



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

Case Reference : **CAM/33UC/HYV/2019/0001**

Property : 40 Berrington Road, Hellesdon, Norwich NR6 6PH

Applicant : Carolyn Ann Dixon (in person)

Representative : Ron Aitken (Mental Health Advocate, Hoarding UK)

Respondent : Broadland District Council

Representative : Mark Siddall

Type of Application : Appeal against local authority's refusal to revoke a final Empty Dwelling Management Order
[HA 2004, s.132 & Sch 7, para 30]

Tribunal Members : G K Sinclair & C Gowman BSc MCIEH MCMI

Date and venue of Hearing : Monday 16th December 2019 at
The Old Bakery, 115 Queens Road, Norwich

Date of Decision : 30th January 2020

DECISION

1. For the reasons which follow the tribunal **allows the appeal** and, subject to the applicant reimbursing the respondent local authority for the balance of relevant expenditure in excess of the total amount of rent or other payments collected or recovered by it (if any), **revokes** the final Empty Dwelling Management Order in relation to the subject premises at 40 Berrington Road, Hellesdon, Norwich NR6 6PH **with effect from 31st March 2020**.
2. This will allow the respondent sufficient time in which to give the current tenants in the subject premises notice to quit, deal with any terminal dilapidations issues and deliver up vacant possession to the applicant.

Background

3. The tribunal has dealt with the subject premises twice before in connection with its jurisdiction under the Housing Act 2004, Part 4, Chapter 2 :
 - a. By its decision dated 26th November 2013 authorising Broadland District Council, the local housing authority, to make an interim Empty Dwelling Management Order (“EDMO”); and
 - b. By order dated 12th January 2015 refusing the applicant home owner permission to appeal both the above interim EDMO and a final EDMO that the respondent local housing authority had made on 25th July 2014.
4. Further to the making of a final EDMO the council invested something in the order of £30 000 in clearing, repairing and improving the property by way of new heating and wiring installations, new windows and doors, and upgrading the kitchen and bathroom so that it was fit for renting. Management costs increased this to around £30 500.
5. Save for voids totalling no more than 2.5 months the property has been let continuously from December 2015, the rent received by the council being applied in reduction of its outlay; so that when Mr Siddall signed a witness statement on behalf of the council on 23rd September 2019 the balance outstanding had been reduced to approximately £4 300. The current rent for the property is £595 per month.
6. On 28th December 2018 the council was contacted by a local firm of estate agents who had been instructed by the applicant to provide a marketing valuation for the property. Later there was correspondence concerning the involvement required of the council in facilitating a sale of the property. By September 2019 the council was confirming to TLT Solicitors, acting for the applicant’s mortgagee, that it would ensure vacant possession (i.e that its tenants would have left) in time for exchange of contracts.
7. On 3rd July 2019 the respondent issued a notice of refusal in response to the applicant’s request that it revoke the final EDMO in order that she might resume occupation of her home. At the time, and currently, the applicant was living in her mother’s home in a nearby street but felt under family pressure to vacate. The ground for refusal stated in the notice was that “the property will become or remain unoccupied.”
8. A fact of which the tribunal was completely unaware until this application is that at all material times the applicant has also been the freehold owner of another property at 6 Sarum Place, Hemel Hempstead. Dacorum Borough Council was approached by the respondent as part of its enquiries into an application by the applicant for a determination by Broadland that she was homeless and in need of accommodation. Dacorum confirmed that it had taken no action under the Housing Act 2004 concerning 6 Sarum Place, but that its planning department had served notice under section 215 of the Town and Country Planning Act 1990 in connection with the adverse impact of the property on the visual amenity of the area, following this up by carrying out works in default.

Interim and final EDMOs – statutory provisions and purpose

9. Sub-sections 132(2) & (3) of the 2004 Act provide that an interim EDMO is an

order made to enable a local housing authority, with the consent of the relevant proprietor, to take steps for the purpose of securing that a dwelling becomes and continues to be occupied, and a final EDMO is an order made, in succession to an interim EDMO or a previous final EDMO, for the purpose of securing that a dwelling is occupied.

