

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0002/04/23

In the matter of a Prohibition Order under Section 20-21 of the Housing Act 2004

Applicants: Michael John Foreman, Nicholas Purcell.

Respondent: Gwynedd Council

Property: 3 Marina Avenue, Fairbourne, Gwynedd, LL38 2AJ

Tribunal.

Tribunal Judge R. Payne Legal Member.

Mr H. Lewis Surveyor member.

Mr D. Morris- Lay member.

Upon hearing Mr Foreman for the Applicants and Mr Iwan Evans for the Respondent by videoconference hearing on 11th October 2023.

ORDER

1. The application to appeal against the Prohibition Order dated 9th March 2023 in respect of the property of 3 Marina Avenue, Fairbourne, Gwynedd, LL38 2AJ is dismissed as an abuse of process of this tribunal.
2. There is no application for, or order for costs.

Reasons for decision.

3. On 9 March 2023 a prohibition order was made by the Respondent Council in respect of the property at 3 Marina Ave, Fairbourne, Gwynedd LL38 2AJ (“the property”). The landlord is Mr Nicholas Purcell, but the property is managed by Mr Michael Foreman, the applicant in this matter who is a licensed agent with Rent Smart Wales. The tenant of the property at the time the order was made

4. Mr Foreman applied to the tribunal to appeal against the prohibition order by application form dated 6 April 2023. Mr Foreman included considerable information with his application form and has since sent several documents and emails to the tribunal including an email on 19 April 2023 which contained what Mr Foreman described as his "Statement of Reason." Mr Foreman consistently referred to what he described as "My Best Course of Action Appeal". In this first statement Mr Foreman said that his appeal was not against the demands for the repairs listed on the prohibition order but that the Respondent had failed to take into lawful consideration the disability status of the tenant and the tenant's care and support needs. He said that simply, what that means is he wanted Gwynedd Council to "lawfully admit the tenant's health condition". The statement described what Mr Foreman said was a lack of appropriate services for the tenant over many years and that the Respondent Council had in his view failed to assess the tenant's care and support needs since January 2016. In brief, these needs include significant challenging behaviour which has also resulted in the tenant damaging the property. Mr Foreman described the tenant as having profound behavioural problems daily.
5. Mr Foreman's statement concluded by saying "the Best Course of Action in this matter is for Gwynedd Council to lawfully admit the Tenant's... disability status and to treat [the tenant] accordingly by finding [the tenant] appropriate temporary accommodation.... There is a manifest failure by Gwynedd Council in respect of the Tenant's care and support needs. As such I believe the Best Course of Action is to refer the Tenant to an Independent Safeguarding body."
6. Mr Foreman emailed the tribunal on 19 May 2023 in which he copied an email of the same day that he had sent to the Respondent. Mr Foreman again set out details of the tenant's support needs saying "as previously stated to yourself, Mr Evans, I am in complete agreement with your recommendations and requirements regarding number 3 Marina Ave... My appeal is for a Best Course of Action which for [the tenant] must be for the Local Authority to provide case – appropriate and person – centred support to relocate [the tenant] whilst the work is undertaken."
7. The Respondent, by statement to the tribunal from Mr Evans dated 17th of May 2023 noted that the Applicant was not appealing or questioning the existence of the category one hazards on the premises and noted that the Council were at a loss to identify a cited ground of appeal. By email of 14 June 2023 the tribunal informed the parties and Mr Foreman in particular that the tribunal's powers in hearing a prohibition order appeal are proscribed by statute and were limited to confirming, quashing or varying the prohibition order. The tribunal made it clear to Mr Foreman that the tribunal had no powers to make any orders or recommendations in relation to care and support that may or may not be needed by the tenant and had no power to bind the local authority in that regard. The tribunal noted that Mr Foreman did not oppose the prohibition order and that the tribunal was minded to dismiss the appeal as to continue with it when the order was not disputed constituted an abuse of process of the tribunal and involved a waste of public funds and time.

8. In response, Mr Foreman by email to the tribunal of 28 June 2023 indicated that he wished to continue with the appeal as he believed that the way it was served demonstrated an abuse of the system. He provided further detailed information about the tenant's ongoing difficulties. The tribunal was informed by email from the Respondent on 11th July 2023 that the individual who had occupied the property had now left and moved outside the local authority's jurisdiction and that the property had been vacant since 5th July. The case had been listed for consideration of the strike out to take place on 11 August 2023 by video link and considering the information from the Council the applicant was asked whether he wished to withdraw the application, but he did not wish to do so. In the event owing to unforeseen circumstances the case could not be heard until 11 October.
9. At the hearing on 11 October 2023 Mr Foreman confirmed that he did not dispute the need for the prohibition order, and he agreed that it was appropriate for the council to have issued the order although he maintained that the Council was reckless in also serving it upon the tenant. Mr Foreman agreed that the issue of the prohibition order was appropriate and said that the ongoing appeal was because of him failing to understand the tribunal's powers. He also noted that all the essential work at the property required by the order was now complete although redecoration was still to be undertaken.
10. The tribunal explained to Mr Foreman that its powers were limited, and the tribunal did not have the power to order the Respondent Council to undertake an assessment of the former tenant's needs. Mr Foreman accepted that he had no valid ground of appeal against the prohibition order, and he did not oppose it being struck out.
11. The tribunal noted that both in writing and orally at the hearing Mr Foreman had confirmed that he did not oppose the making of the prohibition order and he did not factually dispute that the hazards described, and the remedial work required listed in the order existed at the property. The tribunal had previously explained in writing to Mr Foreman that its powers were limited and that it had no ability to order any assessment of an individual's social and health needs.
12. The tribunal were therefore satisfied that continuation of the application and appeal when the applicant did not dispute the making or the contents of the prohibition order, would constitute an abuse of process. The tribunal therefore dismissed the application in whole under rule 41 (1) c) of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016. There was no application for costs and no costs order is made.
13. The tribunal, whilst dismissing this application and appeal as an abuse of the process of the tribunal, also note that Mr Foreman had misunderstood the tribunal's powers and had been acting in good faith throughout for the benefit of a vulnerable individual. The tribunal was impressed with Mr Foreman's commitment and support to the former tenant of the property over many years.

Dated this 21st day of December 2023.

R. PAYNE
TRIBUNAL JUDGE