



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

**Case Reference** : **CAM/00KC/HYI/2022/0001**

**HMCTS** : **Telephone**

**Property** : **35 Old Road, Leighton Buzzard,  
Bedfordshire LU7 2RB**

**Applicant Representative** : **Central Bedfordshire Council  
Pathfinder Legal Services Limited**

**Respondent** : **Andrew John Lewis**

**Type of Application** : **Application for authorisation to make an  
Interim Empty Dwelling Management  
Order (Ss 133 & 134 Housing Act 2004)**

**Tribunal** : **Judge JR Morris**

**Date of Application** : **23<sup>rd</sup> February 2022**  
**Date of Directions** : **7<sup>th</sup> April 2022**  
**Date of Hearing** : **20<sup>th</sup> July 2022**  
**Date of Decision** : **5<sup>th</sup> September 2022**

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**DECISION**

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**Decision**

1. The Tribunal authorises the Applicant to make an Interim Empty Dwelling Management Order in the form as set out at pages A88 to A93 of the Bundle with the following amendments:

The Schedule is to include:

Under the existing heading of “Gas service”  
“The boiler to be relocated from the loft to first or second floor to ensure access for servicing etc.”

Under a new heading of “Stairs”  
“Repairs to the bottom two treads and a handrail fitted”

2. The Tribunal makes no order for payment of compensation.

## **Reasons**

### **Introduction**

3. On 23<sup>rd</sup> February 2022 the Applicant applied for authorisation for an interim Empty Dwelling Management Order in respect of the Property. The Order will enable the Applicant to enter the Property, because it is a dwelling, to undertake work and then to let it on the open market. In the absence of the owner's consent being obtained the Applicant can make a Final Order without the further involvement of the Tribunal.
4. Following receipt of the Application, the Tribunal made a Directions Order on 7<sup>th</sup> April 2022.

### **The Law**

5. The relevant law is contained in sections 133, 134 and Schedules 6 and 7 of the Housing Act 2004 and the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006.
6. Section 133 states that a local housing authority may make an interim Empty Dwelling Management Order in respect of a dwelling which is wholly unoccupied and the relevant proprietor is not a public sector body, after it has obtained authority from a First-tier Tribunal (Property Chamber) (Residential Property).
7. Before making an application, the authority must:
  - a) identify the "*relevant proprietor*" in relation to the dwelling. The relevant proprietor means, in this case, "*the person who has the freehold estate in the dwelling*" (section 132(4)(c)(ii);
  - b) "*make reasonable efforts*" to find out what the relevant proprietor is intending to do "*to secure that the dwelling is occupied*" and to notify the relevant proprietor of its intentions to make an application for an Order (section 133(3));
  - b) take into account the rights of the relevant proprietor and the interests of the wider community when deciding whether to apply for authorisation.
8. Section 134 sets out the matters, which a tribunal must take into account. These are that:

none of the exceptions set out in the Housing (Empty Dwelling management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 apply which are:

  - (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.

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

the tribunal must be satisfied of the following matters:

- *that the dwelling has been wholly unoccupied for at least 2 years or such longer period as may be prescribed;*
- *that there is no reasonable prospect that the dwelling will become occupied in the near future;*
- *that, if an interim order is made, there is a reasonable prospect that the dwelling will become occupied*
- *that the authority has complied with section 133(3) and*
- *that any prescribed requirements have been complied with*

9. The Housing (Empty Dwelling management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 sets out what information has to be provided to the Tribunal to satisfy it that it has complied with Section 133(3) of the Housing Act 2004 i.e., to tell the owner what the applicant intends to do and what advice has been given.

10. The Housing (Empty Dwelling Management Orders) (Prescribed Period of Time and Additional Prescribed Requirements) (England) (Amendment) Order 2012 which came into effect on 15th November 2012.
11. If the Tribunal gives authority for the making of an interim Empty Dwelling Management Order, it may also make an order requiring the applicant 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”*.

### **Hearing**

12. A hearing was held on 20<sup>th</sup> July 2022 attended by Ms Selena Jones of Counsel instructed by Pathfinder Legal Services Limited representing the Applicant, and Ms Elisea Ruocco Housing Operations Manager for the Applicant and Mr Andrew Lewis, the Respondent.

