



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

Case Reference : CHI/00MR/HYI/2020/0001

Property : 34 Chetwynd Road, Portsmouth PO4 0NB

Applicant : Portsmouth City Council

Representative : Miss L Miller, Housing Standards Officer
and Mr M Conway, Licensing Team Leader

Respondent : Katherine Henley

Representative : Mr J. Henley

Type of Application : Interim Empty Dwelling Management
Order

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 13th May 2020

DETERMINATION

Background

1. Application was made by the Council seeking an Interim Empty Dwellings Management Order on 18th February 2020 in respect of the Property.
2. The Property is a terraced freehold house owned by the Respondent.
3. Directions were issued on 12th March 2020. On 20th March 2020 revised directions were issued providing that the matter would proceed by way of telephone hearing without an inspection. The change to the hearing arrangements was necessitated as a result of the Covid 19 pandemic.
4. The parties have substantially complied with such directions and the Applicant has supplied an electronic bundle of documents. References in [] are to pages within that bundle.

The Law

5. The relevant law is set out in the Housing Act 2004 and in particular section 133 and section 134. Section 134 sets out the tribunal's powers:

Section 134

Authorisation to make interim EDMOs

(1)

[F]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.

(5)

The appropriate national authority may by order—

(a)

prescribe exceptions for the purposes of subsection (1)(b),

(b)

prescribe a period of time for the purposes of subsection (2)(a), and

(c)

prescribe requirements for the purposes of subsection (2)(e).

(6)

An order under subsection (5)(a) may, in particular, include exceptions in relation to—

(a)

dwellings that have been occupied solely or principally by the relevant proprietor who is at the material time temporarily resident elsewhere;

(b)

dwellings that are holiday homes or that are otherwise occupied by the relevant proprietor or his guests on a temporary basis from time to time;

(c)

dwellings undergoing repairs or renovation;

(d)

dwellings in respect of which an application for planning permission or building control approval is outstanding;

(e)

dwellings which are genuinely on the market for sale or letting;

(f)

dwellings where the relevant proprietor has died not more than the prescribed number of months before the material time.

(7)

In this section—

“building control approval” means approval for the carrying out of any works under building regulations;

“planning permission” has the meaning given by section 336(1) of the Town and Country Planning Act 1990 (c. 8);

“prescribed” means prescribed by an order under subsection (5);

“wholly unoccupied” means that no part is occupied, whether lawfully or unlawfully.

6. The prescribed exceptions are found in The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006. The relevant provisions are:

Prescribed exceptions

3. 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(2) 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(3) or a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995(4);

(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

Hearing

7. The hearing was attended by the party's representatives listed on the cover. Mr Henley represented his daughter as he had done throughout. All parties had a copy of the electronic bundle available to them.

8. Mr Henley acknowledged that generally he accepted the case put forward by the Applicant and that they had grounds for seeking an interim Empty Dwelling Management Order (EDMO). It was agreed with all parties present that the point in issue was two fold:

Was the Property genuinely on the market? And

If so, was the tribunal prevented from making an interim EDMO if the Property had been placed on the market for sale after the application had been lodged with the tribunal.

9. The tribunal explained to the parties that it has found no authority on the points in issue.

10. The Council's representatives accepted that if the tribunal accepts the Property is genuinely on the market for sale and will be occupied we may not be able to make an order. It was accepted on the documents supplied that the Property is on the market with Cubitt and West but it is a question whether this is sufficient.

11. Mr Henley explained that when first purchased the vision had been that the Property would have been renovated and then sold. Whilst his daughter owned the Property without any mortgage Mr Henley had loaned the money to his daughter to purchase the same (Land Registry entries were in the bundle [68-69]). The plan was that any increase in value would have provided some capital for his daughter who was a teacher living in London to purchase a property there.

After purchase he met various builders and the like and it became apparent that this may not be a viable option. Mr Henley expressly acknowledged that everyone with whom he had dealt with at the council had been very helpful in making suggestions and the like with regard to the Property. He admits that there had been some procrastination on his behalf in moving matters forward and that the issuing of the application before the tribunal had acted as the trigger to place the Property on the market.

