



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

Case Reference : **MAN/00EM/HYI/2019/0001**

Property : **Dunholm, Station Road, Corbridge,
Northumberland NE45 5AY**

Applicant : **Northumberland County Council**

Respondent : **Mr Gavin Howard McDonic**

Type of Application : **Authorisation for Interim Empty
Dwelling Management Order - Section
133 Housing Act 2004**

Tribunal Members : **Judge S Moorhouse LLB
Mr I.D. Jefferson TD BA Bsc FRICS**

Date of Inspection : **22 August 2019**

Date of Decision : **13 February 2020**

DECISION

DECISION

1. The Applicant, Northumberland County Council, is authorised to make an Interim Empty Dwelling Management Order under Section 134 of the Housing Act 2004 in respect of Dunholm, Station Road, Corbridge, Northumberland NE45 5AY in the form annexed to this decision. The operative date of the Order is not to be earlier than the making of the Order following the date of this Tribunal's Decision.

REASONS

Introduction

2. This is an application by Northumberland County Council ('the Applicant') for authorisation from the Tribunal to make an Interim Empty Dwelling Management Order ('EDMO') under the Housing Act 2004 ('the Act') in respect of Dunholm, Station Road, Corbridge, Northumberland NE45 5AY ('the Property'). An Interim EDMO is an order that allows 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 (Section 132(2) of the Act).
3. The LHA 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.
4. Following receipt of the Application, Directions were issued to the parties.
5. On 22 August 2019 the Tribunal inspected the Property in the presence of the Respondent and officers representing the Applicant. Following its inspection the Tribunal issued the Further Directions summarised at paragraphs 16-18 below.
6. The Application was determined on the papers as neither party had requested a hearing, the Tribunal's decision being finalised once the matters referred to in the Further Directions had been addressed.

Facts

7. The Applicant submitted to the Tribunal, pursuant to Directions:
 - A copy of the Application dated 20 May 2019 and supporting documents
 - A copy notice to the Respondent of the intended Application dated 18 February 2019
 - A location map for the Property
 - A case summary including dates of various actions

- Register of title from HM Land Registry indicating that the freehold title to the Property was in the name of the Respondent care of his Joint Trustees in Bankruptcy, with a restriction noted on the register that no disposition under which capital money arises could be registered except under an order of the registrar of the Court
 - A print from the Flood Warning Information Service indicating that the Property was at medium risk of flooding
 - A statement by Gary McGuire (Private Sector Housing Initiatives Officer)
 - Supporting correspondence
 - Photographs showing the condition of the Property
 - Cost estimates for proposed works to the Property
 - A draft Interim Empty Dwelling Management Order.
8. The Respondent wrote to the Tribunal's offices on 1 July 2019 in response to Directions stating that he fully supports the proposed EDMO. The Respondent also indicated that his insurance for the Property did not cover flood risk and that the Property had experienced high water on three occasions since 1995, being inundated to a height of about 3 feet in 2005 and 5 feet in 2015. The Respondent indicated that his own funds might be insufficient to repair the most recent water damage and it was conceivable that the Property could be flooded again before the works were completed.
9. Having considered the submissions and inspected the Property internally and externally the Tribunal finds that the relevant facts are as follows:-
10. The Property is a mid-terrace house constructed in stone with a pitched slate roof situated close to Corbridge rail station approximately a quarter of a mile from Corbridge village centre in an area of similar housing. The ground floor comprises an entrance lobby, hall with stairs, lounge, dining room, breakfast room, kitchen and shower room. The first floor has 3 bedrooms and a bathroom.
11. There have been various complaints since 2014 related to the deteriorating condition of the empty Property, there being no flood defences and the fact that other residents had had to maintain the exterior. The parties have been in contact with each other since August 2017.
12. The Respondent supports the EDMO due to lack of funds to restore the Property from flood damage and the risk of further damage.
13. The Applicant has prepared a schedule of work it considers to be necessary to achieve a lettable standard. The estimated cost of the works comes to £27,810 plus project management fees and contingency, plus provisional sums totalling £5,750 relating to doors, windows roof and loft. The schedule indicates an 'unknown' sum for exploring the requirement of flood defences.

14. Notice of intention to seek an Interim EDMO was sent to the Respondent under cover of a letter dated 18 February 2019.