### **Description of the Property**

13. The Tribunal did not inspect the Property but a description of its structure and condition was provided by the Applicant.

#### ***Structure***

14. The Property is a two-bedroom terraced house. From the other properties in the terrace the front elevation is probably a solid brick wall which has been rendered. The main body of the house is under a tiled pitched roof, at the rear there is a flat roof single storey extension housing the kitchen. The Property fronts directly onto the pavement. There is a small yard to the rear containing a right of way, creating access to neighbouring properties.

#### ***Accommodation***

15. The Property comprises a living room, kitchen, a bathroom on the ground floor, two bedrooms on the first floor.

#### ***Location***

16. The Property is located in a residential area close to shops and schools. The surrounding properties are in a good condition and are well maintained.

#### ***Condition***

17. The Property was said to have a large hole in the flat roof which has led to rainwater damaging the kitchen, the windows and doors require replacement. In addition, there are severe dilapidations to ground floor ceilings which were thought to be due to the Respondent's refurbishment techniques, which rendered the ceilings liable to collapse. There was a poor and possibly dangerous installation of the gas pipe leading to a new boiler in loft.

18. The loft is inaccessible which means that the boiler is inaccessible as there is no means of installing a loft ladder due to space restrictions on the landing. All floorboards to the first floor have been removed and require replacement. Repairs to the staircase are required, which has several treads and risers in disrepair.
19. Within the yard at the rear are two stone walls which are partially collapsed and need to be made safe. Rainwater goods were said to require replacement.
20. A Housing Health and Safety Rating System Assessment was carried out on 4<sup>th</sup> June 2021 following an inspection which found as follows (photographs were provided to illustrate the findings):
  1. Hazard – Excess Cold  
The property has solid walls, old draughty double-glazed units, draughty wooden front and rear doors, no insulation in the loft, a large hole in the kitchen ceiling and no adequate heating. Whilst the boiler is newly installed, it has been located in the loft and has not been commissioned and there is no safe access to it for the purpose of maintenance and so will need to be relocated prior to any occupation. Excess ventilation through the windows and doors wastes heat and reduces the temperature.
  2. Hazard - Domestic hygiene, Pests and Refuse  
Whilst the condition of the kitchen is not extreme, it is poor quality and has been damaged by rainwater ingress and dampness and the layout and materials create surfaces that are very difficult to clean which may lead to infection and disease. It may also contribute to psychological distress. Potential health outcomes- asthma, gastrointestinal disease, depression and anxiety. Insect pest can cause allergic reactions. Insects such as flies can be vectors of disease.
  3. Hazard - Food safety  
Whilst the condition of the kitchen is not extreme, it is unhygienic and offers no suitable conditions for the safe storage or preparation of food. Cracks, chips and other damage may prevent thorough cleansing and provide for harbourage of pathogenic and food spoiling organisms. The insanitary conditions within the kitchen give rise to a greater risk of ill health due to food poisoning or food contamination.
  4. Hazard - Personal hygiene, sanitation and drainage  
Whilst the condition of the bathroom is not extreme, it is poor quality and the layout and materials create surfaces that are very difficult to clean which may lead to infection and disease. It may also contribute to psychological distress. Dysentery and rota virus infections are frequent causes of diarrhoea carried by the oral route (which is a vector of disease) both of which are highly contagious where hygiene levels are poor. This bathroom does not comply with the conditions outlined

