



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

Case reference : **CAM/00KA/HYI/2021/0002**

HMCTS code : **T:BTMM REMOTE**

Property : **4 Rossway, Slip End, Caddington, Beds LU1
4DD**

Applicant : **Central Bedfordshire Council**

Represented by : **LGSS Law Ltd**

Respondent : **1.David Alan Arthur
2.Kathleen Mary Arthur**

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

Tribunal : **Judge Wayte**

Date : **15 July 2021**

DECISION

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Covid-19 pandemic: description of hearing

This application has been determined following a remote telephone hearing using BT Meet Me conferencing. The applicant had originally indicated that they would be content with a paper determination but a telephone hearing was arranged to allow the first respondent, who lives overseas, to take part if he so wished. In the end he declined to do so. The second respondent has taken no active part in the proceedings. I was satisfied that all issues could be determined in a remote hearing. The applicant provided two bundles of 282 and 24 pages respectively, 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 was received by the tribunal on 9 February 2021. Directions were ordered on 16 March 2021 which provided for the respondents to submit their bundle of relevant documents to the tribunal and the council by 19 May 2021. Neither did so, although the tribunal heard from Mr Arthur on 8 April 2021 who confirmed that he had left the property to his former wife as part of their divorce settlement and had lived overseas since 1994. A telephone hearing was arranged in the event that he wished to take part, as his name remained on the Land Register as a joint owner of the property but he subsequently contacted the tribunal to confirm that he did not intend to attend the hearing.
4. The tribunal wrote to Mrs Arthur on 6 April 2021, 21 May 2021 and 16 June 2021 but received no response.
5. The hearing took place on 29 June 2021 by BT Meet Me telephone conferencing. The council were represented by Ms Liburd, the in-house solicitor for the council with Janice Edmond, the person responsible for bringing privately owned empty homes back into residential use, as their witness. Neither respondent attended the hearing. Ms Edmond confirmed that she had spoken to Mrs Arthur that morning who had told her that she was unable to attend the hearing as she had a problem with her eyes. She had discussed selling the property with the council and they indicated that a short adjournment for 4 weeks on terms may provide a satisfactory outcome on both sides. The terms included an order that Mrs Arthur attend the property to clear any possessions, which the tribunal indicated it was unable to make in the absence of her consent. After a short adjournment to seek instructions, the council requested that the application proceed. The tribunal agreed. Mrs Arthur had not been in touch with the tribunal or made a request for an adjournment herself and the history indicated that an adjournment would be unlikely to resolve matters. If an interim EDMO was made that would bring some impetus to the discussions between the parties and in the tribunal’s opinion, having regard to the overriding objective to deal with cases fairly and justly, it was appropriate for the application to proceed.

The Law

6. 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.
7. 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.
8. 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)).
9. 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.
10. 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.
11. 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.*
12. 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.
13. 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

14. 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.

15. The Council's involvement with the property dated back to 2017, following a complaint from a neighbour about the state of the house and garden, which the neighbour believed had caused an infestation of rats. A visit was carried out on 25 August 2017 and a letter sent to the registered owners at the property requesting clearance of the garden. The officer had met Mrs Arthur on site and also enclosed information in respect of the council's Home Improvement Assistance scheme.
16. An unannounced visit on 26 October 2017 found Mrs Arthur at home. The front garden had been cleared but no other work carried out. Further enforcement action was not taken at the time as Mrs Arthur stated that she was ill, although contact was kept up through the council's Gateway support scheme until their help was declined by Mrs Arthur in December 2017.
17. On 19 June 2018 a further complaint was made by a neighbour who stated that the property had been abandoned since Easter that year. Ms Edmond visited the site and found the property empty and unsecured. She sent the first Empty Homes letter to Mrs Arthur on 13 July 2018, enclosing a questionnaire for completion and requesting a response within 14 days. No response was received.
18. A second complaint was received, dated 6 August 2018 and that led to a second Empty Homes letter and questionnaire being sent to Mrs Arthur on 7 August 2018. Again, no response was received.
19. Ms Edmond went to the site again on 8 August 2018 and found that the property was unsecured and in a severely dilapidated condition. A formal Notice of Intended works for the prevention of unauthorised entry or danger to public health was served on Mrs Arthur and a meeting was held with her on 21 September 2018 when she requested help. At a subsequent meeting she indicated that her husband and son were assisting her and she had arranged for a builder to secure the property.
20. It appeared that no or only minimal works were in fact carried out to the property and in response to further complaints, the council boarded the property on 26 February 2019. Ms Edmond wrote to Mrs Arthur at her new address on 28 March 2019 to warn her that enforcement activity would be undertaken by the council if she failed to respond. In the absence of any further meaningful response the council obtained a warrant from Luton Magistrates Court to inspect the property.
21. The warrant was executed on 3 July 2019. Ms Edmond's note in the bundle states that the "*Property is severely /heavily hoarded and this has impeded ability to inspect all parts. The rear extension is completely collapsed and has been for some time as there is now ivy growing inside the house. The kitchen is filthy and severely dilapidated as is the rest of the house. It was impossible to safely access the first floor due to the extent of hoarding. The back/side door is detached allowing immediate unauthorised access to the property. The back garden is severely overgrown. An external examination of the roof/windows/doors/eaves/soffits/fascias and rainwater goods show severe dilapidation.*"