Matters addressed by the Tribunal's Further Directions

15. Further Directions related to two matters.
16. First, the Tribunal noted that the provisions of the Act require (inter alia) that the relevant proprietor and any relevant third party are identified. In the present case the official copy of the register of title included reference to 'Mr Peter Gray and Mr Andrew Little, Baldwins Restructuring and Insolvency Limited...as Joint Trustees in Bankruptcy of [the Respondent]'. A copy Order of Annulment made by District Judge Kramer under section 282 of the Insolvency Act 1986 was produced, dated 28 November 2017. This identified Andrew Little and Kerry Pearson as joint trustees in bankruptcy (at variance with the registered title). The Order included a note to the bankrupt in the following terms: 'It is your responsibility and it is in your interest to ensure that the registration of the petition and of the bankruptcy order at HM Land Registry is cancelled.'
17. The Tribunal directed that upon the registration of the bankruptcy petition and order at HM Land Registry being cancelled, the Respondent forward to the Tribunal the updated official copy of the register of title. This was actioned by the Respondent and received by the Tribunal on 7 February 2020.
18. Second, the Tribunal noted that the provisions of the Act require (inter alia) that the Tribunal determine whether there is a reasonable prospect that if the order is made, the Property will become occupied. Whilst a list of works and associated costs totalling circa. £30,000 had been supplied, they did not include proposed measures to mitigate the risk of flooding. The Tribunal therefore directed the Applicant to forward to the Tribunal particulars of any measures the Applicant proposes to take in order to mitigate the risk that the Property will be uninhabitable due to flooding.
19. This direction was actioned by the Applicant and details forwarded to the Tribunal on 25 November 2019. These included a Flood Resilience Measurement Survey with recommendations and estimated costs of £11,732. The Applicant indicated an intention to obtain additional estimates should permission to make an interim EDMO be granted. It was stated that it had always been the Applicant's intention to seek grant funding for flood resilience works and that the cost of the recommended measures would not be passed to the Respondent or recovered from rental income should the interim EDMO be authorised.
20. The Applicant stated also that insurers had confirmed that the Property could be insured against flood risk subject to reasonable measures being taken.

The Law

21. The relevant law is contained in Sections 133 and 134 of, and Schedule 7 to, the Act, The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 and The Housing (Management Orders and Empty Dwelling Management Orders) (Supplemental Provisions) (England) Regulations 2006.
22. Section 133 states that a LHA may make an Interim EDMO in respect of a dwelling which is wholly unoccupied, which is not owned by a public sector body and after it has obtained authority from this Tribunal.
23. Before making such an application the LHA must '*make reasonable efforts*' to find out what the owner is intending to do to '*secure that the dwelling is occupied*' and to notify the owner that the LHA is considering making an EDMO Section 133(3). Notice of the decision to apply to the Tribunal must be given not less than 3 months before application is made.
24. The Applicant must also take into account the rights of the owner and the interests of the wider community when deciding whether to apply for authorisation (Sections 133(4)).
25. The LHA must then satisfy itself that none of the prescribed exceptions apply. These are set out in The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006.
26. The Tribunal must take into account the interests of the community and the effect that the order will have on the rights of the owner or any third party. It must then satisfy itself on the following matters (Section 134(2)):
 - (a) *that the dwelling has been wholly unoccupied for at least 2 years;*
 - (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.*
27. If the Tribunal gives authority for the making of an Interim EDMO, it may also make an order requiring the applicant to pay '*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.*'
28. Finally, the regulations set out what detailed information the applicant has to provide to the Tribunal to satisfy it that the applicant has complied with Section 133(3) including details of efforts to find the owner, steps taken to ascertain what the owner intends to do and advice given to the owner.

Determination

29. The Tribunal finds that the Applicant has communicated with the Respondent owner and has complied with Section 133(3) of the Act and the provisions of the Regulations.
30. The Tribunal finds that the Property has been empty for at least 2 years and that none of the prescribed exceptions apply.
31. The Tribunal finds that there is no reasonable prospect of the Property becoming occupied in the near future, whereas if an Interim EDMO is made there is a reasonable prospect that the dwelling will become occupied. In this respect the Tribunal notes the Applicant's intention to put flood resilience measures in place.
32. The Respondent is in support of the proposed Interim EDMO. There are no relevant third parties.
33. The Tribunal therefore makes the Decision set out in paragraph 1 of this document.