10. According to official departmental guidance¹ :

The intention of EDMOs is to bridge the gap between voluntary measures and existing compulsory purchase powers. A decision whether to pursue an EDMO is entirely at the discretion of a LHA. The threat of an EDMO is intended to put pressure on the owner to enter into constructive dialogue with the authority with the object of agreeing the best course of action to secure occupation of the dwelling, thereby avoiding the need for an interim EDMO or, as the case may be, a final EDMO, to be made.

11. In this case both an interim and then a final EDMO were made. What then of bringing the order to an end? Section 137(4) provides that :

The authority must from time to time review –

- (a) the operation of the order and in particular the management scheme contained in it,
- (b) whether, if the dwelling is unoccupied, there are any steps which they could appropriately take under the order for the purpose of securing that the dwelling becomes occupied, and
- (c) whether keeping the order in force in relation to the dwelling (with or without making any variations under paragraph 15 of Schedule 7) is necessary to secure that the dwelling becomes or remains occupied.

12. Schedule 7 provides much greater detail, including on revocation and appeals. On the former, paragraph 16 provides as follows :

- (1) The local housing authority may revoke a final EDMO in the following cases –
 - (a) where the authority conclude that there are no steps which they could appropriately take as mentioned in section 137(4)(b) or that keeping the order in force is not necessary as mentioned in section 137(4)(c);
 - (b) where the authority are satisfied that –
 - (i) the dwelling will either become or continue to be occupied, despite the order being revoked, or
 - (ii) that the dwelling is to be sold;
 - (c) where a further final EDMO has been made by the authority in respect of the dwelling so as to replace the order;
 - (d) where the authority conclude that it would be appropriate to revoke the order in order to prevent or stop interference with the rights of a third party in consequence of the order; and
 - (e) where in any other circumstances the authority consider it appropriate to revoke the order.
- (2) But, in a case where the dwelling is occupied, the local housing authority may not revoke a final EDMO under sub-paragraph (1)(b), (d) or (e) unless the relevant proprietor consents.
- (3) A revocation does not come into force until such time, if any, as is the operative

¹ *Guidance Note on Empty Dwelling Management Orders* : Department for Communities and Local Government (July 2006), para 1.1

time for the purposes of this sub-paragraph under paragraph 33 (time when period for appealing expires without an appeal being made or when decision to revoke is confirmed on appeal).

- (4) The power to revoke an order under this paragraph is exercisable by the authority either –
 - (a) on an application made by a relevant person, or
 - (b) on the authority's own initiative.
- (5) Where a relevant person applies to the authority for the revocation of an order under this paragraph, the authority may refuse to revoke the order unless the relevant proprietor (or some other person) agrees to pay to the authority any deficit such as is mentioned in paragraph 23(4).
- (6) In this paragraph "relevant person" means any person who has an estate or interest in the dwelling (other than a person who is a tenant under a lease granted under paragraph 2(3)(c) or 10(3)(c)).

13. Amongst more general provisions, sub-paragraphs 23(4) & (5) provide that :

- (4) Sub-paragraphs (5) and (6)² apply where, on the termination date for an interim EDMO or final EDMO, the total amount of rent or other payments collected or recovered as mentioned in paragraph 5(3) is less than the total amount of the authority's relevant expenditure together with any such amounts of compensation as are mentioned in sub-paragraph (2)(b) above.
- (5) The authority may recover from the relevant proprietor—
 - (a) the amount of any relevant expenditure (not exceeding the deficit mentioned in sub-paragraph (4)) which he has agreed in writing to pay either as a condition of revocation of the order or otherwise, and
 - (b) where the relevant proprietor is a tenant under a lease in respect of the dwelling, the amount of any outstanding service charges payable under the lease.

14. By paragraph 30 an owner can appeal against a refusal to revoke an EDMO, and by paragraph 32 the tribunal may confirm, reverse or vary the decision of the local housing authority. If the appeal is against a decision of the authority to refuse to revoke the order, the tribunal may make an order revoking the order as from a date specified in its order.

Inspection and hearing

15. The tribunal inspected the subject premises at 10:00, immediately before the hearing. Also present were Mr Siddall for the respondent and the current tenant, who showed the tribunal around. Neither the applicant nor her representative attended.

