



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

Case Reference : **CHI/OOMR/HYI/2019/0002**

Property : **42 Windsor Road, Portsmouth
PO6 2TG**

Applicant : **Portsmouth City Council**

Representative : **Ms L Bellamy (Empty Property
Officer)**

Respondent : **Mr I Paterson**

Representative : **n/a**

Type of Application : **Application for an Interim Empty
Dwelling Management Order under
Housing Act 2004 (as amended)**

Tribunal Members : **Judge RE Cooper
Mr D Banfield FRICS**

**Date and venue of
Consideration** : **Havant**

Date of Decision : **13/11/2019**

DECISION

The Tribunal hereby authorises the Applicant to make an interim Empty Dwelling Management Order in the terms of the draft order annexed to this Decision subject to the amendment set out in paragraph 31 below.

All references to ‘sections’ and ‘schedules’ in this decision relate to the Housing Act 2004 except where otherwise stated. Page numbers in the Applicant’s bundle are referenced by [].

Background

1. An interim Empty Dwelling Management Order (‘interim EDMO’) is an order that must be authorised by the Tribunal. An interim EDMO enables a local housing authority (LHA), with the consent of the relevant proprietor, to take steps for the purpose of securing that a dwelling becomes and continues to be occupied (s132(2)).
2. If the LHA is unable to obtain the owner’s consent it can make a final EDMO without requiring further authorisation from the Tribunal (s136). A final EDMO enables the LHA to secure that a dwelling is occupied but without requiring the owner’s consent. The proprietor may appeal to the Tribunal against a decision of the LHA making a final EDMO.
3. On 30th July 2019, the Applicant applied to the Tribunal for authorisation to make an interim EDMO in respect of 42 Windsor Road, Portsmouth, PO6 2TG (‘the Property’) in accordance with s133.
4. Directions were made on 23rd August 2019 and were sent to both the Applicant and Respondent. The Tribunal indicated that the matter would be determined on the papers in accordance with Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 unless either party objected. No objection has been received and the Tribunal has therefore made its determination on the basis of the documents submitted and an inspection of the property, which took place on the morning of 12th November 2019. Mr Paterson attended to provide access to the Tribunal which, after the intervention of a locksmith, was effected by all those in attendance. In addition to members of this Tribunal the following people were in attendance at the inspection: Ms Lauren Bellamy and Ms Lowri Miller of Portsmouth City Council and Mr Ian Paterson, the Respondent.

The Legal Framework

5. Section 134 sets out the Tribunal’s jurisdiction to authorise an interim EDMO. The relevant provisions so far as this application is concerned are 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 have 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.*
- (4) *On authorising a local housing authority to make an interim EDMO in respect of a dwelling, the tribunal may, if it thinks fit, make an order requiring the authority (if they make the EDMO) 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.*

(7) *In this section—*

...
“prescribed” means prescribed by an order under subsection (5);
“wholly unoccupied” means that no part is occupied, whether lawfully or unlawfully.

6. For the purposes of s134(2)(a), the prescribed period is 2 years (Housing (Empty Dwelling Management Orders) (Prescribed Period of Time and Additional Prescribed Requirements) (England) (Amendment) Order 2012))
7. Section 133(3) provides as follows;
- (3) *Before determining whether to make an application to the appropriate 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, and*
 - (b) *to ascertain what steps (if any) he is taking, or is intending to take, to secure that the dwelling is occupied.*
8. The prescribed exceptions and requirements referred to in s134(1)(b) and (2)(e) respectively are set out in the Housing (Empty Dwelling Management Orders)(Prescribed Exceptions and Requirements) (England) Order 2006 (‘The Prescribed Exceptions and Requirements Order’) the relevant provisions of which are as follows;

3 Prescribed exceptions

For the purposes of section 134(1)(b) of the Act a dwelling falls within a prescribed exception if—

