



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

Case Reference : CHI/24UD/HPO/2023/0003

Property : Lower Garden, Edneys Lane, Denmead,
PO7 6JJ

Applicant : Mr G B Holmes

Representative :

Respondent : Winchester City Council

Representative :

Type of Application : Appeal against a Prohibition Order

Tribunal Member(s) : Judge D Whitney

Date of hearing : 14th July 2023

Date of decision : 17th July 2023

DECISION

Background

1. The Applicant seeks to appeal a prohibition order.
2. An application was received by the Tribunal on 20th March 2023 seeking to appeal a prohibition order dated 9th March 2023. This application the Tribunal confirmed by way of letter dated 18 May 2023 had been deemed withdrawn pursuant to Rule 11(3) due to the failure to pay the necessary fee. A letter dated 27th April 2023 had warned the Applicant that a failure to pay the fee within 14 days would give rise to a deemed withdrawal.
3. By a letter and application form dated 18th May 2023 the Applicant has renewed the application and paid the fee. The prohibition notice which the Applicant seeks to appeal is dated 9th March 2023 and so the application for appeal has been made out of time.
4. Further it was unclear as to the basis of the appeal.
5. The Tribunal issued a notice that it was minded to strike out the application in accordance with Rule 9 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that the appeal was made out of time and the application identifies no grounds of appeal which have any prospect of success and so the Tribunal lacks jurisdiction.
6. Representations were received from the Applicant dated 1st June 2023 and received on 5th June 2023. It was unclear as to the reasons for a delay and the grounds for appealing the prohibition order. However it appeared that there may be grounds and the Applicant was entitled to make oral submissions so the Tribunal could make findings as to the facts of the case.
7. The matter was listed for a hearing on 14th July 2023. The Applicant made further representations dated 3rd July 2023 and the Respondent made representations with photographs of the Property dated 28th June 2023.

Hearing

8. Mr Holmes appeared in person and was assisted by a friend. Mr Easey, Winchester City Council Private Sector Housing Team appeared for the Respondent.
9. Mr Holmes explained that he failed to pay the original fee for the first application due to suffering from an attack of gout at the time. He explained as a result he failed to pay the fee in accordance with the

Tribunal direction but did promptly renew his application (and pay the fee) once he learnt the same had been deemed withdrawn.

10. He confirmed he relied upon his written representation dated 3rd July 2023.
11. He explained that in his view it was best the listing of his property was removed so that he could demolish the same and build a new residential property. He suggested this had happened to other cottages in the area. He explained that he had, when first listed challenged the listing. Currently he lived mainly in an apartment in Southsea but spent some time at the subject Property. He had funds to build a new home.
12. Mr Holmes believed undertaking the works required under the prohibition notice was a waste of his funds. He accepted all of the hazards which the Prohibition Order relied upon. He stated he did not believe they were hazardous to himself as he was aware and would take measures to avoid. Given it was his home he could not see how this could affect the council and he would not hold them responsible if he suffered any harm.
13. It was clarified by Mr Easey that Rachel White of Historic Enforcement at Winchester City Council had written on Mr Holmes' behalf to Historic England to advise them that Mr Holmes wished the Property to be "de-listed". Mr Easey explained that the council did not support this request. Mr Holmes accepted he had taken no further steps in this regard.
14. Mr Easey simply relied upon his letter of representations dated 28th June 2023 and the photos attached to the same. He resisted the appeal on the grounds that the hazards were accepted and he had little choice given the number of Category 1 hazards but to serve a Prohibition Order.

Decision

15. At the conclusion of the hearing I advised the parties as to my decision and said written reasons would follow. I confirmed:
 - I was satisfied that there was good reason to extend time for Mr Holmes making the appeal;
 - I was not satisfied that Mr Holmes had identified any good reason for bringing the appeal and I would dismiss the same;
16. I found that Mr Holmes had good reason for lodging his appeal out of time and that I should extend the time for the same.
17. The original appeal was made within the statutory time limit. Mr Holmes explained how when the fee was requested he had been

effected by an attack of gout causing him severe pain and leaving him unable to make the necessary payment. I accept his evidence and it is plain looking at the correspondence received by the Tribunal that he did move promptly to renew his appeal. It is reasonable in my judgment to extend time in the circumstances of this case.

18. I turn to the application itself. I explained to Mr Holmes that we are bound by statute as to our jurisdiction. This Tribunal has no jurisdiction over the listing of his Property and would be unable to direct the local authority to assist him with applying to remove the listing.
19. Given the Property is listed I accept the submission of Mr Easey for the Respondent that the options open to them were more limited and they could not issue a Demolition Order. I accept that a Prohibition Order was appropriate given the number of Category 1 hazards identified by Mr Easey.
20. Mr Holmes candidly admitted the hazards. Many of these were obvious from the photos. Mr Holmes himself suggests the Property should be demolished being a more economic outcome. He believes it would cost up to £600,000 to carry out the works required under the prohibition order. It is plain parts of the Property are falling down and the risks must be considerable to anyone residing at the Property.
21. Whilst I express sympathy for Mr Holmes' position I am not satisfied that anything he referred to orally or within his written representations amount to a ground upon which he can challenge the Prohibition Order. The Respondent council have powers and duties which require them to look at all residential property within their area. The Property is clearly a residential property. They are aware it is in disrepair and that Mr Holmes does continue from time to time to occupy the same. I appreciate that Mr Holmes says this is to best protect his home from burglaries and vandalism. I accept this may be true but equally the local authority has a duty to ensure any risk of injury is ameliorated both for him and others. As I explained at the hearing if they failed to do so then they could leave themselves open to criticism.
22. Given the particular submissions made and the facts of this case I determine that the appeal should be dismissed having heard the oral evidence and written submissions made by Mr Holmes.
23. I remind Mr Holmes that he would be well advised to take advice as to what steps he must take. As I explained it is imperative he complies with the terms of the Prohibition Order. If he fails to do so then he may commit a criminal offence and the Respondent may be forced to take further action.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.