16. A description of the condition of the premises when they were inspected by the tribunal in 2013 can be found at paragraphs 10–13 of the decision dated 26th November 2013.³ By contrast, the metal Crittall windows and the external doors have all been replaced with PVCu double glazed units and the approach to the front door is presentable, laid to gravel. Internally, the bedrooms were neatly appointed and furnished. The tenant's partner and several small children were

² Sub-para (6) concerns interim EDMOs, so is not quoted

³ CAM/33UC/HYI/2013/0001

in the large living room to the rear, so the tribunal did not venture much beyond the door. The bathroom suite was modern, and by comparison with the previous inspection the kitchen was a revelation. It was light, airy and fitted with modern units. The rear garden was kept reasonably neat, although the respondent had erected a fence across the rear, reserving an area (with shed) for storage beyond that part subject to the tenancy. A new shed for the tenant's use had been erected on the footings found previously behind the garage.

17. The start of the hearing was delayed in part by the applicant's desire to submit a number of additional bundles of documents, each with a handwritten list of contents, to supplement the respondent's witness statement and exhibits. She was also helpfully represented by Mr Ron Aitken, a Mental Health Advocate from the charity Hoarding UK. Mr Siddall represented the respondent council.
18. While a number of the written points that Ms Dixon raised in her documents attempted to go back over old ground, which the tribunal was not prepared to let her re-open, Mr Aitken confirmed that he had been involved for the previous year concerning the applicant's hoarding issues, and he focussed on issues of mental illness, vulnerability and the local authority's duty⁴ to her under section 42 of the Care Act 2014 :

...to make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case (whether under this Part or otherwise) and, if so, what and by whom.
19. Mr Aitken informed the tribunal that there is a care plan in place. If the situation were to arise again he would have expected Broadland to act differently; rather than a narrow environmental health issue it is a broader health issue , and the council would have to take account of s.42 safeguarding under the Care Act, with a joint meeting with adult social care from Norfolk, Ms Dixon's GP, and other relevant organisations.
20. Mr Siddall interjected that Broadland wrote and asked to converse with social services, the GP, insurers, etc – on the making of the interim order; and again in about May 2014 the council did exactly the same, asking for consent to speak with these other bodies. Ms Dixon then commented that she was suffering from depression and was not opening her mail, so the council's approach was failing her considerably. She said that her permission was not required in order to ask social services to get involved.
21. Mr Aitken said that the s.42 process would have brought certain things into play, including help with coping as a householder, and her ability to maintain a safe and habitable home. She would have made that test (i.e. she was unable to cope). If someone fails in two of those areas, they are deemed eligible for support from adult social services or the NHS, depending on the nature of the support needed. Insofar as the inability to get into the kitchen, and failing to maintain a habitable home are concerned, his organisation can train fire officers in how to handle severely hoarded properties.

⁴ NB. In Norfolk this duty falls on the County Council, which is responsible for social services, not the District Council

22. The applicant had commented that her mum is a hoarder, and lots of projects get started and not finished – which is also typical of hoarders. She said that her sister is a hoarder, and these are mental health disorders which come from some type of abuse in the past, or poverty – so they don't want to throw things away.
23. She said that her mother (at whose home she was then living) does not have central heating at 93. The project was started by her father, but never finished. The radiators are hanging off the walls, with pipes not attached – and it had been like that since the 1970s or 80s. He was a very capable man, so it was all very strange.
24. Mr Aitken was keen to emphasise that, unlike in the past, Ms Dixon now had external support. Jess Sollis has been allocated, and MIND had provided one hour's support for the last five years, about hoarding. She also had support workers from Together (a national mental health charity) who visit her two hours per week. They are not allowed to help her at her mum's house, because of safeguarding issues - including threats of violence from family members. Her GP is also involved as well. Dr Berry had outlined previously her health needs (she had written a letter to the tribunal for the attempted appeal – she was then at the walk-in clinic at Castle Mall, but was now at Rouen Road).
25. Ms Dixon explained that her income at present is ESA and PIP. The Hemel Hempstead property is subject to a loan of about £25 000, payable at £60 per month. Her plan was to retire, and she was hoping to rent it out, but she said that the mortgage company know that she will get a pension lump sum in a few years.
26. As for Berrington Rd, she would have to let out a couple of rooms, and could get more than the amount being paid to Broadland for the whole property. Asked about what would happen to all her goods that are in storage, Ms Dixon was rather vague. She had visions of sorting out all her stuff, sell it on eBay, then use the space for a table tennis table – but her mum (who had some prowess at the sport in her youth) was far too frail for that now. That had been taken away from her, and from her mum.
27. Ms Dixon confirmed that she was living at number 93 (mother's house), on her own. Her mother was capable of coming home with help. Mr Aitken submitted that if the order were revoked then it would assist with family dynamics, as there are disagreements with siblings even on minor matters.
28. Mr Siddall interjected that Broadland were concerned with Joyce Dixon (mother), and had met with the social worker. He did invite the social worker to open up a conversation concerning the mother, to discover her circumstances, and Broadland's position would be influenced by that.
29. The tribunal asked Mr Aitken whether the proposal to share the house with a lodger was viable, if Ms Dixon was still a hoarder. He commented that being alone does not assist, and that having company helps.
30. Asked about her financial position, and the viability of living in the house when there were mortgage debts on two (and Hemel Hempstead was still cluttered,