12. Mr Henley stated the Property is on the market for sale. He relied on various documents within the bundle relating to the same [456-466] including terms of business with estate agents. He explained that last Summer he had met with various agents who had suggested the Property could be marketed for £240,000. This Spring when he contacted Cubitt & West Estate Agents they recommended that the Property was marketed at £250,000 and Mr Henley had appointed them by way of contract dated 9th March 2020. Mr Henley in his documents had provided a link to the property details on the internet.
13. Mr Henley explained that the ownership of the Property had become a weight around his and his daughter's neck. He stated that the Property is genuinely on the market for sale and he believes his evidence shows that.
14. On questioning by the Council Mr Henley accepted if prices dropped dramatically (Mr Henley referred to the figure of £100,000) then he would have to take the Property off the market and do the works required. However currently the Property is genuinely on the market and prior to lockdown his agents had some interest in the same.
15. Mr Henley explained after he had spoken to agents in Summer 2019 he had been distracted by various domestic arrangements. He candidly accepted that he did nothing until the Council put him under pressure by issuing the current application. It was as a result of the same that he placed the Property on the market for sale.
16. Mr Henley indicated he was happy to undertake to the Council that he would tell the Council if he withdrew the Property from the market for sale. He referred to the fact that he had requested the Council to withdraw the application on the basis that he produced evidence that the Property was on the market for sale [459].
17. At this point the tribunal adjourned for 15 minutes to allow both sides to consider what if anything further they wished to add. The tribunal confirmed it had read the whole of the bundle and was aware of the contents of the same.
18. When the hearing re-convened the tribunal confirmed with Mr Henley that save for the questions relating to whether the Property

was “genuinely on the market for sale” he accepted that the other grounds required for the making of an interim EDMO were made out by the Council. Mr Henley confirmed he understood these grounds such as the Property had to be left unoccupied for at least 2 years and he did not dispute the same.

19. Mr Henley confirmed that during the short adjournment he had emailed the Council confirming the undertaking he had referred to earlier in the hearing. He also had heard back from Cubitt and West that given the relaxations to lockdown which became effective on the day of the hearing they were able to arrange actual viewings and had already organised one for the coming Saturday.
20. The tribunal reminded the parties that it would need them to comment upon the draft interim EDMO [17-22] and any changes they felt might be required if the tribunal was satisfied that such order should be made.
21. Miss Miller submitted it was difficult to say if the Property was genuinely on the market until sold and she remained concerned that if a suitable price as determined by the Respondent was not achieved the Property would be withdrawn.
22. Miss Miller candidly admitted that she struggled with the question as to whether the tribunal had a jurisdiction to make an order if the tribunal determined the Property was genuinely placed on the market after the date of the application.
23. Mr Henley raised objections to two parts of the proposed order relating to the grounds for making an EDMO. He states the Property is on the market and this is a matter of fact. As a result there is every prospect the Property would become occupied. In his opinion by marketing the Property as he has done it falls within a prescribed exception and an interim EDMO cannot be made. Mr Henley apologised to all that time had been taken up in having to make the application, but he was satisfied that the Property was being marketed.

Decision

24. The tribunal firstly thanks both parties for their thoughtful and considerate submissions. Mr Henley readily accepted the Council had endeavoured to assist him and his daughter and very candidly accepted he had procrastinated.
25. Given the concessions made by Mr Henley the tribunal is satisfied that the principal grounds for making an interim EDMO are made out by the application. The relevant issues are those set out in paragraph 8 above.

26. All parties were clearly trying to assist the tribunal. The tribunal accepts the evidence of Mr Henley that he was advised last Summer to market the Property at £240,000 and that when he reverted to the agents in late February, early March a marketing figure of £250,000 was proposed. Plainly since Cubitt & West were instructed the current pandemic will have impacted on any steps taken to sell the Property. The tribunal did look at the Property on the link supplied and it is being advertised as for sale at a price of £250,000. It is noteworthy that the Council appear to accept the Property is being marketed by Cubitt & West.
27. The Council did not suggest that the price or any aspect led them to believe that the marketing was anything other than genuine. Further this tribunal heard from Mr Henley who appeared to accept sale is the correct way forward whilst stating that plainly, if as a result of the current pandemic, the value had dropped significantly (Mr Henley referred to a valuation of £100,000) he would have to re-think whether a sale was the correct way forward. This struck the tribunal as being a proper and genuine way to proceed.
28. The tribunal believes that the words “genuinely on the market for sale” should be given their normal natural meaning. Such words don’t create a requirement that a would be buyer has been found, only that the owner is taking reasonable steps to secure a sale such as placing the property on the open market with a reputable estate agent who advertises the same on the various property portals at a price they have recommended.
29. Weighing up all the evidence the tribunal is satisfied on a balance of probabilities that as at 9th March 2020, when Miss Henley entered into terms of business with Cubit & West at a price they suggested that the Property was genuinely placed on the market for sale and as at the date of this hearing the Property remained on the market.
30. The tribunal records that Mr Henley indicated he had given an undertaking to notify the Applicant if the Property should be removed from the market for sale.
31. Having determined that the Property is at the date of the hearing on the market the question now is does this preclude the tribunal from making an interim EDMO?
32. The tribunal records it could find no specific authority directly on this point. The tribunal has carefully considered the wording of Section 134(1)(b) of the Housing Act 2004. This tribunal takes the view that the appropriate date for it to consider is the date of the hearing of the application and not the date of the application itself. What follows is that given we have determined that the Property falls within one of the prescribed exceptions (namely being genuinely on the market for sale) at the date of the hearing then the tribunal does not retain jurisdiction to make an interim EDMO.

33. The tribunal dismisses the application.

Judge D. R. Whitney