- (a) it has been occupied solely or principally by the relevant proprietor and is wholly unoccupied because—*
 - (i) he is temporarily resident elsewhere;*
 - (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 mental disorder;*
 - (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 mental disorder; or*
 - (iv) he is a serving member of the armed forces and he is absent from the dwelling as a result of such service;*
- (b) it is used as a holiday home (whether or not it is let as such on a commercial basis) or is otherwise occupied by the relevant proprietor or his guests on a temporary basis from time to time;*
- (c) it is genuinely on the market for sale or letting;*
- (d) it is comprised in an agricultural holding within the meaning of the Agricultural Holdings Act 1986 or a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995;*
- (e) it is usually occupied by an employee of the relevant proprietor in connection with the performance of his duties under the terms of his contract of employment;*
- (f) it is available for occupation by a minister of religion as a residence from which to perform the duties of his office;*
- (g) it is subject to a court order freezing the property of the relevant proprietor;*
- (h) it is prevented from being occupied as a result of a criminal investigation or criminal proceedings;*
- (i) it is mortgaged, where the mortgagee, in right of the mortgage, has entered into and is in possession of the dwelling; or*
- (j) the person who was the relevant proprietor of it has died and six months has not elapsed since the grant of representation was obtained in respect of such person.*

4 Prescribed requirements

- (1) For the purpose of section 134(2)(e) of the Act the prescribed requirements with which a local 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;*
- (aa) *it has—*
 - (i) *notified the relevant proprietor in writing of its decision to make an application under section 134 of the Act to the residential property tribunal for authorisation of an interim empty dwelling management order no less than 3 months before it makes such an application, or*
 - (ii) *made all reasonable efforts to comply with subparagraph (aa)(i) before the commencement of that 3 month period;*
- (b) *it must provide to the appropriate tribunal—*
 - (i) *details of the efforts they have made to notify the relevant proprietor that they are considering making an interim empty dwelling management order in respect of his dwelling, as required under section 133(3)(a) of the Act;*
 - (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)(b) of the Act;*
 - (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;*
 - (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; . . .*
 - (v) *the classification of the dwelling for council tax purposes under the Local Government Finance Act 1992*
 - (vi) *all information they have that suggests that the dwelling has been causing a nuisance for the community; and*
 - (vii) *all information they have that suggests that the community supports the proposed making of the interim empty dwelling management order by the local housing authority; and]*
- (c) *where the relevant proprietor—*
 - (i) *has undertaken or is undertaking repairs, maintenance or improvement works; or*
 - (ii) *has applied to a 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,*

it must give reasons to the tribunal why it considers that an empty dwelling management order is required to secure occupation of the dwelling.

The Application

9. In their lengthy statement of evidence [23] to [31], the Applicant refers to the various matters on which the Tribunal must be satisfied under

ss133(3) and 134 (2) of the Act. The Applicant also provided evidence supporting those matters.

The Response

10. No written response has been received from the Respondent, but at the inspection of the property on 12th November 2019, Mr Paterson informed the Tribunal that he consented to the making of an interim EDMO.

Decision

11. Before authorising the Applicant to make an interim EDMO, the Tribunal must be satisfied that none of exceptions apply and that all of the relevant conditions set out in ss133 and 134 and the Prescribed Requirements are met.
12. The Tribunal accepts the evidence provided by the Applicant, and accepts that Mr Paterson may be in agreement with the making of an interim EDMO. However, before authorising such an order the Tribunal must determine whether the information provided by the Applicant satisfies the requirements of the Housing Act 2004 and must take into account the interests of the community and the effect an order may have on the rights of the 'relevant proprietor' and third parties (if any). The Tribunal has made this determination on the basis of its inspection and the evidence provided in the bundle.
13. 42 Windsor Road is a three bedroom, semi-detached house built around the turn of the Twentieth century. It was built with the intention of being occupied as a separate dwelling (s132(4)). The Property has a through reception room and kitchen on the ground floor, with an adjoining lean to at the side, and a conservatory to the rear. The first floor comprises three bedrooms and a bathroom. The property is falling into a state of disrepair and the rear garden is very overgrown. The lean to at the side, the conservatory to the rear and the front façade are all deteriorating. The ceilings in all of the first floor rooms are collapsing and there is evidence of damp to the ground floor front bay window. At some point since it was first constructed, uPVC double glazed windows have been installed, but the photograph at [219] shows this did not happen in the last three years.
14. The Respondent, Mr Ian Paterson, is the freehold owner of the Property who inherited it on the death of his mother ([93] to [94b]). For the purposes of this application he is the 'relevant proprietor' (132(c)).
15. The Tribunal is satisfied that the Property has been unoccupied for at least 2 years (s134(2)(a)). The photographs at [181] to [265] which were taken in 2016 and 2018 show that the property remained unchanged in that two year period, and that no works had been carried out. At the time of the Applicant's inspections and our own on 12th November 2019, the property was empty. There was no evidence at the time of the Tribunal's inspection of any person having been in recent occupation and we were

