



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00MR/HYI/2019/0001

Property : 157 Haslemere Road, Southsea, Hampshire
PO4 9AW

Applicant : Portsmouth City Council

Representative : Lauren Belamy, Empty Property/Housing
Standards Officer

Respondent : Mr C Staples

Representative :

Type of Application : Authorisation to make an Interim Empty
Dwelling Management Order

Tribunal Member(s) : Mr D Banfield FRICS
Judge M Tildesley OBE

Date of Hearing : On the papers following an inspection on
3 April 2019

Date of Decision : 3 April 2019

DECISION

The Tribunal hereby authorises the Applicant to make an interim EDMO in the terms of the draft order submitted and now annexed to this Determination

Background

1. The Tribunal received an application for authorisation to make an Interim Empty Dwelling Management Order (EDMO) in accordance with Section 133 of the Housing Act 2004.
2. An Interim EDMO is an order that enables a Local Housing Authority (LHA) with the consent of the owner to take steps for the purpose of securing that a dwelling becomes and continues to be occupied.
3. In the event that the LHA is unable to obtain the owner's consent it can go on to make a final EDMO without further authority from the Tribunal. However, this does not prevent the owner appealing to the Tribunal against a decision by the LHA to make a final EDMO. A final EDMO enables the LHA to achieve the purpose set out in paragraph 2 above but without the owner's consent.
4. Directions were made on 15 March 2019 and sent to both parties. The Tribunal indicated that the matter would be determined on the papers in accordance with Rule 31 of the Tribunal's procedural rules unless either party objected. No objection has been received and the Tribunal has therefore made its determination with the assistance of the bundle received and an inspection of the property. The Applicant confirms that the bundle has been sent by recorded delivery to Mr Staples at his correspondence address. Acknowledgement of delivery has been received. The Tribunal has not received any communication from the Respondent. References to pages in the bundle are shown as [].
5. The Tribunal carried out an inspection of the property and surrounding area on the morning of 3 April 2019. Present were Lauren Bellamy the council's Empty Property Officer who was accompanied by Jelena Taylor and Sarah Curtis both Housing Standards Officers with the Council. The Respondent, Mr Staples did not attend. A Warrant had been obtained authorising entry.
6. The property comprises an early 20th century two storey end of terrace house in a street of similar and more modern properties. The property has rendered elevations under an interlocking tile roof. There is a small single storey front bay. The windows have been replaced at some time with UPVC double glazed units. Behind the front door on the ground floor is a narrow hall with some missing floorboards: a front room with bay where the ceiling has been removed together with a small section of the floor; a large kitchen/diner and an internal bathroom/WC. A staircase with missing bottom steps leads from the kitchen/diner to the first floor where there are two bedrooms both with their ceilings removed. The front bedroom has sections of plaster removed from the front wall exposing what appears to be a failed lintel over the front window and some failed brickwork. Access could not be gained to the rear overgrown garden but at the front is an overgrown shallow garden area behind a low brick wall.
7. Photographs taken in 2016 and 2018 of the interior and exterior have been provided. The photographs show a dilapidated property where some internal repairs appear to have started but then abandoned. The Tribunal did not

observe any significant change in condition from that recorded by the photographs.

8. On the property register [403] the Freehold is listed under Title Number HP464255 and the proprietor is shown as Christopher Frederick Staples of 157 Haslemere Road, Southsea, Portsmouth.
9. The Applicant is the local housing authority for the purposes of the Housing Act 2004.

The Law

10. The Tribunal's jurisdiction in respect of the authorisation of an interim EDMO is set out in section 134 of the 2004 Act which provides so far as is relevant to this Application as follows:

(1) *The appropriate 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—*

- (a) *is satisfied as to the matters mentioned in subsection (2), and*
- (b) *is not satisfied that the case falls within one of the prescribed exceptions.*

(2) *The matters as 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 has complied with section 133(3), and*
- (e) *that any prescribed requirements have been complied with.*

(3) *In deciding whether to authorise a local housing authority to make an interim EDMO in respect of a dwelling, the tribunal must take into account—*

- (a) *the interests of the community, and*
- (b) *the effect that the order will have on the rights of the relevant proprietor and may have on the rights of third parties.*

11. Section 134(1) (b) refers to prescribed exceptions which are found in the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 ("The Housing Order 2006") and are referred to below.

Evidence and Submissions

The Applicant

12. In their lengthy statement of evidence, the Applicant refers to the matters on which the Tribunal must be satisfied under S134 (2) of the Act. Those relevant to this application are referred to below.

(a) The dwelling has been wholly unoccupied for at least 2 years

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The property, according to Council tax has been empty since 2006. The freeholder advised, in 2016 that the reason why the property has been empty is because his tenants had caused disrepair to the property and he has had to carry out work to live in it himself.