which would not assist a sale and consolidation of finances), Ms Dixon said that on Berrington Road she had mortgage arrears of £36 548.62 and a total debt now of £84 857.41. She owed the storage company perhaps £10 000 for unpaid fees. Asked whether it has a lien on her goods, Ms Dixon said yes, but that she can collect until the end of January, at which point they will reassess the situation.

31. If she sold Hemel – a two bedroom end terrace worth perhaps £300 000 – that would pay off her mortgagee, and if she got her health back she could work again, but she was now much nearer retirement. Psychologically, moving back to Berrington Road was easier than the situation at present. If the order were revoked, there would be more chance of the treatment plan working. Mr Aitken said that Hoarding UK would advise the applicant about equity release and other schemes that may be helpful. Ms Dixon had not exhausted possibilities of assistance from her former trade union. There would be ongoing support from Hoarding UK.
32. When assessing her financial position one could not overlook the outstanding debt to Broadland for work done at Berrington Road, but Mr Siddall said that as at the hearing date her debt for renovations, etc was now only about £2 240.
33. Before putting the respondent's case the tribunal reminded Mr Siddall that the purpose of this legislation was to ensure that homes were lived in; not to prevent houses becoming untidy.
34. He said that he was aware of the Hemel Hempstead property only through his discussions with Dacorum Borough Council, and that it was not taking any steps, although the planners had served a s.215 notice. Since 2006 6 Sarum Place had been substantially unoccupied. The applicant remains the council tax payer. That property could have been dealt with, and in January 2017 Broadland had received a letter from Norfolk Community Law Service, with a plan to sell that to move closer [to her mother]. Nearly three years on that seems no closer to happening. Diogenes syndrome will not have helped, but the property had not been cleared. As for Berrington Road, the applicant has occupied her mother's home, but is struggling as that has not been properly maintained.
35. It was put to Mr Siddall by the tribunal that in 2013 Ms Dixon had sought no assistance, but now she has ongoing support, including an improved social life with Help for Homeless People. He agreed that Ms Dixon is very earnest in her intentions, but despite this there had not been any improvement.
36. Mr Siddall submitted that approaching Ms Dixon's mortgagee might not be her only recourse. The applicant had made a homelessness application, but this failed as she owned two properties. She might benefit from social housing. Some social landlords offer mortgage rescue schemes. It is another option perhaps. They might even take on ongoing concerns about management of the property also. Orbit may still do it locally.
37. The hearing ended with Ms Dixon determined that she wished to move back in, with external support from various resources, and see if she could sort out her finances. The council rightly pointed to the apparent lack of effort to resolve the financial and other problems to date. The house was on the market, and it had

agreed with the mortgagee that it would arrange to terminate the current starter tenancy and move the tenant and her family on elsewhere in time for exchange of contracts. It therefore expected that the final EDMO was soon going to come to an end and that the property would soon be occupied by a new owner.

38. Berrington Road had been placed on the market largely at the behest of Ms Dixon's bank, Lloyds, as it had been willing so far to let her sell voluntarily rather than take action to sell as mortgagee in possession. What would it think of her current proposal to resume living there? How would she manage to resolve the arrears problem?
39. The tribunal directed that Ms Dixon approach her bank and ask it to provide its views in writing by Friday 10th January, allowing the council until Friday 17th in which to submit its comments. The tribunal would then deliver its decision before the end of January (the deadline for dealing with the storage company).

