



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

Case Reference : **MAN/00EM/HYI/2019/0004**

Property : **24 Broadway Circle Blyth
Northumberland NE24 2PQ**

Applicant : **Northumberland County Council**

Respondent : **Mr Iain Gordon MacPhail**

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

Tribunal Members : **Judge W.L. Brown
Mr I.D. Jefferson TD BA Bsc FRICS**

Date of Determination : **25 June 2020**

Date of Decision : **30 June 2020**

DECISION

DECISION

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 24 Broadway Circle Blyth Northumberland NE24 2PQ 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

1. 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 24 Broadway Circle Blyth Northumberland NE24 2PQ (the 'Property') ('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).
2. 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.
3. Following receipt of the Application, Directions dated 21 January 2020 were issued to the parties.
4. The Tribunal inspected the exterior of the Property in the absence of the parties on 25 June 2020. The inspection was so that the Tribunal could verify that on a balance of probabilities the Property is unoccupied. The Tribunal observed an overgrown site, the windows are white-washed and there was no visible evidence of occupation noted.
5. The Tribunal has determined the Application following a consideration of the written representations and supporting documentary evidence provided by the Applicant, but without holding a hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant gave its consent and the Respondent did not object as he played no part in the proceedings. Moreover, having reviewed the submissions, the Tribunal was satisfied that this matter is indeed suitable to be determined without a hearing: although the parties are not legally represented, the issues to be decided have been clearly identified in the Applicant's statement of case, which was sufficiently clear to enable conclusions to be reached properly in respect of the issues to be determined, including any incidental issues of fact.

Facts

6. The Applicant submitted to the Tribunal, pursuant to Directions:
 - A copy of the Application dated 12 November 2019 and supporting documents
 - A copy notice to the Respondent of the intended Application dated 26 July 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.
 - A statement dated 14 November 2019 by Mr Gary McGuire (Private Sector Housing Initiatives Officer)
 - Supporting correspondence
 - Photographs showing the condition of the Property, inside and outside
 - Cost estimates for proposed works to the Property
 - A draft Interim Empty Dwelling Management Order.
7. Mr McGuire identified in his statement various correspondence sent by the Applicant to the Respondent, to which he had no replied, including in March and September 2017, July 2018 and July 2019 providing the Notification of Intention to Submit the Application.
8. Having considered the submissions and inspected the Property externally the Tribunal finds that the relevant facts are as follows:-
9. The Property is a 3 bedroom semi-detached house with gardens to the front, rear and side. Detached from the Property is a single garage, which is one of a pair.
10. There have been various complaints since 2016 concerning the deteriorating condition of the empty Property and related anti-social behaviour. The Applicant believes from its Council Tax records that the Property has been empty since 18 November 2008, when it was inherited into the ownership of the Respondent. The Tribunal was informed that squatters had entered the Property on or about 11 September 2017, leading to attendance by the Police. The Respondent failed to respond to a Community Protection Order issued by the Applicant on 8 October 2018 regarding overgrown vegetation in the garden area and accumulation of waste.
11. Pursuant to a Warrant of Entry granted by South East Northumberland Magistrates Court on 19 July 2019 an officer of the Applicant entered the Property. The photographs of the abandoned condition of the interior of the Property and its exterior were exhibited to Mr McGuire's statement. From those photographs, supporting evidence identified in Mr McGuire's statement

and its inspection the Tribunal concluded that the Property is unoccupied and in a poor state internally and externally is as described in paragraph 4.

12. 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 £13,020 plus project management fees, plus provisional sums totalling £11,150, if deemed necessary, relating to installation of a new boiler and related works, electrical rewire, replacement of certain doors and windows and to demolish the conservatory.
13. Notice of intention to seek an Interim EDMO was sent to the Respondent under cover of a letter dated 18 February 2019.
14. The Tribunal was supplied by the Applicant with an address for the Respondent, identified as being both his place of residence and for correspondence. It is the same address as that appearing for him on the Office Copy entries of the Land Registry records for the Property, as at the date of their issue on 4 December 2019. The Tribunal was not aware of any of its correspondence being returned undelivered. The Tribunal received a copy of a Certificate of Service submitted to the Magistrates' Court concerning the Warrant for Entry, referring to the same address. The Applicant informed the Tribunal through Mr McGuire's statement that the Respondent was listed at the same address for Council Tax purposes and was identified as residing there on the electoral roll when checks were made on 11 January and 10 June 2019. The Tribunal was satisfied on a balance of probabilities that the correspondence from the Applicant to the Respondent relevant to the matters before the Tribunal and to him from the Tribunal, had been received. The Tribunal was satisfied that the Applicant was aware of the matters leading to the Application and of these proceedings.

The Law

15. 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.
16. 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.
17. 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.
18. 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)).

19. 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.
20. 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.*
21. 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.*'
22. 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

23. The Tribunal finds that the Applicant has communicated with the Respondent owner in accordance with Section 134(2) and has complied with Section 133(3) of the Act and the provisions of the Regulations.
24. The Tribunal finds that the Property has been empty for at least the 2 years prior to the Application and that none of the prescribed exceptions apply.
25. The Tribunal finds that if the Interim EDMO is not granted there is no reasonable prospect of the Property becoming occupied in the near future. Once an Interim EDMO is made there is a reasonable prospect that the dwelling will become occupied.
26. The Respondent is aware of the Application and has not responded. There are no relevant third parties.
27. The Tribunal therefore makes the Decision set out in the heading of this decision document.

L Brown
Tribunal Judge
30 June 2020

Annex

**Housing Act 2004
Section 133 (5)**

INTERIM EMPTY DWELLING MANAGEMENT ORDER

Iain Gordon MacPhail
104 Stanley Street
Blyth
Northumberland
NE24 2BX

being the person who is the relevant proprietor the premises known as 24 Broadway Circle, Blyth, Northumberland, NE24 2PQ

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 24 Broadway Circle, Blyth, Northumberland, NE24 2PQ

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:

.....
Authorised Signatory

Dated:.....
[Name of signatory]
[Job title]

[address and contact telephone number]

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.