satisfied that no works had been carried since 2018, and the condition remained substantially the same as that shown in the photographs.

16. The letters at [41] to [92] show that between 2015 and 2018 the Applicant has advised and provided information to the Respondent with a view to assisting him either to sell the property in its current state of disrepair, or to undertake works with a view to obtaining an enhanced sale price or potentially provide a home for his daughter to occupy. That evidence indicates that the Respondent had told the LHA at meetings and telephone calls in January 2015 and December 2017 that he intended to do works and then sell the property. However, our inspection and the other evidence before us showed that nothing has been done to carry out works to remedy the defects. Accordingly, the Tribunal was satisfied that there was no reasonable prospect of the property becoming occupied in the near future (s134(2)(b)).
17. The Tribunal found that there was a reasonable prospect of the Property becoming occupied if an interim EDMO was made (s134(2)(c)) for the following reasons. The authority has prepared a report [169] to [178] applying the Housing Health & safety Rating System (HHSRS) setting out the works that would be required to remedy the defects at the property. The Applicant has also prepared tender documents detailing the works to be undertaken [285] to [288] together with an estimate of costs. The Applicant has provided evidence that in July 2019 there were 352 households on the Local Authority's housing register [269] and that number had increased significantly since 2018 when there were 198. These matters all indicate a firm intention for the property to be brought back into a habitable condition in order that it can be let out.
18. The Tribunal also found that the authority has complied with the provisions of section 133(3). Notification of the LHA's intention to apply to the Tribunal to authorise an interim EDMO was sent to the Respondent on 12th April 2018 [33] and further notification was sent on 10th June 2019 [91].
19. As to the duty on the LHA to ascertain what steps the Respondent was taking or intending to take to secure the Property is occupied, the letters at [41] to [92] show that the LHA was in contact with the Respondent between January 2015 and March 2018 ascertaining his intentions, and providing comprehensive advice to enable him to secure that the Property became occupied, either by selling it or carrying out works. These letters included advice on obtaining probate and registering the Property at Land Registry, the provision of the detailed schedule of works in accordance with HHSRS required to bring the property to a lettable condition, availability of loans and so on. The Tribunal is therefore satisfied the provisions of s133(3)(b) are met.
20. In relation to the matters set out in the Prescribed Exceptions and Requirements Order, the Tribunal was satisfied that the LHA's evidence at [24] to [26] demonstrated it had checked that none of the exemptions in Article 3 applied. The Respondent, who is now retired, lives in

Porchester and has never resided at the Property. The Respondent's mother, Stella Patterson (who previously owned the house) died on 25th August 1993, and probate was granted to the Respondent on 27th October 1993 [93], substantially in excess of 6 months ago. The Tribunal accepts the Applicant's submissions in relation to the remainder of the prescribed exceptions (Article 3(b) to (i)) as set out at [26] to [28].

