



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

Case reference : **CAM/00KC/HYI/2020/0001**

HMCTS code : **P:PAPERREMOTE**

Property : **22 Winfield Street, Dunstable, Bedfordshire,
LU6 1LS**

Applicant : **Central Bedfordshire Council**

Represented by : **LGSS Law Ltd**

Respondent : **Boris Shamul**

Application : **Authorisation to make an Interim Empty
Dwelling Management Order -
Section 134 Housing Act 2004**

Tribunal : **Judge Wayte**

Date : **4 September 2020**

DECISION

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Covid-19 pandemic: description of hearing

This application has been determined on the papers. The applicant had indicated that they would be content with a paper determination. The respondent has taken no active part in the proceedings. I was satisfied that all issues could be determined in a remote hearing on paper. The applicant provided a bundle of 292 pages, the contents of which I have noted.

The tribunal's decision is that the Applicant is authorised to make an Interim Empty Dwelling Management Order (EDMO) in the terms of the draft order submitted.

The application

1. This is an application by Central Bedfordshire Council for authorisation to make an Interim Empty Dwelling Management Order (“EDMO”) under the Housing Act 2004 (“the 2004 Act”). An interim EDMO is an order that enables a Local Housing Authority, with the consent of the owner, to enter a dwelling and take steps to ensure it becomes occupied, usually by undertaking works and then letting the property to persons from its housing register.
2. In the event that the housing authority is unable to obtain the owner’s consent, the authority can go on to make a final EDMO without the further involvement of this tribunal. This enables the authority to achieve the same purpose but without consent, although the council must first obtain authorisation from this tribunal for an interim EDMO.
3. The application is dated 24 March 2020. Directions were ordered on 21 May 2020 which provided for either party to request a hearing by 10 July 2020. The applicant had already indicated in the application that they were content with a paper determination and made no request for a hearing. The respondent has taken no active part in the proceedings, although he spoke to a tribunal caseworker on 23 July 2020 when he refused to give an address for service but asked for another copy of the application and directions to be sent to the property which he claimed to attend “periodically”.
4. Those documents were sent to him on 23 July 2020 and he was given an extension to 14 August 2020 to provide any documents in support of any opposition to the application or make a request for a hearing. Nothing further was heard from him and therefore this determination has been made on the basis of the applicant’s bundle which was provided under cover of their letter dated 15 June 2020.

The Law

5. The relevant statutory provisions are sections 133, 134 and Schedule 7 to the 2004 Act. There are also two sets of Regulations: the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 and the Housing (Empty Dwelling Management Orders) (Prescribed Period of Time and Additional Prescribed Requirements) (England) (Amendment) Order 2012. The latter increased the prescribed period that the property remains unoccupied from 6 months to 2 years.
6. Section 133 states that a local housing authority 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.
7. Before making the application, it 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 of its intentions to make such an application (Section 133(3)).

8. 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.
9. Section 134 then sets out those matters which this tribunal has to take into account. It must first of all satisfy itself that none of the prescribed exceptions applies, set out in the 2006 Order. These include dwellings previously occupied by the owner who is at the material time temporarily elsewhere, holiday homes, dwellings genuinely on the market for sale or where repairs or renovations are being undertaken.
10. It must then satisfy itself of the following matters in 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.*
11. Finally, the tribunal must also 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.
12. If the tribunal gives authority for the making of an interim EDMO, 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*”.

The applicant's case

13. The applicant relied on a witness statement from Janice Edmond, a Technical Officer within the Housing Initiatives Service for Central Bedfordshire. She stated she had been employed in that role for seven years. Her responsibilities include bringing privately owned empty homes back into residential use, providing financial assistance to homeowners and investigation and enforcement under the 2004 Act.
14. Her involvement with the property dated back to 2014, following a referral from the police. Following an inspection, the property was prohibited from use under section 20 of the 2004 Act pending its refurbishment to current housing standards.
15. The council was then approached in 2015 by an elderly tenant of the property who complained that the condition of the property was affecting his asthma. He

was rehoused by the council who commenced consultation with the owner to bring the property back into use. Ms Edmonds states that the property has been empty since 4 March 2015.