(b) That there is no reasonable prospect that the dwelling will become occupied in the near future.

At a visit to the property in 2016 the freeholder advised that he would carry out the works within 6 months. The Council re-inspected in 2018 when it was determined that no further works had been carried out. No replies have been received to the numerous letters sent to the Respondent and it is felt that without intervention by the Council the property is likely to remain unoccupied.

(c) That if an Interim Order is made there is reasonable prospect that the dwelling will become occupied,

Should the interim EDMO be granted, the local authority will work with the owner to carry out the required works to bring it back into use provided that they agree to a tenancy for the property to be occupied.

Failure to gain agreement will result in the process of applying for a Final EDMO which will then allow for the property to be renovated, rented and the costs incurred will be recouped through the rental income

(d) That the authority has complied with section 133 (3)

Section 133 (3) Before determining whether to make an application to a residential property tribunal for an authorisation under section 134, the authority must make reasonable efforts -

(a) To notify the relevant proprietor that they are considering making an interim EDMO in respect of the dwelling under this section

On 6 March 2018 a letter was sent to the freeholder with a notice attached giving a 90-day warning that an application for an Interim EDMO would be made should the property not be brought back into use.

(b) To ascertain what steps (if any he is taking or is intending to take, to secure that the dwelling is occupied.

The property owner was written to several times in 2015 and 2016 and a meeting held at the property in 2016 when a timescale for works was established. Several letters and phone calls have been sent to the freeholder throughout 2017 and early 2018 but no contact has been made.

Matters under section 134(2) of the Act continued .

(e) That any prescribed requirements have been complied with.

4 (1) for the purpose of section 134 (2) (e) of the Act the prescribed requirements with which a housing authority must comply are that.

(a) It must make reasonable efforts to establish from the relevant proprietor whether he considers that any of the exceptions contained in article 3 apply to the dwelling.

No response has been received to the questionnaire sent at the same time that the Notice of Intention to serve an Interim EDMO was served. The same questionnaire was sent twice in 2015.

(b) It must provide to the residential property tribunal .

(i) Details of the efforts that they have made to notify the relevant proprietor that they are considering making an interim EDMO in respect of his dwelling as required under section 133 (3)(a) of the Act.

A notice of intention to serve an Interim EDMO were served on 6 March 2018 and the owner was written to on 29 January 2018 advising that they had gained entry under warrant, had keys to the property which he could collect and that unless contact was made within 14 days a notice of intention would be served.

ii) Details of the enquiries they have made to ascertain what steps (if any) the relevant proprietor is taking or is intending to take to secure that the dwelling is occupied as required under section 133 (3) of the Act

All letters sent to the freeholder since 2015 have requested information as to his plans for the property. After the visit in April 2016 a letter dated 9 May 2016 was sent confirming the works to be undertaken.

(iii) Details of any advice and assistance they have provided to the relevant proprietor with a view to the relevant proprietor securing that the dwelling is occupied,

Letters sent in 2015 gave advice and offered financial assistance. A full survey was carried out under the Housing Act 2004 in April 2016 which was copied to the freeholder. The survey outlined the works required. A further survey was carried out in January 2018 under warrant and the owner given information which would help

(iv) All information they have that suggests that the dwelling may fall within one of the exceptions described in article 3 whether available from the authority's own enquiries or from representations made to it by the relevant proprietor

Article 3 - For the purposes of section 134(1) (b) of the Act a dwelling fails within a prescribed exception if.

(a) It has been occupied solely or principally by the relevant proprietor (2) and is wholly unoccupied because

(i)He is temporarily resident elsewhere .

The owner advised that he was planning to carry out works himself and move in prior to which it had been let. There is no evidence to suggest that the property he currently lives in, and owns, is temporary.

(ii)He is absent from the dwelling for the purpose of receiving personal care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present disorder

There is no evidence to suggest this is the case.

(iii)He is absent from the dwelling for the purpose of providing or better providing personal care for a person who requires such care by reason of old age, disablement, illness past or present alcohol or drug dependence or past or present disorder

The freeholder advised he had been looking after his mother who passed away prior to their visit in 2016. There is no evidence to suggest that he is providing care to anyone nor was the reason given for why the property was empty since 2006.

(v) The classification of the dwelling for council tax purposes under the Local Government Finance Act 1992(5) and

The dwelling is classified as Class B and (Prem50) meaning that it has been empty for more than 2 years.

(vi) All information they have that suggests that the dwelling has been causing a nuisance for the community.

Reported as empty in 2016. Neighbours have been cutting back overgrown vegetation at the front to prevent the highway being blocked,

(vii) All information they have that suggests that the community supports the proposed making of the interim empty dwelling management order by the local authority.

The neighbouring community has been consulted with reference to an application for an Interim EDMO. 48 properties were written to and 12 replies were received with all agreeing to the property being brought back into use.