S Moorhouse
Tribunal Judge
13 February 2020

Annex

Housing Act 2004 Section 133 (5)

INTERIM EMPTY DWELLING MANAGEMENT ORDER

Gavin Howard McDonic
97 Esmond Street, Liverpool L6 5AY

being the person who is the relevant proprietor of the premises known as Dunholm, Station Road, Corbridge, Northumberland NE45 5AY.

Northumberland County Council of County Hall, Morpeth, NE61 2EF hereby makes the following Interim Empty Dwelling Management Order under Section 133 of the Housing Act 2004 in respect of Dunholm, Station Road, Corbridge, Northumberland NE45 5AY.

This Order comes into force on the [date] day of [month] and shall cease to have effect at the end of the period of 12 months beginning with the date on which it is made, unless it ceases to have effect at some other time as provided for by Schedule 7, paragraph 1 of the Act.

The Respondent may apply to the Applicant to vary or revoke the Order (paragraphs 6 and 7 of Schedule 7 to the Act) or for an Order that a particular item or items of expenditure in the accounts that the Applicant must keep are not “relevant” expenditure (paragraph 5(7)).

A relevant person may appeal to the First-tier Tribunal (Property Chamber) concerning the terms of this Order if it does not provide for matters mentioned in Paragraph 5(5)(a) and (b) of Schedule 7 to the Act.

This order is made on the [date] day of [month, year]

The Common Seal of the Northumberland County Council of County Hall, Morpeth, Northumberland, NE61 2EF was hereunto affixed in the presence of:

.....
Duly Authorised Signatory

Dated:.....

EXPLANATORY NOTES

(Unless otherwise stated, statutory references are to the Housing Act 2004.)

Dwelling

A dwelling is defined under section 132 4(a) and (b) of this Act.

Application of an Empty Dwelling Management Order

An Empty Dwelling Management Order applies to a Dwelling if it meets one or more of the criteria defined under sections 133 of this Act.

Operation of the Order

If there is not an appeal, the order will become operative at the end of 28 days from the date it is served. If there is an appeal and the Residential Property Tribunal confirms the order, it will not become operative until the period for appealing has expired without such an appeal being brought or when a decision is given confirming the order.

If you start an appeal to the Residential Property Tribunal and then withdraw it, it will not become operative until the period for appealing has expired or on the day on which it would have become operative if the tribunal had confirmed the order or a variation of the order.

Effect of the Order

The effect of the order is that the Council are taking control of this property from you. You remain the legal owner of this property. The council will undertake any works it feels necessary at the property and manage it, or arrange for it to be managed on its behalf. The Council will receive all rents from the property, however they are only entitled to grant a tenancy or a license of the dwelling with prior written consent from the Relevant Proprietor. (No consent is needed once a Final EDMO has been granted).

Whilst the order is effective, you, as the relevant proprietor, are not entitled to receive any rents or other payments from persons occupying the house. You are not entitled to exercise any rights or powers with respect to the property and may not create any leases, tenancies or licences with respect to the property.

Period of the Order

This interim order will remain in force for 12 months from the date it was made unless it is revoked

at an earlier date. If the Council feels that the property is not likely to be reoccupied they may apply

for a Final Empty Dwelling Management Order, which lasts for a period up to 7 years.

Financial Arrangements

Whilst the order is in force, the Council must keep full accounts of their income and expenditure in

respect of this house. The Council must pay to the Relevant Proprietor any monies left over after deductions to meet relevant expenditure.

Appeals

The Relevant Proprietor has a right of appeal to the First Tier Tribunal (Property Chamber) against certain decisions regarding Empty Dwelling Management Orders (Housing Act 2004, schedule 7, paragraphs 26, 30 and 34). If you disagree with the decision you have 28 days in which to appeal to the Residential Property Tribunal, beginning with the date specified in the notice as the date on which the decision was made.

Relevant Proprietor

The relevant proprietor is defined (section 132 (4) c of the Act) as the freeholder or, if the dwelling is let under one or more leases with an unexpired term seven years or more the lessee under whichever of those leases has the shortest unexpired term.

Advice

If you do not understand this order or wish to know more about it, you should contact the Council. If you want independent advice about your rights and obligations, you should go to a Citizens Advice, Law Centre, Housing Aid Centre or a solicitor. You may be able to obtain help with all or part of the cost of legal advice from a solicitor under the Legal Aid Scheme.

Land Charge

When the order becomes operative it will be a local land charge on the premises to which it relates.

This means that it will be recorded in the register of local land charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. Purchasers will normally search this register.