

RESIDENTIAL PROPERTY TRIBUNAL

Property : 59 Kennet Close,
Berinsfield OX10 7QE

Applicant : South Oxfordshire District Council

Respondent : (1) Elizabeth Norton
(2) Abbey National PLC

Case number : CAM/38UD/HY1/2006/0001

Application : Authorisation for Interim Empty
Dwelling Management Order
(Section 134 Housing Act 2004 ("the Act"))

Application date : 20th November 2006

Tribunal : Bruce Edgington (lawyer chair)
David Brown FRICS MCI Arb

DECISION

1. The Applicant South Oxfordshire District Council is authorised to make an interim Empty Dwelling Management Order in the form annexed to this decision as varied in the following ways:-
 - (a) It must contain a statement that either 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 which the applicant must keep are not 'relevant' expenditure (paragraph 5(7))
 - (b) The final paragraph must be amended to reflect the fact that the only appeal to this Tribunal is against the terms of the Order if it does not provide for matters mentioned in Paragraph 5(5)(a) and (b) of Schedule 7 to the Act – not against the making of the Order itself.
2. The Tribunal makes no order for payment of compensation.

Reasons

Introduction

3. This is an application by South Oxfordshire District Council to authorise it to make an interim Empty Dwelling Management Order ("EDMO") which is a new jurisdiction created by the Act. In this regard, the Act's purpose is to enable

local housing authorities, with the consent of the owner, to enter a dwelling, to undertake work to it to enable it to be let on the open market and then to actually let it.

4. 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 such consent. In view of the draconian nature of a final EDMO, it is therefore necessary for a thorough investigation at this stage even though it is 'only' an interim order which is proposed.
5. Following receipt of the application, the Tribunal made various Orders and invited the only other known interested person, namely Abbey National PLC to join as a party if it so wished. It did, and a further Order was therefore made joining Abbey National PLC as a second respondent.
6. All parties were told that the Tribunal considered that, on the face of it, this matter could be dealt with by way of a paper determination i.e. without a formal oral hearing. At the same time the requisite 14 days' written notice of the Tribunal's intention to proceed in this way was given, and the parties were also given clear written notice that any one of them could, at any time prior to a decision being made, insist on an oral hearing.
7. The 14 days notice has expired and no party has asked for an oral hearing.
8. The Tribunal has been concerned that the first respondent owner, Elizabeth Norton, has not taken part in these proceedings. However, it is satisfied that all possible efforts have been made by the applicant to trace her and that it is likely, on the balance of probabilities, that she is aware of these proceedings and has chosen not to take part.

The Facts

9. As the first respondent owner has chosen not to dispute any of the facts set out by the applicant, the Tribunal finds that the facts are as follows.
10. Some 4½ years ago, Councillor Marc Hiles sent an e-mail to Mr. Bruce Cameron, the private sector housing manager for the applicant. It said that a resident had notified him that the property was empty and he had personally inspected to find that this was true. There was mail "halfway up the door" which he considered to be a possible fire hazard. It seemed clear from observations and from the neighbours that the property had been empty for many months and possibly years.
11. This started a search for the owner. Investigations with HM Land Registry found that the first respondent acquired her interest in the property as freehold owner in 1990. However, her address was stated to be the property.
12. The Clerk to the Parish Council then alerted the applicant in September 2002 to the fact that the property had been broken into. The e-mail said that residents living close to the property '...are becoming increasingly concerned that it will be set on fire.' The applicant therefore contacted the police who had registered

the break-in as a crime but they were unable to help with regard to the whereabouts of the first respondent.

13. The applicant then contacted the second respondent who revealed that the first respondent's address, according to their records, was 355 Canford Lane, Westbury-on-Trym, Bristol ("the Bristol property"). A search at HM Land Registry revealed that she was the owner of that property as well.
14. There then followed a number of letters and telephone calls to the first respondent asking that she bring the property back into use and reminding her of the then power of the applicant to make a compulsory purchase order. Letters were sent by post to both addresses and were hand delivered.
15. The applicant considered a compulsory purchase order but decided, instead, to use a tracing agency to try to contact the first respondent. In December 2003, this tracing agent managed to see the first respondent at the Bristol address. A letter from Mr. John Thwaites of Churchill Ltd. was received on 14th January 2004 which said "We confirm that Ms. Norton implied that she was interested in selling the property, or even letting it – presumably after modernisation." Subsequently, they added that "When we originally met Ms. Norton she seemed keen to negotiate..." The applicant wrote to the first respondent offering to assist her with advice or help in either of her stated objectives.
16. The applicant made a search on the internet for the first respondent without success. It continued to write to her and when the Act was about to be brought into effect, it wrote again explaining its powers in respect of EDMO's. In July 2006, the applicant's colleagues in Bristol City Council visited the Bristol property and reported that it was still occupied. They were not able to meet the occupier but there was no reason to suggest that it was anyone other than the first respondent. Bristol City Council also confirmed that its council tax records confirmed that the first respondent was registered as occupying the Bristol property and was claiming the single occupier's allowance.
17. In August 2006 the applicant wrote once again to the first respondent warning her that it was proposing to use its powers to make this application. The bailiff instructed by Bristol City Council to collect arrears of council tax visited the Bristol property and tried to hand her this letter. The bailiff was unable to actually meet her, but left the letter at the Bristol property for her.

The Law

18. The only relevant law at the moment is contained in Sections 133, 134 and Schedule 7 to the Act and in the Regulations which were brought into effect at the same time as the Act in April 2006.
19. 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.
20. Before making an application for such authority, 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)).

