

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0024/02/18

In the Matter of 20, Ynys Las, Llwynhendy, Llanelli, Carmarthenshire, SA14 9BT.

In the matter of an Application under Section 134 of the Housing Act 2004 for authorisation to make an interim Empty Dwelling Management Order (EDMO).

APPLICANT Carmarthenshire County Council
RESPONDENT Jacqueline Johanna Norris-Atterbury
TRIBUNAL; Chairman; Richard Payne
 Surveyor; Roger Baynham

UPON the tribunal reading the application, the witness statement and enclosures of Mr Andrew Lavender dated 8th February 2018 and upon it being noted that the Respondent agrees with the making of an interim Empty Dwelling Management Order, and upon the tribunal having given notice on 12th February 2018 that the application would be dealt with upon the papers and without an oral hearing on 7th March 2018;

ORDER

IT IS ORDERED;

1. The tribunal authorises the Applicant local housing authority of Carmarthenshire County Council to make an interim Empty Dwelling Management Order (EDMO) in respect of the dwelling at 20, Ynys Las, Llwynhendy, Llanelli, Carmarthenshire, SA14 9BT (“the dwelling”).
2. The tribunal is satisfied that the dwelling is one to which section 133 of the Housing Act 2004 applies.
3. The tribunal is further satisfied as to the matters in section 134 (2) of the Housing Act 2004, namely
 - 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 section 133(3) and
 - e. That any prescribed requirements have been complied with.

4. The tribunal is not satisfied that the case falls within one of the prescribed exceptions.
5. Further, the tribunal, in deciding whether to authorise the local housing authority to make an interim EDMO in respect of the dwelling has taken into account the interests of the community and the effect that the order will have on the rights of the relevant proprietor and may have on the rights of third parties.
6. The tribunal authorises the Applicant to make the interim EDMO in the form that was exhibited at page 479-481 of section 3 of the documentation bundle that was filed in support of the application dated 8th February 2018 and was attached to the tribunal's order of 7th March 2018.

Reasons for the tribunal's decision.

Background.

7. By letter to the tribunal and an application form dated 8th February 2018, the Applicant Carmarthenshire County Council sought the tribunal's authorisation to make an Empty Dwelling Management Order (EDMO) in respect of 20 Ynys Las, Llwynhendy, Llanelli, SA14 9BT ("the property"). The property was purchased by the Respondent Ms Jacqueline Johanna Norris-Atterbury on the 27th October 2008 for £90,000 with the assistance of a mortgage from Birmingham Midshires, part of the Bank of Scotland PLC. It was tenanted between January 2nd 2009 and 17th January 2014 but has been empty since that time. It is a three bedroom semi-detached house with a reasonable sized rear garden and conservatory. The Applicant relied upon a bundle running to 482 pages which included an extremely helpful detailed statement and enclosures from Mr David Andrew Lavender, a Consultant Environmental Health Officer. Mr Lavender also sits as a professional member of the Midlands First-tier Tribunal (Property Chamber) and informed both the Respondent and this tribunal of that fact.
8. The bundle and statement contained evidence that the Applicant had been in touch throughout with the Respondent who agreed with the application. Upon the evidence the Council had originally been contacted by the Respondent in July 2015 as she had expressed an interest in the 'Houses into Homes' Scheme which was operated by the Council in partnership with the Welsh government whereby an interest free loan of up to £25,000 towards the cost of renovating a long-term empty property could be granted for a maximum of three years where the owner intends to rent the property out. However it was not possible for the Respondent to take advantage of the scheme because any such loan was required to be secured either as a first or second charge against the property or an alternative security property and must not exceed 80% of the current value taking into account any prior charges.
9. The council also wrote to the Respondent in March 2016 setting out a number of options available to try and bring the property back into use. No response was received and the council considered whether the property would be suitable for an

EDMO. Further requests for information, an EDMO exemption questionnaire and further guidance were sent to the Respondent on 27 May 2016. Whilst the Respondent was unable to afford to undertake required repairs herself and was living in rented accommodation, selling the property was also not an option since the likely sale price would be insufficient to pay off the mortgage. The Respondent therefore had a depreciating asset in a poor condition that was still subject to mortgage repayments.