21. In relation to the Prescribed Requirements set out in Article 4, the Tribunal accepts that the letter of 12th April 2018 enclosed a notice of the Applicant's intention to apply to the First-tier Tribunal (Property Chamber) after 90 days to authorise an interim EDMO [33] to [40].
22. The correspondence exhibited at [41] to [92] of the Applicant's bundle clearly indicated that the LHA had sought to ascertain the steps the Respondent was taking to secure the dwelling was occupied, and that they provided comprehensive advice and offers of assistance to him with a view to securing the property was occupied. The LHA has provided evidence that the Property is classified in Band C for Council Tax purposes under the Local Government Finance Act 1992 [123].
23. The LHA has also provided evidence of complaints and other information it had taken into consideration setting out the views of the local community regarding the property and the rights of the proprietor before making their application for authorisation of an interim EDMO [28] to [29], [125], [135] to [162] and [292]. On balance, the Tribunal is satisfied that the Applicant has demonstrated its compliance with the Prescribed Requirements and s133(4).
24. In reaching this decision, the Tribunal has also taken into account the interests of the community and the effect that the making of an order would have as required by s134(3).
25. There is only evidence of one unsolicited complaint being made about the state of the Property [125]. However, from the responses to the questionnaire circulated by the LHA to 47 properties in the immediate vicinity, it was clear that there was concern from the properties immediately adjoining 42 Windsor Road (both in Windsor Close and Hawthorne Crescent) regarding the very overgrown garden, the state of disrepair and potential lack of security, and the impact of these matters on their own properties [146], [160] and [292].
26. 11 of the 47 residents contacted by the LHA had replied to the questionnaire, which the Tribunal found to be a reasonable response rate. Of those, only one individual objected to the making of an interim EDMO due to the potential risk of noise if the property were let to a family from the housing register [161]. In general the responses were supportive of or had no objections to the making of an EDMO.
27. From its inspection, the Tribunal was satisfied that the property in its current condition is below the standard of maintenance usual in the area. The majority of houses in the street are well maintained and Windsor

Road appears to be a quiet cul-de-sac close to local amenities and the train station. Properties on the street were being advertised for sale and to let. We found these matters indicative of a reasonably desirable place to live, and the presence of a property that had been empty for over twenty years was potentially detrimental. Clearly, given the numbers of individuals on the housing register in need of housing, an additional three-bedroom unit of accommodation would be beneficial to the wider community. On balance, although there were not a significant numbers of complaints about the property and there was not overwhelming positive support for the making of an interim EDMO, the Tribunal was satisfied that making one would be in the interests of the community 9s134(3)(a).

28. In considering the effect of the order on the rights of the relevant proprietor the Tribunal has given significant weight to the Respondent's confirmation that he agrees to the making of an order. He will retain ownership of the property, and this is an opportunity for works to be carried out which will bring a three-bedroom unit of living accommodation back into occupation more than 20 years after it was last occupied, which, to date, the Respondent has been unable to achieve notwithstanding the LHA's advice and support. Once the costs of the works have been recovered, rent will revert to Mr Paterson, and the valuation evidence at [289] to [291] shows that in an improved state, the house is likely to increase in value. There is nothing in the evidence indicating that any third party had rights that might be affected by the making of an interim EDMO.
29. On balance having considered all of the information before us, the Tribunal is satisfied that the requirements set out in the Housing Act 2004 for the authorisation of an interim EDMO are met. Having taken into account the interests of the community, in so far as it is possible to do so, as well as the effect of the order on any rights of the Respondent, the Tribunal has decided to authorise the Applicant to make an interim EDMO.
30. The Tribunal does not consider it appropriate for any order to be made under s134(4), and there is no application for an order under paragraph 22 of Schedule 7.
31. Accordingly, the Tribunal hereby authorises the Applicant to make an interim EDMO in the terms of the draft order submitted (which is annexed to this Determination), subject to the deletion of the word 'are' on the 5th line on page 3 of 6 [19] and the insertion of '*under paragraph 26(1)(c) of Schedule 7*' after '(PC)' on line 13 of page 3 of 6 [19].

Signed: Judge RE Cooper

Date: 13/11/2019

Note:

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