22. Following the inspection the property was left secure from unauthorised access. Ms Edmond advised Mrs Arthur that she would draw up a schedule of works and obtain authorisation for the renovation in order to bring the property back into use. A notice was also served under the Prevention of Damage by Pest Act 1949 to eradicate the rodent infestation. In the absence of any response the council served a notice stating that the works would be carried out by the council in default. That prompted contact from Mrs Arthur's daughter who indicated that the family were making arrangements to have the works carried out to the property themselves.
23. Again, no or only minimal works were in fact undertaken and following a flurry of further complaints by neighbours throughout 2020, the application was sent to the tribunal in February 2021.
24. The respondents became the registered owner of the property on 14 May 1984. There is a registered charge dating back to the purchase in the name of Barclays Bank PLC. Both the council and the tribunal have written to the bank about the proceedings and neither has received a response. It may be that the charge has been cleared as Mr Arthur indicated in his letter to the tribunal dated 8 April 2021 that he had paid the mortgage off as part of his divorce settlement with Mrs Arthur. Although he is still registered as a joint owner he stated that he had not entered the property since 1989 and felt he had no legal right to do so.
25. 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 at least Easter 2018. She relies on the state of the property and the failure of the second respondent, in particular, 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).
26. 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 to a local family in need of housing. She stated that 304 families with a 3 bed need were identified in 1 July 2020. 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).
27. She asserts that the council has complied with section 133(3) of the 2004 Act by contacting both Mr and Mrs Arthur on numerous occasions since 2018 and giving Mrs Arthur ample opportunity to arrange the works herself. The formal Notice of Intention to make an Interim EDMO was sent to the respondents on 28 August 2020. The covering letter set out the other options available and included a draft order. That letter stated that the council would submit their application not less than three months from the date of the letter. As stated above, the application was made on 9 February 2021.
28. In addition to its engagement with the owners over a number of years, the council consulted the Police, neighbouring properties and its Gateway support service. As set out above, multiple complaints had been received from neighbours concerned about the condition of the property and the rat infestation since 2017.

Ms Edmond confirmed that this and a neighbouring property, also under enforcement activity by the council, stood out as a blight to an otherwise nicely maintained area. That, together with the demand for three bedroom properties in the area satisfied section 134(3)(a) which requires the tribunal to consider the interests of the community.

29. 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 second respondent would benefit from the property being repaired and occupied, although the business case suggests that it will take 7 years for the cost of the repairs to be recovered through the rent. As stated above, although there is a registered charge on the property, evidence from Mr Arthur indicates that this had have been cleared by him as part of his divorce settlement with Mrs Arthur. Mr Arthur also considers that he has no claim to the property, despite the fact that he remains a registered owner.
30. 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, relying on the extended correspondence and engagement with Mrs Arthur since 2017.

The respondents' case

31. As stated above, the first respondent has confirmed that although he is still registered as a joint owner of the property, he considers that he has passed his interest in the property to the second respondent. Mrs Arthur took no active part in the proceedings. Although the evidence shows that she had previously occupied the property as her residence, she appears to have abandoned the property when it became impossible for her to live there and has not provided any evidence of any intention to return, even assuming that she can raise funds to do the works. The most recent conversation with Ms Edmonds indicated that she wished to sell the property to the council. Ms Edmonds indicated that the council would take a pragmatic approach to resolve matters with Mrs Arthur, which might include the provision of social housing if she met the requirements.

The tribunal's decision

32. 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 Mrs Arthur's absence is temporary or due to her receiving care. 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.
33. 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 owners to ascertain what steps they were taking to secure the occupation of the property, keep Mrs Arthur in particular 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.
34. 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 respondents have shown no will or ability to restore the property to occupation. In the circumstances, I have taken into account the effect of an interim EDMO on their rights but do not consider that they outweigh the other factors in favour of making such an authorisation. Given the evidence from Mr Arthur and the lack of response from Barclays Bank to letters from the council and the tribunal about the application, I have also concluded 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.

35. 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

15 July 2021

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.