Discussion

40. The tribunal has now seen two letters from TLT LLP, the solicitors instructed by Lloyds Bank. Both are dated 8th January 2020. The first stated :

The Bank does not intend to take any possession action for the following three months (from today's date) to allow you time to remedy the breaches of your mortgage account, whether by agreement with the Bank or by the sale of the Property.

We suggest that you forward a copy of this response to the Tribunal and to the Council. If you have difficulty accessing a computer to do this, we are happy to forward this on as appropriate.

41. The second letter went rather further :

We note you are currently taking steps to market the Property. Please confirm that you still intend to market and sell the Property if the Council revokes the Empty Dwelling Management Order. The Bank has already exercised considerable forbearance in allowing you time to effect a voluntary sale.

Whilst the Bank will agree to defer action for three months from today's date, the arrears position needs to be resolved. The arrears currently stand at £37,196.87. A sale of the Property at market value will redeem the account and remedy the position once and for all.

If, however, you no longer intend to sell the Property, the Bank will require firm proposals for payment of those arrears, backed up by financial evidence and a fully completed income and expenditure form. You have mentioned a pension fund. We do not have any details of that and have not provided any assurances on the Bank's behalf regarding a delay of action pending that potential pay-out. Perhaps you could let us have details when responding to this letter.

As for the renting out of rooms in the Property, the terms of your mortgage provide that any letting is prohibited without consent of the Bank. That said, the Bank may be prepared to consider this but solely on the condition that the occupants were lodgers and not formal tenants. The Bank will require full details of these proposals in order to consider providing its consent.

42. In response to this Mr Siddall wrote to the tribunal :

In addition to demonstrating how the arrears will be repaid the bank seeks a clear financial plan detailing how Ms Dixon intends to meet future mortgage payments. It is clear that Ms Dixon has not been able to provide the bank with any evidence to their satisfaction that future mortgage payments will be made.

The bank suggests that Ms Dixon work with Suzie Payne (debt advisor within Broadland District Council) to come up with a plan to meet the banks stipulated requirements. Suzie Payne has been approached to provide statement to accompany this response and provided with the appropriate exemption under the GDPR. Ms Dixon has however requested that Suzie Payne disclose no matters to do with her financial situation to myself and Suzie respects this request to continue her professional relationship with Ms Dixon.

Despite Suzie Payne's continued work with Ms Dixon the bank currently have received no evidence that either of their two criteria can be met. I would go further and suggest if Ms Dixon believed Suzie Payne held important information that would support her application she would be eager for this information to be released.

The Council is unconvinced that Ms Dixon genuinely has robust plans to address the arrears to the bank or her future payments and is in the firm belief that no other conclusion can be reached.

The council therefore urged the tribunal not to revoke the final EDMO.

43. The tribunal reminds itself that the purpose of this legislation is to ensure that homes are not left empty unnecessarily, so that they can be brought back into use as homes and not simply capital assets. It is no function of this part of the Act to regulate how an owner occupies his or her home. The tribunal can try to test how genuine an expressed desire to resume occupation may be, but not to second guess an owner's ability, as against a lender, to remain living there for anything more than the short term.

44. Whether Lloyds Bank can persuade the County Court to order possession, rather than accept an offer of discharge of the arrears by instalments, is not a question that this tribunal can answer. Neither can it assess whether some other deal that might involve agreeing a sale of 6 Sarum Place and offering it as an alternative security might not be acceptable. These are matters between borrower, lender and perhaps the court.

45. Reluctantly, but with that in mind, the tribunal is satisfied that Ms Dixon does have a genuine intention of resuming occupation of her own home – but this time in the knowledge that she can call on supporters from various organisations including Hoarding UK. She is in Mr Aitken's debt, and she should not let him and his organisation down.

46. In order to give Broadland time in which to serve notice to quit and bring the current tenancy to an end, do any necessary end-of-tenancy redecorating and give vacant possession, the existing order shall be revoked as of 31st March 2020. That is shortly before the expiry of Lloyds' three month deadline for putting forward

a proposal for discharge of the arrears, so Ms Dixon must use this time wisely, take sound advice, and make as positive a proposal as she can. It is up to her.

Dated 30th January 2020

Graham Sinclair
First-tier Tribunal Judge