5. Hazard - Falling on stairs etc.  
The bottom two treads are seriously damaged. There is no handrail. The stairs are steep and narrow. There is a turn at the base of the stairs. All of these features together, create a significant hazard. The lack of hand rail doubles the likelihood of a fall. The components detailed, create greater risk of harm due to the structural design and condition of the stairs.
  6. Hazard - Falling between levels  
The boiler has been located within the loft space. Access to the loft is extremely difficult as the loft hatch is small and there is no fixed ladder and rail installed, there is no room to install a fixed ladder and rail as the landing is less than a metre squared and the loft hatch is directly above it.
  7. Hazard - Electrical hazards  
The condition of the electrical installation is antiquated and from visual inspection requires work to bring it up to current standards. It is necessary before commencement of any works to have the system tested by a competent engineer. It should be noted that the current electrical installation contains no mains wired smoke or heat detection. As human tissue acts as a resistant to electricity, heat is generated which may result in burns. Burns occur at the point of contact with electricity.
  8. Hazard - Fire  
There is no fire smoke or heat detection within the house. There is no fire door between the kitchen and living quarters creating an escape route. The most common cause of death by fire is being overcome by gas or smoke making early detection paramount. Increasing the risk relating to fire are impairment of mobility and speed of escape.
  9. Hazard - Structural collapse and falling elements  
There is a significant area of structural collapse within the kitchen with a large hole in the flat roof that is open to free flowing rainwater ingress which could lead to further disintegration of the structural parts and therefore collapse. In addition, the ceiling in the living room has been damaged during works carried out by the owner, this has led to one corner of the ceiling becoming live, rendering the entire the lathe and plaster ceiling liable to collapse. Outcomes have been changed mainly to reflect the likelihood and level of damage should in the living room collapse causing injury.
21. The Witness Statement of Ms Elisea Ruocco was provided. She said she was the Housing Operations Officer within the Housing Solutions Service for Central Bedfordshire and her responsibilities included bringing privately owned empty homes back into residential use, providing financial assistance to homeowners, investigation and enforcement under the Housing Act 2004 and other environmental health and housing legislation.

## **Schedule of Works prepared based on above for Interim Empty Dwelling Management Order Schedule**

22. A Schedule of Works was prepared with a view to remedying the defects in the Property in order that it may be put into a habitable condition.

### Electrical

- Carry out a full test of the electrical supply and fittings and certificate, any repairs to be agreed before carrying out. Supply and fit Aico 3000 series interlinked fire detection comprising of; multifunctional smoke heads and 1 heat detector hard wired to existing lighting circuit and tested. Remote Test/Hush button to be fitted in hall on main escape route and be in full view. Allow for 1 no Carbon monoxide detector battery type. House will require D1 LD2 level of protection. Smoke Alarm installation to have separate test certificate, preferably Aico one. All pendants to have energy saving bulbs installed.

### Gas Service

- Carry out full service to boiler and check all radiators are operational. Provide certificate of test and service. Leave heating on and working until all works are complete, then turn off and cap gas.

### Asbestos Survey

- Carry out R&D survey, once results are known, a discussion is to be held to discuss the process to move forward with project.

### Upvc

- Carry out complete overhaul of windows not being changed, The front and rear doors are being changed to agreed style, the windows to rear of property to be changed to agreed style, any additional works to be authorised by client, check all double glazed units.

### Blinds

- Supply & install, Vertical Blinds in Carnival FR Navy, 89mm, With Wand Controls.

### Keysafe

- Supply and fit keysafe to front of property for access.

### House Clear and Clean

- Full property clearance of any furniture not being utilised. Check loft and clear. All flooring that is staying to be protected from start.
- Fully clean property ready for occupation to include windows inside and out, air fresheners to be place around property, particular attention to be paid to the bathroom ad kitchen. To include full viral clean, swab test and certification at end.

### Clearance

- Full property clearance of any furniture not being utilised. Check loft and clear. All flooring that is staying to be protected from the start.

Fully clean property ready for occupation to include windows inside and out, air fresheners to be placed around property, particular attention to be paid to the bathroom and kitchen. To include full viral clean, swab test and certification at end.

#### Decoration

- Full decoration to a 2-bed property to include additional works to new plaster and timber.

#### General

- Remove all hooks, nails and picture hanging brackets from walls.
- Check loft for adequate insulation.
- Supply hasp and staple with padlocks to the loft hatch.

#### Kitchen

- Kitchen to be removed and replaced with new as per specification below, design has already been completed, allow for all water feeds for sink and washing machine, all waste runs to be removed and re-run with new pipework and fittings.

#### Roof

- Remove and renew flat roof to include joists.
- Apply Weberfloor DPM epoxy resin damp proof system to kitchen floor and once cured, apply levelling compound, all in accordance with manufacturer's requirements.