16. The owner Mr Shamul made contact with the council shortly afterwards and there has been regular contact between the parties for a number of years, initially with a view to the council purchasing the property. In the absence of meaningful progress towards a sale, the council decided to pursue the EDMO route.
17. The property was last inspected on 13 July 2018, in the presence of the respondent. The full details are in the applicant's bundle but describe "*a two-bed mid terraced house circa 1900 in a very poor condition both structurally and in terms of general dilapidation. In particular, the rainwater goods, soffits and facias require replacement. The bathroom and rear bedroom require new ceilings and the kitchen and bathroom require replacement. The property requires a full rewire, new boiler and central heating system. The windows and doors require replacement. The roof was not inspected but appears in relative good order from the pavement. The property is full of personal belongings and other detritus that may require commercial removal.*"
18. The respondent became the registered owner of the property on 25 November 1985. He has no mortgage. Official Copy Entries of the title show a creditor's notice dated 22 November 1999 but a recent bankruptcy search was clear. Ms Edmonds' statement contains several references to the respondent maintaining he has no funds to put the property back in repair. He does not live at the property but refuses to provide an alternative address either to the applicant or the tribunal.
19. In terms of the requirements of the 2004 Act and Regulations, Ms Edmonds confirms that the property has remained wholly unoccupied for at least two years, as required by section 134(2)(a). In fact, her evidence is that the property has remained empty since 2015. She relies on the state of the property and the failure of the respondent to make any effort to carry out any repairs since that date to support her claim that there is no reasonable prospect that the dwelling will be occupied in the near future, as required by section 134(2)(b).
20. She has assessed the repairs that need to be undertaken to the property and a business case has been approved to carry them out and re-let the property via the council's own property management agency, CBC Lettings. She therefore states that if an interim EDMO is authorised there is a reasonable prospect that the property will become occupied, as required by section 134 (2)(c).
21. She asserts that the council has complied with section 133(3) of the 2004 Act by serving the respondent with a Notice of Intention to make an Interim EDMO on 6 December 2019, served with a covering letter setting out the other options available to him and a draft order. That letter stated that the council would submit their application no less than three months from the date of the letter. As stated above, the application was made on 24 March 2020.

22. In addition to its engagement with the owner over a number of years, the council consulted the Police, Fire, Planning Enforcement, Building Control and Council Tax departments and neighbouring properties. Several responses were received from neighbours concerned about the condition of the property and confirming that it had attracted serious anti-social activity, adversely affecting the neighbourhood.
23. Turning to section 134(3)(a) which requires the tribunal to consider the interests of the community, Ms Edmonds states that the council has a waiting list of 1659 with a two bedroom need of 427. She also pointed out the neighbours' concerns as to the effect of an empty property in such poor condition on the value of their properties and the area generally.
24. Section 134(3)(b) requires the tribunal to take into account the effect that an order will have on the rights of the proprietor and any third parties. Ms Edmonds asserted that the respondent would benefit from the property being repaired and occupied, although the business case suggests that it will take 6 years for the cost of the repairs to be recovered through the rent. As stated above, there is no mortgage on the property.
25. Turning to the Housing Order 2006, Ms Edmonds maintained that the applicant had made reasonable efforts to establish whether any of the exceptions set out in article 3 applied and disclosed copies of letters sent to the respondent in 2015 and 2016. She also identified letters and conversations with the respondent as evidence of enquiries to ascertain what steps the respondent was taking to secure that the property could be reoccupied. Finally, she stated that all of the letters sent over the years included advice, assistance and encouragement to the proprietor with a view to him securing occupation of the dwelling.

The respondent's case

26. As stated above, the respondent took no active part in the proceedings. He commented to the tribunal caseworker that he was 82 and that the issue with the property had been going on for 12 years (although we have no evidence pre-dating 2014). Notes of the various conversations with the council over the years confirm that he had said he wanted to live in the property himself but had no money to do the works. He had also previously complained to the Local Government and Care Ombudsman that the applicant had withdrawn their offer to buy the property. The Ombudsman declined to consider the complaint as it was out of time but the applicant confirmed back in September 2019 that the offer to buy the property remained open, subject to survey.

The tribunal's decision

27. I find that the property has been empty for at least two years and that none of the exceptions apply. In particular, there is no evidence that the property was previously occupied by the respondent, who in any event has lived elsewhere since at least 2014. I also find that there is no reasonable prospect of the property becoming occupied in the near future in the absence of an EDMO or the property being sold.

28. If an EDMO is authorised, it is clear that the property can be available for letting within a reasonably short time, once the works have been completed. I am also satisfied that the applicant has made every possible effort to work with the owner to ascertain what steps he was taking to secure the occupation of the property, keep him informed of its intentions and, in particular, its intention to make this application. I therefore find that section 133(3) and the provisions of the 2006 Order have been complied with.
29. I am in no doubt that an interim EDMO is in the interests of the community, as it will remove the very real problem of the dilapidated and empty property as well as providing much-needed accommodation for persons on the applicant's housing register. An EDMO is a substantial interference with the rights of the owner but the respondent has shown no will or ability to restore his property to occupation. He has also failed to engage properly with the applicant's offer to buy the property, despite his complaint to the Ombudsman. In the circumstances, I have taken into account the effect of an interim EDMO on his rights but do not consider that they outweigh the other factors in favour of making such an authorisation. I agree with the applicant that there do not appear to be any relevant third parties affected by this application and therefore there is no-one in whose favour an order for compensation could be made.
30. I therefore authorise the applicant to make an interim EDMO in the terms of the draft order submitted. The signed and dated order is to be submitted to the tribunal within 14 days of this decision being sent to the applicant.

Judge Ruth Wayte

4 September 2020

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.