10. The council however suggested an alternative solution, namely by the use of serving an Improvement Notice under the Housing Act 2004 in combination with an EDMO. Mr Lavender's statement explained that an interim EDMO when in force is a local land charge and an application may be made for it to be entered as an appropriate restriction in the register of the property's title. However any money expended through an interim or final EDMO has no priority over any existing charges, in this case the mortgage with Birmingham Midshires/Bank of Scotland. However Mr Lavender explains that by taking a two stage approach using an Improvement Notice and undertaking works in default, and then following up with an interim EDMO, it would be possible to protect any funds provided by the Applicant. This works as follows; the council can undertake works in default of the Improvement Notice under section 12 of the Act. On completion of the works, a formal demand under Schedule 3, section 8 – 11 of the Housing Act 2004 can be served. Further, Schedule 3, section 13 (1) states that "Until recovered, the expenses recoverable by the local housing authority, together with any accrued interest on them, are a charge on the premises to which the improvement notice related."
11. Schedule 3 section 13 (3) says that "For the purpose of enforcing the charge, the local housing authority have the same powers and remedies, under the Law of Property Act 1925... and otherwise, as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver." Mr Lavender explains that *"Consequently, the funds expended in complying with the improvement notice in default would take priority over Birmingham Midshire/Bank of Scotland charge. This approach ensures that if the Birmingham Midshire/Bank of Scotland take steps to recover their charge because of non-payment of the mortgage or other breach of the mortgage conditions, Carmarthenshire County Council (Public Funds) would be protected. This level of protection would not be available, if an EDMO was pursued in isolation."*
12. Mr Lavender spoke to the Respondent by phone on 11 July 2016 to discuss and explain the approach suggested. She had consented to an inspection of the property and a schedule of works had been provided for her consideration. In further email responses of the first and 16th of August 2016, the Respondent agreed to the works specified in the schedule and consented to the Applicant making an application for an EDMO, that the matter could be dealt with by written representations and that documents could be served on her by email. Subsequently an Improvement Notice and demand for expenses under sections 12 and 49 of the act respectively were served upon the Respondent by email and by first class post with a copy of the documents also being sent to the Bank of Scotland at their registered address.

13. The Respondent did not seek to appeal against the Improvement Notice. By email of 24th of May 2017 the Respondent consented to the schedule of works proposed by the Council, full details of which had previously been sent to her together with the costs. In a discussion with the Respondent on 19 September 2017, Leighton Evans, Empty Property Adviser with the Applicant confirmed that most of the works have been completed and discussed the service of demand for payment, contact with the mortgage company and the proposed EDMO application. The Respondent confirmed that she was happy to proceed. Subsequently, a letter and Demand for Recovery of expenses incurred by the local authority was served on the Respondent by email and first class post on 24 November 2017. This letter also confirmed the Council's intention to apply to this tribunal for an interim EDMO and asked that she provide her written consent for this course of action, which she did by means of a signed consent form dated 1 December 2017.
14. A certificate of practical completion of the works was issued on 24 November 2017, a full set of pictures of the completed works was taken and the relevant certificates in relation to electrical installation, landlord's gas safety certificate and the windows (FENSA) were obtained. All of these were exhibited to Mr Lavender's statement as indeed were the various other emails and notices referred to in his statement.

The Law.

15. Under section 133 of the Act, a local housing authority may make an interim EDMO in respect of the dwelling if it is one to which this section applies and, upon application to the tribunal the tribunal by order authorises them under section 134 to make such an order. Under section 133(2), the section applies if the dwelling is wholly unoccupied and the relevant proprietor is not a public sector body. Further under section 133 (3) before determining whether to make an application to the tribunal, the authority must make reasonable efforts to notify the relevant proprietor that they are considering making an interim EDMO and to ascertain what steps if any of the proprietor is taking or is intending to take to secure that the dwellings occupied. Further, section 133(4) requires that in determining whether to make an application to the tribunal for an authorisation for an interim EDMO, the authority must take into account the rights of the relevant proprietor of the dwelling and the interests of the wider community.
16. Section 134 of the Act says that 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 certain matters set out in section 134 (2) and the case does not fall within one of the prescribed exceptions. Section 134 (2) says that the matters 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 section 133 (3), and
- (e) that any prescribed requirements have been complied with.

Evidence and findings.

17. In respect of the requirements of section 134 (2), Mr Lavender's witness statement dealt clearly and comprehensively with each element. With regard to section 134 (2) (a), the property was described as having been empty since 17 January 2014 according to the Council's Council tax records. This was further evidenced by an inspection undertaken by the Council in relation to the earlier Houses into Homes loan application dated 28th of October 2015 and the Respondents response to the EDMO exemption questionnaire confirming that the property had been empty for 2 years and 2 months as of 31 May 2016. Further the council had served an improvement notice on 18 August 2016 and the property remained empty until the conclusion of the work in November 2017.
18. With regard to 134(2)(b), the tribunal was satisfied upon the evidence that there was no reasonable prospect that the dwelling will be occupied in the near future. The Respondent had confirmed that she lacked the funds to undertake the work necessary at the property to transform it into a lettable condition and she did not have the funds or the ability to organise the work required to secure the property upon being notified that it was insecure by the police. Mr Lavender suggests that without the Council's intervention the property would have remained empty and would have deteriorated further continued to attract antisocial behaviour. The tribunal accepts this.
19. Section 134 (2) (c) was also satisfied. Mr Lavender's statement confirmed that Carmarthenshire County Council Social Letting Agency was able to manage the property during the currency of the EDMO and that there was strong demand for 3 bedroomed housing in the Llwynhendy Ward, with 40 families registered on the Council's Housing choice register.
20. There was ample evidence in Mr Lavender's statement that the Respondent had been notified that the Council were considering making an interim EDMO and that they had sought to ascertain what steps if any she was taking or is intending to take to secure that the dwelling was occupied. In fact the Respondent, to her credit consented to the Council's proposed solution and worked with them throughout. Therefore, the tribunal was satisfied that the authority had complied with section 133 (3). Further, Mr Lavender gave details of how the Applicant had complied with various other requirements of the Housing Order 2006 and the tribunal were satisfied that section 134 (2) (e) had been complied with.
21. When deciding whether to authorise a local housing authority to make an interim EDMO in respect of a dwelling, the tribunal must take into account both the interests of the community and the effect that the order will have on the rights of the relevant