21. 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.
22. 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. These are set out in **The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006** ("the Regulations"). Section 134(6) of the Act confirms that these exceptions can include such things as holiday homes, dwellings genuinely on the market for sale or where repairs or renovations are being undertaken. The Tribunal has considered all the exceptions set out in the Regulations and is satisfied that none of them applies in this case.
23. 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 of the following matters (Section 134(2):-
 - (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 (sic) complied with section 133(3) and*
 - (e) *that any prescribed requirements have been complied with*
24. 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 of the order with the rights of the third party"*
25. The Tribunal also asked the applicant to comment on the provisions of Section 132(2) of the Act which says that an interim EDMO is an order enabling a housing authority *"with the consent of the relevant proprietor"* to secure that the property is occupied. The applicant's response has been to say that this issue is not relevant to the Tribunal's consideration of this application. All it means is that if authority is granted, then an interim EDMO can only become operational if the owner's consent is obtained. The Tribunal accepts the applicant's interpretation of this provision and notes its acceptance that consent will have to be obtained before any action can be taken under the terms of any interim EDMO.
26. Finally, the Regulations also set out what detailed information has to be provided to the Tribunal to satisfy it that it has complied with Section 133(3) i.e. the efforts to find the owner, tell her what the applicant intends to do and what advice has been given to the owner.

Representations of the Parties

27. The applicant has provided detailed representations and a photograph of the property which shows that it is a relatively modern mid-terraced house of partially rendered brick/brick faced construction under a tiled roof.
28. The first respondent has provided no representations despite all correspondence and directions Orders being sent both to the property and to the Bristol property. However, the Tribunal notes that when she was seen in December 2003, she said that she was interested in either selling or letting the property.
29. The second respondent says that the mortgage payments are being made and are up to date. It urges the Tribunal not to give authority because an interim EDMO 'could prompt Abbey's borrower into ceasing mortgage payments and therefore jeopardise Abbey's security'. It also points out that if the applicant does let the property, then before any order was made it would need to know the terms of any such letting because it will only consent to a letting on certain terms.

Conclusions


30. This Tribunal finds that the applicant has made every possible effort to trace the first respondent owner, to ascertain what steps she was taking to secure the occupation of the property and to keep her informed of its intentions and, in particular, its intention to make this application. Thus it finds that Section 133(3) and the provisions of the Regulations have been complied with.
31. It also finds that on the balance of probabilities, the first respondent owner lives at the Bristol property and has received the various communications sent to her at that address by both the applicant and this Tribunal. Corroboration of this can be found not only from the tracing company employed by the applicant but also from the fact that the second respondent gave this address as being hers and that payments under the terms of the mortgage have been kept up to date. Thus, notices of increase in rates etc. must presumably have reached her at the Bristol property.
32. The Tribunal finds that the property has been empty for at least 5 years, that none of the exceptions applies and that the local community is concerned that the property is empty because of the risk this poses for burglary and fire. It also finds that the first respondent wanted the property sold or let in December 2003 and, as she has not contested this application, is probably still of the same view.
33. It is clear from the photograph that the property is reasonably modern and, with suitable upgrading, can be available for letting within a reasonably short time. Members of the Tribunal also note from their experience in dealing with appeals against fair rent assessments within the jurisdiction given by the **Rent Act 1977** that there is still scarcity of property available for letting in the location of South Oxfordshire which means that the property should be reasonably easy to let. Thus, in terms of providing an extra home, it is another reason why it is in the interests in the community for this authority to be given.
34. The Tribunal notes the representations from Abbey National PLC but points out that an EDMO does not affect the validity of a mortgage or the mortgagee's ability to enforce the terms thereof. With respect to Abbey National PLC, it

would be well advised to consider paragraphs 4 and 12 of the 7th Schedule to the Act which makes the position clear. These provisions were set out in detail to make it clear that a suggestion that the mortgage might not be paid is not a reason for a mortgagee to stand in the way of authorisation being given by a Tribunal in cases such as this.

35. It may also be worth pointing out that as there will be no contractual relationship between the applicant and the second respondent, it may well be that the applicant does need the second respondent's 'consent' to any letting. If the terms of the letting do not comply with the second respondent's terms, this may be a breach of the terms of the mortgage but it seems unlikely that a court would support an enforcement action when the breach is not that of the borrower. Having said that, the applicant will obviously have to ensure that the property remains insured if it lets on terms that do not comply with the terms required by Abbey National PLC.

Compensation

36. The applicant urges the Tribunal to make no order for compensation.
37. The only persons/bodies who might be affected by an interim EDMO are the two respondents. The first respondent owner should not lose money as a result of this authorisation. In fact, in the long run, she might gain from having the property up graded and let.
38. As far as the second respondent is concerned, it was clearly Parliament's will that a mortgagee's interests in a property should be subservient to the local housing authority's during the existence of an EDMO. This is clear from the wording of paragraphs 4(9) and 12(9) of the 7th Schedule to the Act. They both say that a mortgagee retains all its rights e.g. of enforcement save in so far as they might interfere with the power of the local housing authority's powers under an EDMO.
39. As Parliament did not suggest that compensation should automatically be given to a mortgagee, this Tribunal concludes that its intention was just to ensure that when an EDMO came to an end, the mortgagee's priority to be paid was preserved if it decided not to take enforcement action during the currency of the EDMO. There is no suggestion in this case that when any EDMO comes to an end, there is any prospect of the capital value of the property being affected adversely. Thus it cannot be said that authorising an interim EDMO is likely to cause the second respondent to lose money in the long run and a compensation order is therefore not appropriate.


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Bruce Edgington
Chair
24th January 2007