#### Ceilings

- Remove ceiling and allow for all de-nailing, ceiling is lathe and plaster type
- Board new ceiling with 12mm plaster board, laid in staggered / offset formation, joints taped and filled, allow for
- all scrim tape and course threaded drywall screws, complete with 5mm skim plaster coat.
- Allow for patch float and set plastering for making good walls
- Allow for 40mm Thermal boards to be installed front and rear elevations complete with plaster skim

#### Internal doors

- Renew all door frames and allow for 1no fire rated frame and door set to standard. Allow for 4 panel embossed panelled doors

#### Bathroom

- Supply and fit complete bathroom 3 piece suite to include shower tap combination to bath complete with riser rail, hose and head. Supply and fit shower curtain rail and white curtain, all tiling and flooring to be as per specification below

#### Flooring

- Renew flooring to ground floor areas in Colonia, colour to be agreed



- All flooring on stairs and 2 bedrooms to be carpet as per specification below

#### External

- Clear rear courtyard garden and discard all rubbish, all sandstone to be kept and put to one side
  - Rebuild 2no sandstone walls with correct mortar, this to be checked and agreed with client
23. At the hearing in response to the Tribunal's questions Ms Ruocco confirmed that the hazard identified with regard to the stairs would need to be remedied by repairs to the bottom two treads and a handrail fitted. In addition, it was noted that the need to relocate the boiler should be included in the schedule.

#### *Proprietorship*

24. Ms Ruocco said that pursuant to section 132(4)(c)(ii) of the Housing Act 2004 the Applicant had identified the Respondent as the "*relevant proprietor*" in relation to the dwelling which in this case is "*the person who has the freehold estate in the dwelling*". Ms Ruocco provided an Official Copy of the Register of Title at HM Land Registry of Title Number BD74040. This showed the Respondent Mr Andrew John Lewis as the registered proprietor since 13<sup>th</sup> December 2007 and that his address was the Property. It also showed that Barclays Bank Plc had a charge against the Property.

#### *Unoccupied for 2 years*

25. The Council had as required by section 134(2)(a) of the Housing act 2004 investigated the Property since 2018 as a long-term empty home. Since 2018 the Respondent has registered the Property for Council Tax purposes as his second home backdated to 19<sup>th</sup> December 2014, which has resulted in him avoiding the Council Tax levy. It was submitted that the Property has remained unoccupied for at least two years.

#### *No reasonable prospect of Occupation*

26. Ms Ruocco referred to correspondence from the Applicant to the Respondent and the limited response from the Respondent in reply over the past two years. Ms Ruocco said that as required by section 134(2)(b) of the Housing act 2004 the Applicant had made a reasonable effort to ascertain what steps the proprietor is taking or intends, to secure occupation. During this time, some works have been carried out to the house, however, they are of poor quality and have, in fact created further dilapidation. Further, the Respondent has stated on many occasions that it is his intention to take action. None of these statements has led to the property being renovated to acceptable standards and reoccupied or sold. There is no reasonable prospect that the dwelling will be occupied in the near future. She referred to the Housing Health and Safety Survey which described the condition of the Property as at 4<sup>th</sup> June 2021.

27. Ms Ruocco said that it is the Applicant's duty, pursuant to section 135(2) of the Housing Act 2004, to take appropriate steps for the purpose of ensuring dwellings become and continue to be occupied. As the Property has been unoccupied for at least two years (section 134 (2)(a) of the Housing Act 2004) and there is no reasonable prospect that the dwelling will be occupied in the near future (section 134(2)(b) of the Housing Act 2004).

*Prospect of occupation if Order is made*

28. Ms Ruocco said she had assessed the repairs that need to be undertaken to the Property and had calculated the cost of these repairs and found that they are recoverable under the terms of an Empty Dwelling Management Order. In addition, she had taken into account the funding and income available for this project and found it to be cost-effective. She referred to the Schedule of Works attached to the draft interim Empty Dwelling Management Order and the calculations provided. Therefore, as required by section 134(2)(c) there was a reasonable prospect of the Property being occupied if an Interim Empty Dwelling Management Order is made.

*Notification*

29. As required by section 134(2)(d) of the Housing Act 2004 the Applicant has complied with section 133(3)(a) of the Housing Act 2004 by notifying the Respondent Proprietor that the Applicant is considering making an interim Empty Dwelling Management Order, by Notice of Intention, by covering letter and by Draft Interim Empty Dwelling Management Order copies of which were provided. It has also sought to ascertain what steps the Respondent proprietor was taking or intends, to secure occupation.
30. The Applicant has also notified the Respondent in writing of its decision to apply for authorisation to make an interim Empty Dwelling Management Order no less than 3 months before its application.