proprietor and may have on the rights of 3rd parties, in accordance with section 134 (3). In this regard, exhibited to his statement at Exhibit 27, (pages 473 – 474 of the bundle), Mr Lavender had set out various factors in an analysis headed “Human Rights Relevant Proprietor Vs Wider Community” dated 24th of January 2018. This included matters such as the consent of the Respondent to the Council’s proposals, that the property would be improved, ensure that it was occupied and therefore less likely to be the subject of criminal damage, vandalism and antisocial behaviour, thereby dealing with the concerns of neighbours and Councillors about the property being vacant and attracting antisocial behaviour and vandalism.

22. In terms of the wider community, Mr Lavender cited statistics which estimated there to be around 86,867 dwellings in Carmarthenshire, approximately 24,830 empty properties in Wales, with 2,844 empty properties in Carmarthenshire (empty for more than 6 months) and that Carmarthenshire has the highest number of empty homes in Wales. He said that consequently Carmarthenshire has 3.3% of its private sector dwellings empty which compares with 2.1% nationally in Wales and 2.79% nationally in England. He cited the Carmarthenshire County Council local Housing market assessment (March 2014) which estimated that given the current levels of supply, there was a shortfall of 1850 affordable homes every year for the next 5 years. In addition there was a strong demand for three-bedroom accommodation in the Llwynhendy area with 40 families registered on the housing register in December 2017. He pointed out the numerous ways in which empty properties are known to have an adverse effect upon the neighbourhood and particularly upon the immediate neighbours and indicated that the Respondent, neighbours and local councillors were supportive of the use of an EDMO.
23. Having carefully considered the evidence upon this point, the tribunal was firmly of the view that the interests of the community would be positively served by the making of the EDMO, allowing the property to be tenanted, thereby benefiting the wider and immediate community and of course the new tenants. Mr Lavender’s statement also detailed correspondence that had been sent to the Bank of Scotland, the mortgagee of the property and third party with rights over the property, but no response had been received. Nevertheless, the tribunal was satisfied that in fact the rights of the mortgagee would be protected and ultimately enhanced by authorising the interim EDMO. Upon Mr Lavender’s figures, the market rent for the property was likely to be around £448.76 per calendar month, less the social letting scheme management fee of 8% plus vat, leaving the owner with £405.68 per month towards paying the costs of the improvement work and associated other costs to the Council.
24. The total cost of the works as specified in the Housing Act 2004 demand served on 24 November 2017, was £28,472.83. Mr Lavender stated that based upon the above income figures it would take approximately 5 years and 9 months for the debt to be repaid. Once that had happened the management of the property would be passed back to the Respondent or she could continue to let the property through Carmarthenshire County Council’s Social Letting Scheme on similar terms. On withdrawal of the EDMO after repayment of the Council’s debt, the Respondent would be free to directly let the property out or to sell the property, and either way,

the rights of the mortgagee and indeed the Respondent would be protected and enhanced by the increase in value of the property, certainly as opposed to the condition it was in prior to the Councils intervention.

25. Section 134 (4) does enable a tribunal, on authorising a local housing authority to make an interim EDMO, to make an order requiring the authority 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 if the tribunal thinks fit. There was no evidence before the tribunal of any circumstances or reasons for the tribunal to make a compensation order either to the Respondent, the Bank of Scotland or any other third party, and consequently we make no such order.
26. The tribunal further, was not satisfied that this case fell within one of the prescribed exceptions as mentioned in section 134 (1) (b).
27. As indicated in the original order that was made and promulgated on 7 March 2018 the tribunal authorised the Applicant to make an interim EDMO in respect of the property at 20, Ynys Las, Llwynhendy, Llanelli, Carmarthenshire, SA14 9BT, in the form that was exhibited at page 479 – 481 of the bundle of documents accompanying Mr Lavender’s statement.
28. Finally, the tribunal wishes to compliment the parties for the way in which this application process was dealt with. The Respondent, very sensibly in our view, cooperated and worked with the Council and will most likely benefit in the future from having done so. The tribunal was very impressed with the Council’s approach to this case and the extremely comprehensive and helpful statement and exhibits prepared by Mr Lavender. Given the figures upon empty dwellings in Wales, it is to be hoped that more Local Authorities in Wales will follow the approach of the Applicant in this case and be proactive and innovative in using the existing powers that they have to bring empty dwellings back into occupation to the benefit of the owners, the wider community and of course the families and individuals who can be provided with homes as a result.

DATED this 27th day of November 2018



CHAIRMAN