(c) Where the relevant proprietor -

(i)Has undertaken or is undertaking repairs, maintenance or improvement works;

(ii)Has applied to local planning authority or other authority for permission to make structural alterations or additions to the dwelling and he awaits the decision of a relevant authority on the application,

The owner has previously undertaken works to the property. However, since 2015 no works have been carried out. The inspections in 2016 and 2018 found that no further work had been carried out despite the owner advising that he would be completing the works and moving in to the property himself.

LHA's consideration of the rights and interests specified in section 133(4) of the Act

133(4) In determining whether to make an application to a residential property tribunal for an authorisation under section 134, the authority must take into account the rights of the relevant proprietor of the dwelling and the interests of the wider community.

By applying for an Interim Empty Dwelling Management Order, the local authority is ensuring that the property is brought back into use and reoccupied whilst taking into account that the freeholder still wishes to keep the property in his name.

The EDMO allows for the Council to manage the property on behalf of the freeholder and, once the outstanding debt for the work on the property has been reimbursed through rental income, the freeholder will receive a rental income minus reasonable management fees.

The wider community will benefit from the property being brought back into use because there are currently 290 households on the housing register for 2-bedroom houses in Southsea. In 2017 an average of 40 households a month approached the local authority because they were being made homeless and had 1 or 2 children. This means that this type of accommodation has a perpetual high demand.

C) Where the LHA notified the relevant proprietor that it was considering making an Interim EDMO, a copy of the notification.

On 6 March 2018 the freeholder was served a notice of intention to serve an Interim EDMO providing the required 90 days warning as per the legislation.

The Respondent

No response has been received from the Respondent.

Decision

13. Before making an interim EDMO, the Applicant must be authorized to do so by the Tribunal in the form of the draft order submitted (or as varied by the Tribunal). In order to authorize the interim EDMO, the Tribunal must be satisfied, not just that no exceptions from the legislation apply, but essentially that the conditions referred to in paragraph 10 above have been satisfied.
14. The Tribunal accepts the evidence provided by the Applicant at paragraph 12 above but must determine whether that information satisfies the requirements of the Act.
15. No response has been received from Mr Staples and the Tribunal must make its determination on the basis of its inspection and the evidence provided in the bundle.

16. From the evidence provided and from its inspection the Tribunal is satisfied that the property has been unoccupied for at least 2 years.
17. Building works have started but no progress has occurred for some time from which we find that there is no reasonable prospect that the dwelling will be occupied in the near future.
18. The authority has prepared a report [147] applying the Housing Health & safety Rating System which sets out the defects found and a schedule of works for their elimination. Tender documents detailing the work to be undertaken [393] have been prepared indicating the authority's firm intention that the property is brought back to a lettable condition which are accepted by the Tribunal as satisfying the requirement that there is a reasonable prospect that the dwelling will become occupied.
19. The Tribunal is satisfied from the evidence above that the authority has complied with section 133(3) and that any prescribed requirements have been complied with.
20. The precise purport of "interests of the community" does not appear clear. Nevertheless, it must be at least arguable that it is not restricted to matters relating to the provision of dwellings but includes complaints from neighbours and/or environmental health officers about the condition of the Property.
21. Complaints from neighbours have been received and the Tribunal's inspection confirmed that the property in its current condition does not conform to the standard of maintenance usual in the area.
22. In considering the effect of the order on the rights of the relevant proprietor the Tribunal considers that this an opportunity for outstanding works to be carried out thus establishing a unit providing living accommodation and capable of providing an income that, once the cost of the works has been recovered will revert to Mr Staples.
23. Finally, the Tribunal has considered whether the circumstances fall within one of the prescribed exceptions particularly with regard to S.3 (a) i and ii.
24. To be satisfied that this exemption applies the Tribunal must consider whether Mr Staples' current residence is "temporary" and finds it is not. The Applicant have indicated that Mr Staples is living in a property formerly occupied by his mother and now shared with his brother. No evidence has been received to the contrary.
25. In the light of all the information supplied, the Tribunal is sufficiently satisfied as to the matters necessary for the authorisation of an interim EDMO. Further, having taken into account so far as possible the interests of the community and the effect of the order on any rights of the Respondent, the Tribunal has decided to give the authority sought by the Application.
26. **Accordingly, the Tribunal hereby authorises the Applicant to make an interim EDMO in the terms of the draft order submitted and now annexed to this Determination subject to the signed and dated Order being submitted to the Tribunal for formal authorisation by 18 April 2019.**
27. The facts of this Application did not warrant consideration of an order under section 134(4) of the 2004 Act.