*Efforts of the Applicant to determine exceptions, establish intent & to advise*

31. As required by section 134(2)(e) of the Housing Act 2004 the Applicant has met the prescribed requirements of Housing (Empty Dwelling management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006. It made reasonable efforts to establish from the Respondent whether he thinks any of the exceptions in article 3 apply as required by article 4(1)(a). A list of exceptions was sent to the Respondent and he was asked if any apply.
32. The Applicant made reasonable efforts to establish from the Respondent what steps the Respondent was taking or intends to take to ensure the Property is occupied as required by article 4(1)(b)(ii) by providing him with a questionnaire to complete.
33. The Applicant made reasonable efforts to advise assist and encourage the Respondent to secure occupation of the Property. It has met with the Respondent and drawn up a schedule of works and has offered financial assistance as required by article 4(1)(b)(iii).

### *Interests of the Community*

34. It was submitted that pursuant to section 134(3)(a) of the Housing Act 2004 it was in the interests of the community to make an interim Empty Dwelling Management Order. As at 19th July 2021, the Council had a housing waiting list with 122 applicants who needed two-bed accommodation in Leighton Buzzard. In addition, empty properties, particularly those in a dilapidated and overgrown condition such as the Property have a negative impact on the prices of neighbouring properties which directly affects the financial position of their owners. Properties that have been unoccupied for some time, are detrimental to the amenity of the area and are more likely to attract squatters and anti-social behaviour, which is likely to blight the neighbourhood further and cause complaints. Such incidents have been reported in relation to this property.

### *Interests of the Respondent*

35. It was also submitted that pursuant to section 134(3)(b) of the Housing Act 2004 the Applicant was not aware of any particular or special circumstances of the Respondent that would mean the making an Empty Dwelling Management Order would have an impact particular to them that was not envisaged to be the general impact of the legislation by Parliament. It was believed that the Respondent can only be benefited by the Applicant taking over management of the property in order to bring it into a liveable condition and ensure that its physical parts are properly maintained, insured and managed; and that it is occupied.

### *Compensation*

36. It was stated that the Applicant was not aware of any particular or special circumstances of the proprietor, or of any third party, that would mean that an order for compensation to be paid to them would be necessary under section 134(4) of the Housing Act 2004.

### **Conclusion**

37. It was therefore submitted that therefore it was appropriate for an Interim Empty Dwelling Management Order to be made because:
- The property has been wholly unoccupied since investigations commenced in 2018 and there is no reasonable prospect of the property becoming occupied in the near future without the intervention of the council.
  - The management of the property by the Council is necessary for the protection of the health safety and/or welfare of persons, carrying out their lawful activities in the vicinity of the premises.
  - The relevant proprietor(s) have been requested to submit their proposals for the use of the property and there do not appear to the council to be any steps being taken or proposed, that are adequate or sufficient to ensure that the property is occupied within a reasonable time.

## Feasibility of an Interim Empty Dwelling Management Order

38. The Applicant said that account must be taken of the costs of repair to (former) Decent Homes Standard. In addition, costs associated with property management are calculated at 6% of the annual rental income and a cost for maintaining the property per annum of 2% of annual rental income over the 7-year period of the Final Empty Dwelling Management Order. All costs associated with serving and carrying out the functions of an Empty Dwelling Management Order are recoverable under statute either via rental receipts or through a legal charge on the property or direct recovery from the owner (if this is practicable). Calculations are based on income and expenditure over a six and a half year period to allow time for renovations and repairs.

Rental Income £822.73/month at LHA 6.5 yrs	£64,172.94
Estimated renovation costs to make habitable	£51,490.66
Management costs @ 6% of rental income	£3,850.37
Maintenance @ estimated 2% rental income	£1,283.45
Fee for Residential Property Tribunal	£300.00
Insurance for 7 years	£1,400.00
Cost of Serving Notice (£284.00 per owner)	£284.00
Officer Time	£875.11
Total costs	£59,483.59
Shortfall/Surplus	£4,689.35 Surplus

39. It was submitted that it will be possible to recover the cost of refurbishment within the 7 years available under the Empty Dwelling Management Order as detailed above and to reimburse the owner of the property the value indicated above following the full recovery of the Council's costs. This value would enable the Council to secure the rental value of this property at local housing allowance for a period of seven years, which will contribute significantly towards the provision of affordable housing in the town. The intention will be to provide sustainable tenancies for local homeless families. Empty Dwelling Management Orders are a cost-effective enforcement option as there are minimal legal costs and no compensation payable as the owner does not lose the value of the asset.

