addressed in earlier submissions.
24. Mrs. Richards then made submissions upon the category 2 Hazards in the Notice. It was submitted that the Council's enforcement action must be reasonable and referred to section 5.1 of the aforementioned guidance. It was submitted that the Council's entire approach had been unreasonable.
25. It was stressed again that the Applicant had been successful in applying for a grant to update the heating appliances at the Property. As regards the issue of Hygiene in the kitchen, the point was made that the council had inspected the property shortly after it had been searched by the police and before the Applicant had the opportunity to clean the house. That had now been done and the kitchen was not unhygienic. The point was made that had the council inspected again this would have been noticed.
26. The Applicant stated that the comments about the uneven surfaces in the yard had been exaggerated. The Applicant stressed that it was a working farm and accepted that not everything was perfect.
27. Mrs. Richards informed the tribunal that the Applicant had recently received a loan from her friend to carry out substantial refurbishment of the Property. The works had been delayed in consequence of the arrest of Mr Wadge. However, the money was soon to be available and the work could start again. It was indicated that about £18,000 had been spent so far and the balance of the work would take about 12 months to finish. The Applicant stated that she was prepared to accept an Improvement Notice which included all of the items mentioned in the Prohibition Order but required 12 months in which to complete the work. It was submitted that this was the better course of action to take and that is the course that should have been adopted by the Respondent.
28. In concluding her submissions, Mrs. Richards stated that the Respondent had failed to engage with the Applicant and had behaved unreasonably in the

circumstances. It was suggested that with proper engagement the matter could have been resolved sensibly as the Applicant had already started a major refurbishment at the time that the Order was served. It was submitted that the Applicant was both prepared and financially able to finish the works. In such circumstances, service of the Order was unreasonable.

Respondent's evidence

29. Mr. Williams denied that the Respondent had behaved unreasonably. He said that it had been sympathetic to the Applicant's situation and the Council had provided temporary accommodation for the family. He said there had been close liaison with the Applicant during the period in question.
30. The Respondent said that alternative courses of action had been considered but it was felt that a Prohibition Order was reasonable in the circumstances. Mr. Williams said that he stood by the findings in the Order although he accepted that he had not inspected the Property since the Order had been issued.
31. He said that he felt there was no point in serving a suspended Prohibition Order as it simply delayed the works and, in any event, he did not consider that the Applicant had the means to finance the required works.

Cross examination

32. Mrs. Richards asked Mr. Williams how it could be said that there had been close liaison as he had suggested. Mr. Williams responded by saying that another Council employee, Helen Rowe had been appointed as the families' designated officer.
33. Mrs. Richards asked him whether he agreed that appointing an officer was not the same thing as evidencing the close liaison which had been suggested. Mr. Williams said that he was not able to answer that question.
34. The tribunal asked Mr. Williams if he still felt that a Prohibition Order was still necessary given what had been said by the Applicant today. He responded by saying that he felt such an Order to be appropriate although he would be willing to consider an Improvement Notice if he were satisfied that it could be properly funded and evidence provided that work was being carried out to an appropriate standard.

Discussion

35. It was clear that the Order had been issued at a difficult time for the Applicant and her family. However, the tribunal are satisfied that at the relevant time service of the Order could be justified as one of several possible enforcement options available to the Respondent at the time. The Property required major building work

and had a large number of outstanding issues, many of which could be viewed as hazards.

36. However, the tribunal has heard evidence that at the time at which the Order was served the Applicant had already started to refurbish the property and had received funding from a friend to facilitate a substantial refurbishment of the property. We accept that evidence.
37. We also accept that the process was disrupted in consequence of the action taken against Mr. Wadge, but that the disruption had now been resolved.
38. The tribunal also accept the Applicant's evidence that she will carry out all of the works set out in the Prohibition Order within a period of 12 months and furthermore are satisfied that she has the financial ability to facilitate the necessary works.
39. The tribunal is satisfied that whilst a Prohibition Order could be justified in terms of the work required, the same result could have been obtained by means of service of an Improvement Notice which would have enabled the Applicant to have remained at the Property whilst undertaking the work. This is particularly the case as the Applicant and her friend (a builder by trade) proposed to undertake parts of the work with outside help on those aspects which was beyond their expertise.
40. In the circumstances, the tribunal determine that service of an Improvement Notice is the best course of action in the circumstances, allowing the Applicant 12 months from the date of service of the Notice in which to carry out the work to the Property. In that regard, the required works are exactly the same as those contained within the Prohibition Order dated the 11th July 2019.
41. With that in mind, the tribunal is of the view that in the circumstances that now prevail the Prohibition Order is no longer appropriate and accordingly the Order is quashed.

Dated this 9th day of December 2019.

Andrew Grant
Chairman.