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

The grounds of appeal are limited by paragraph 26(1)(c) Part 4 Schedule 7 of the Housing Act 2004 to decisions about the payment of surplus rent.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Annexed Draft Order

Ref - 18/00341/RP

Housing Act 2004 (As Amended): Section 133(5)

Interim Empty Dwelling Management Order (EDMO)

To: Christopher Frederick Staples
(Relevant Proprietor)¹

Address: 4 Hulbert Road, Bedhampton,

Postcode: PO9 3TE

Relating to: 157 Haslemere Road, Southsea, PO4 0AW (the dwelling)²

Portsmouth City Council ('the council'), makes an Interim Empty Dwelling Management Order under Section 133(5) of the Housing Act 2004 (As Amended), in respect of the dwelling.

The reasons for making the order are:

The dwelling has been wholly unoccupied for more than two years.

There is no reasonable prospect that the dwelling will become occupied in the near future. Despite making an agreement in 2016 to carry out the works on the property and move into it himself the freeholder has failed to comply with this action. The Council has written to the freeholder repeatedly since this date but no further contact has been made. Visits to the property have found no works being carried out or change to the external of the premises. Therefore, it would appear that there is no prospect of the dwelling becoming occupied in the near future.

If an interim order is made, there is a reasonable prospect that the dwelling will become occupied. Should an Interim EDMO be agreed the local authority will look to gain an agreement from the freeholder to start a Shorthold Tenancy Agreement. All works will then be carried out by the local authority to remove all identified hazards

¹ 'Relevant proprietor', in relation to a dwelling, means: (i) if the dwelling is let under one or more leases with an unexpired term of seven years or more, the lessee under whichever of those leases has the shortest unexpired term; or (ii) in any other case, the person who has the freehold estate in the dwelling.

² 'Dwelling' means: (i) a building intended to be occupied as a separate dwelling, or (ii) a part of a building intended to be occupied as a separate dwelling which may be entered otherwise than through any non-residential accommodation in the building;

from the Housing Health and Safety Rating System Assessment. The property will then be rented out by the local authority to a family on the Portsmouth City Council housing waiting list.

The council has made reasonable efforts to notify the relevant proprietor that they are considering making an interim EDMO in respect of the dwelling and to ascertain what steps (if any) he/she is taking, or is intending to take, to secure that the dwelling is occupied and to give the property owners a minimum notice period of three months prior to applying to the Property Chamber of the First Tier Tribunal (PC) for an interim EDMO. The council has served an "intention to apply for Interim EDMO" notice on the 6th March 2018 along with a covering letter advising him how he can avoid this action as well as providing guidance on how this action will affect him.

The council has made every effort to confirm that the prescribed exceptions and requirements³ do not affect the making of the interim EDMO. Checks with Council data bases such as council tax, planning and adult social care have confirmed that the property does not fall within the exemptions of the act.

The council, having had regard to the interest of the wider community, the rights of the relevant proprietor and the rights of third party⁴ interests believe the making of the order is the best course of action.

The wider community has been consulted. 48 properties surrounding the premises were written to requesting their opinion on the matter. There were 12 responses. All were happy to agree to the EDMO. There are currently 290 households on the housing register for two bedroom properties in Southsea. Therefore this property will help the wider community by providing much needed accommodation.

The rights of the owner have also been considered as the property ownership will remain with the freeholder if we take this action. This is as opposed to a Compulsory Purchase Order (CPO) where the ownership will be challenged. The initial rent taken from the property will be used to pay off debts owed to the council for bringing it back into use. However, once this balance has been paid the freeholder will receive the rent minus any managing agent fee.

The effect of the order is that, with the consent of the relevant proprietor, the council will take steps for the purpose of securing that the above named dwelling becomes and continues to be occupied.

The council will take all other steps considered appropriate with a view to the proper management of the dwelling pending the making of a final EDMO or the revocation of the interim EDMO.

³ Detailed in The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006, SI 2006/367 (As Amended); The Housing (Empty Dwelling Management Orders) (Prescribed Period of Time and Additional Prescribed Requirements) (England) (Amendment) Order 2012 (S.I. 2012 No. 2625)

⁴ 'Third party', in relation to a dwelling, means any person who has an estate or interest in the dwelling (other than the relevant proprietor and any person who is a tenant under a lease granted under Paragraph 2(3)(c) or 10(3)(c) of Schedule 7) of the act.

A relevant person may appeal to a Property Chamber of the First Tier Tribunal (PC) against the terms of an interim EDMO on the grounds that they do not provide for one or both of the matters mentioned in Paragraph 5(5) (a) and (b) within 28 days beginning with the date on which the order is made.

This Order is made on [insert date] and ceases to have effect at the end of the period of 12 months beginning with the date on which this Order is made or at some other time provided in Schedule 7 Paragraph (1)(4) to (8) of the act.

Signature:

Name in capitals: Clare Hardwick

Designation: Acting Head of Private Sector Housing

Date:

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