### Time line

40. The Applicant provided a timeline of events leading up to the decision to apply for an Interim Empty Dwelling Management Order to show that the procedural requirements had been met together with supporting documents.
- From the Respondent's Council Tax return the Applicant believed property to be occupied by a single person but was then subsequently registered as second home since 2014.
  - On 31<sup>st</sup> May 2018, the Applicant's Empty Homes Officer received a complaint from a neighbour about the Property, advising it had been empty for two years. The neighbour was concerned about disrepair and the old unstable boundary wall at the rear.

- c) On 10<sup>th</sup> July 2018, 31<sup>st</sup> October 2018, 2<sup>nd</sup> April 2019 and 28<sup>th</sup> August 2019 rats were reported to be present at the Property.
- d) Empty Home Questionnaires were sent to the Respondent by the Applicant on 11<sup>th</sup> June 2018, 9<sup>th</sup> July 2018 and 10<sup>th</sup> September 2018 but no reply was received from the Respondent.
- e) On 12<sup>th</sup> November 2018 a Schedule of Works prepared following inspection with Respondent.
- f) Between 26<sup>th</sup> November and 7<sup>th</sup> December 2018 noises were heard coming from the Property by a neighbour which she believed to be due to a water leak.
- g) In 2019 letters and emails were sent to the Respondent by the Applicant asking what progress had been made on refurbishing the house with a view to it being occupied with replies from the Respondent as follows:
- 14<sup>th</sup> February 2019
  - 20<sup>th</sup> February 2019
  - 13<sup>th</sup> March 2019 the Respondent replied stating that he was obtaining quotes
  - 2<sup>nd</sup> April 2019
  - 9<sup>th</sup> April 2019 Respondent replied stating that he was obtaining quotes
  - 1<sup>st</sup> July 2019
  - 17<sup>th</sup> July 2019 Respondent replied stating that he was obtaining quotes
  - 31<sup>st</sup> July 2019
  - 14<sup>th</sup> August 2019
  - 30<sup>th</sup> August 2019
  - 4<sup>th</sup> October 2019
  - 8<sup>th</sup> November 2019
- h) On 6<sup>th</sup> December 2019 a requisition for information confirming all parties with a legal interest in the property was sent under section 16 Local Government (Miscellaneous Provisions) Act 1976. The notice was accompanied by a covering letter and is a precursor to the commencement of enforcement action. No response was received which is a criminal offence.
- i) In 2020 letters and emails were sent to the Respondent by the Applicant asking what progress had been made on refurbishing the house with a view to it being occupied with replies from the Respondent as follows:
- 2<sup>nd</sup> January 2020
  - On 8<sup>th</sup> January 2020 Applicant's Officers met with the Respondent and the Schedule of Works was revised.
  - In 24<sup>th</sup> January 2020 Respondent replied stating that he was obtaining quotes
  - 7<sup>th</sup> February 2020
  - 13<sup>th</sup> March 2020
  - 28<sup>th</sup> October 2020 formal letter requesting information as to the Respondent's intentions for the Property.

- j) On 24<sup>th</sup> December 2020 and 21<sup>st</sup> January 2021 neighbour reported the Property deteriorating
- k) In 2021, in anticipation of enforcement action, the Applicant sent the following demands and notices to the Respondent and took the following actions:
- 10<sup>th</sup> March 2021 demanded production of utility bills for gas, electricity and water for years 2018, 2019 and 2020 under section 235 Housing Act 2004.
  - 9<sup>th</sup> April 2021 Notice of entry was served under section 239 Housing Act 2004
  - 10<sup>th</sup> May 2021 Warrant issued section 240 Housing Act 2004
  - 4<sup>th</sup> June 2021 Property inspected by the Applicant's Officers in anticipation of enforcement action and found to be in very poor condition. Locks changed.
  - 8<sup>th</sup> September 2021 Notice of Intention to serve an Interim Empty Dwelling Management Order.
  - 27<sup>th</sup> September Applicant informed Barclays Bank, owner of the registered charge, of the intention to serve an Interim Empty Dwelling Management Order.
- l) On 11<sup>th</sup> November 2021 Respondent contacted the Applicant stating that he had been dealing with a number of personal issues but was now in a position to work with the Applicant to get the Property back into use.
- m) On 16<sup>th</sup> November 2021 the Respondent contacted the Applicant saying that he did not have funds to carry out the necessary work. The Applicant advised the Respondent of loans that may be available.
- n) On 17<sup>th</sup> November 2021 onwards the Applicant sought to return the Property keys to the Respondent and sent a letter to the Respondent informing him that an application will be made for an Interim Empty Dwelling Management Order to the Tribunal.
- o) On 14<sup>th</sup> December 2021 Applicant informed that a survey obtained by a neighbour identified the Property as the likely cause of damp and mould in the neighbouring house.
- p) 4<sup>th</sup> January 2021 Applicant wrote to the Respondent asking if he had been able to raise the funds to carry out the work. Complaint by neighbour received relating to the damp and mould survey
- q) 21<sup>st</sup> January 2021 The Applicant telephoned the Respondent but there was no reply. No further communication was received from the Respondent with regard to his ability or willingness to raise the necessary funds to pay for his portion of the works. As a result, the Applicant proceeded with the application for an Interim Empty Dwelling Management Order.

## Discussion at Hearing

41. The Tribunal and the parties went through the Applicant's evidence in some detail. The Respondent agreed that he was the proprietor of the Property and that it had been unoccupied for two years and that it did not come within any of the exceptions. The parties confirmed the description of the Property and its current condition. The Respondent did not dispute the Applicant's account of the condition of the Property through the Housing Health and Safety Rating System Survey and conceded that much if not all of the work identified by the Applicant in the Schedule of Works was required to put the Property back into a habitable condition.
42. The Tribunal and the parties then considered the timeline provided by the Applicant. The Respondent said that he had bought the Property as an investment and started to carry out renovation works as and when he had time and money to do so. He felt he was making reasonable progress with the works until 2018. He said that a combination of things had meant he could not progress and complete the works necessary. As a result, the Property was in some areas deteriorating faster than he could carry out works.
43. The personal circumstances included his partner and he having a child, his being made redundant, the problems experienced by many families during the pandemic which had hit him particularly hard with regard to employment and hence income. The coronavirus restrictions had also had an effect on obtaining materials and instructing contractors to carry out work when he was in a position to do work.
44. In response to the Tribunal's questions the Respondent said that with regard to some of the correspondence sent to him by the Applicant he doubted that he had received it as he had changed address. Nevertheless, he acknowledged that he had received letters towards the end of 2018 and had met with the Applicant's Officers to prepare a Schedule of Works and during 2019 when he had sought to obtain quotations. He conceded that in retrospect he should have kept in closer contact 2019 with the Applicant in the latter part of 2019.
45. The Respondent said that he was in a much better position now than he had been during 2019 to 2021. He had a job which although not at the salary he had prior to his redundancy, nevertheless, significantly more than he had received in the interim with good prospects. In addition, he said that family members were able to provide some capital. Given time he was confident that he would have sufficient funds to be able to bring the Property up to a habitable standard.
46. When asked about the amounts he could raise, he said the capital would be about £25,000 adding that he could carry out some of the work himself. When questioned about the timescale he said account would need to be taken of family commitments and that his partner and he had recently had another child.
47. When asked to comment on the Applicant's costings the Respondent said that although the Order would mean the Property would be brought up to a

standard within 7 years when the Property would be returned to him. Nevertheless, he would not have access to the rental income which would all go to pay for the work and management of the Property.

## **Decision**

48. The Tribunal considered all the evidence adduced and submissions made.
49. The Tribunal found it was agreed that pursuant to section 132(4)(c)(ii) of the Housing Act 2004 the “relevant proprietor” was the Respondent as “*the person who has the freehold estate in the dwelling*”.
50. The Tribunal was satisfied that pursuant to section 134(2)(a) of the Housing Act 2004 the dwelling has been wholly unoccupied for at least 2 years and that none of the exceptions set out in the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 paragraph 3 apply.
51. In addition, the Tribunal was satisfied that pursuant to section 134(2) and Housing (Empty Dwelling management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 paragraph 4(1) that the Applicant Local Authority has made reasonable efforts to establish what the relevant proprietor is intending to do to secure that the dwelling is occupied. In doing so it had provided through the timeline and supporting documents:
  - (1) Details of its notifying the relevant proprietor of its intentions to make an application for an Order pursuant to section 133(3)(a) of the housing act 2004, the Notice of Intention being served on 8<sup>th</sup> September 2021 and the Application being made on 23<sup>rd</sup> February 2022;
  - (2) Details of enquiries made to ascertain what steps the relevant proprietor intended to take. Pursuant to section 133(3)(b) of the Housing act 2004;
  - (3) Details of any advice or assistance given to the relevant proprietor;
  - (4) All information that suggests the dwelling may be excepted;
  - (5) Classification of dwelling for Council Tax;
  - (6) All information that the dwelling has been causing a nuisance for the community; and
  - (7) All information that suggests the community supports the proposed making of the Interim Empty Dwelling Management Order.
52. The Tribunal was also satisfied that the Applicant Local Authority had carried out a thorough assessment of the condition of the Property and the works required to put it into a habitable condition in order to be occupied. The Applicant had also made it clear through its feasibility study that it would carry out the works specific in the Schedule of Works if an Order was made. The Tribunal was of the opinion that the works identified were required and that if they were carried out the Property would be in a habitable condition and that there would be a reasonable prospect of it being occupied. Demand for rented accommodation was high in the area as were market rents which is what must be charged under the Order. This may result in the costs of refurbishment being reimbursed well within the projected the six and half years.



53. The Tribunal then considered whether there was a reasonable prospect of the Property being occupied in the near future taking particular account of the Respondent's evidence and submissions if an Order was not made.
54. The Tribunal appreciated that the Respondent had had employment difficulties exacerbated by the coronavirus restrictions which had caused him financial problems from 2018 to the present time. However, the Respondent had held the Property since 2007 and during the period 2007 to 2018 had not been able to put the Property into a habitable and lettable condition, as he declared was his intention on purchase. Taking into account the time taken by the Respondent to refurbish the Property as well as the past financial constraints the Tribunal considered whether his circumstances had changed sufficiently to satisfy the Tribunal that he would be in a position to put the Property into a habitable condition so that it would be occupied in the near future.
55. The Tribunal found that the Respondent's costings for refurbishment were realistic and even allowing for a reduction to take account of the Respondent carrying out work himself the overall sums required are significant. The Tribunal was of the opinion that capital of £25,000 or thereabouts would not be sufficient and that it was unlikely that the Respondent would be able to make sufficient contribution from either his time or his income bearing in mind that he has a growing family.
56. The Tribunal was satisfied that if the Order was not made, there was no prospect of the Property being occupied in the near future as the Tribunal was of the opinion that the Respondent did not have the resources.
57. The Tribunal then considered what effect the Order would have on the rights of the Respondent, as the relevant proprietor, and any third party such as his family. The Tribunal found that the effect of the Order would be to put the Property into a sound habitable condition and it would be occupied at a rent which would pay for the refurbishment and the letting costs. The Property would then be returned to him within 7 years at, what the Tribunal believes from its knowledge and experience to be an increased capital value.
58. Although as the Respondent said he would not have the rental in this period nevertheless he would not have the costs of refurbishment and management.
59. Overall, the Tribunal was satisfied that the Order would not have an adverse effect on the Respondent rights in relation to the Property.
60. Lastly the Tribunal considered the interests of the community. It found that the Order and its related refurbishment of the Property, particularly as a part of a terrace, would benefit the immediate community in repairing the dilapidated wall and addressing the damp and mould thus reducing the risk of blight. It would also benefit the wider community by providing additional accommodation in an area of demand.
61. Based on the evidence adduced and the submissions made, the Tribunal authorises the Applicant to make an Interim Empty Dwelling Management

Order in the form as set out at pages A88 to A93 of the Bundle with the following amendments:

The Schedule is to include:

Under the existing heading of “Gas service”

“The boiler to be relocated from the loft to first or second floor to ensure access for servicing etc.

Under a new heading of “Stairs”

“Repairs to the bottom two treads and a handrail fitted”.

62. The Tribunal did not consider an order for compensation was necessary.

**Judge JR Morris**

#### **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.