

HM COURTS & TRIBUNALS SERVICE

RESIDENTIAL PROPERTY TRIBUNAL

Property: 13 Chester Close, Washingborough, Lincolnshire LN4 1SH

Applicants: North Kesteven District Council

Respondent: Mr Christopher Parker

Case Number: MAN/32UE/HYI/2012/0001

**Date of
Application:** 20 January 2012

**Type of
Application:** Authorisation for Interim Empty Dwelling
Management Order pursuant to section 134 of the
Housing Act 2004 ("2004 Act")

Tribunal: Michael Tildesley OBE (Lawyer Chair)
Peter Mountain FRICS

**Date of
Determination:** 21 August 2012

**APPLICATION DETERMINED ON AN INSPECTION OF THE
PROPERTY AND WRITTEN SUBMISSIONS**

**REGULATION 21 OF THE RESIDENTIAL PROPERTY TRIBUNAL
PROCEDURES AND FEES (ENGLAND) REGULATIONS 2011**

DECISION

The Application

1. This is an application by North Kesteven District Council (LHA) for authorisation from the Tribunal to make an Interim Empty Dwelling Management Order (EDMO) under section 134 of the 2004 Act in respect of the subject property. An Interim EDMO is an order that enables a Local Housing Authority (LHA) with the consent of the owner to take steps for the purpose of securing that a dwelling becomes and continues to be occupied.
2. In the event that the LHA is unable to obtain the owner's consent it can go on to make a final EDMO without further authority from the Tribunal. However, this does not prevent the owner appealing to the Tribunal against a decision by the LHA to make a final EDMO. A final EDMO enables the authority to achieve the purpose set out in paragraph 1 above but without the owner's consent.
3. Following receipt of the application the Tribunal issued directions to progress the hearing. The LHA indicated that it was content for the application to be dealt with without a hearing. The Tribunal directed that the Application could be determined on the basis of an inspection of the property and written submissions unless the parties requested an oral hearing within 21 days. No such request was received from the parties within the stipulated time.
4. The Tribunal's directions also required the parties to provide a statement of their respective cases and documentary evidence in support. The LHA complied with the directions. Mr Parker did not.
5. The Tribunal's inspection was originally set for 12 April 2012 which was postponed at Mr Parker's request owing to illness in the family. The inspection of the property went ahead on 21 August 2012 in the presence of Mr Gallimore and Mr Taylor of the LHA and Mr Parker.
6. The LHA's bundle of evidence included the Application, draft Interim EDMO, Statement of Reasons signed as a statement of truth by Mr Gallimore, and copies of correspondence and notices.

The Law

7. The Tribunal's jurisdiction in respect of the authorisation of an interim EDMO is set out in section 134 of the 2004 Act which provides so far as is relevant to this Appeal as follows:

“(1) A residential property tribunal may authorise a local housing authority to make an interim EDMO in respect of a dwelling to which section 133 applies if the tribunal—

- (a) is satisfied as to the matters mentioned in subsection (2),
and

(b) is not satisfied that the case falls within one of the prescribed exceptions.

(2) The matters as to which the tribunal must be satisfied are—

(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 complied with section 133(3), and

(e) that any prescribed requirements have been complied with.

(3) In deciding whether to authorise a local housing authority to make an interim EDMO in respect of a dwelling, the tribunal must take into account—

(a) the interests of the community, and

(b) the effect that the order will have on the rights of the relevant proprietor and may have on the rights of third parties.

(4) On authorising a local housing authority to make an interim EDMO in respect of a dwelling, the tribunal may, if it thinks fit, make an order requiring the authority (if they make the EDMO) 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”.

8. Section 134(1)(b) refers to prescribed exceptions which are found in The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 (“The Housing Order 2006”).

Findings of Fact

9. The property was a two storey end terrace constructed of brick and roof tiles and built in the 1970’s. The property comprised a lounge/diner and kitchen on the ground floor and two bedrooms and a bathroom at the first floor. There were gardens mainly lawn to the front and rear of the property. The property was located on a residential estate in the village of Washingborough which was about three miles from the centre of Lincoln. The Tribunal found from its external inspections that the occupiers of the other properties on the estate had maintained their properties to a good condition and kept the front gardens tidy. Mr Parker had owned the property for over 20 years, and had moved with his family to another house in Washingborough.

10. The Tribunal sets out its findings against each of those matters which it is required to consider under section 134 of the Housing Act 2004.

Has the dwelling been wholly unoccupied for at least 6 months?

11. The Council Tax records showed that the property had been vacant since 13 August 2005. Mr Parker confirmed at the inspection that the property had been unoccupied for a considerable number of years. The Tribunal was satisfied that the property had been wholly unoccupied for at least six months.

No reasonable prospect that the dwelling will become occupied in the near future?

12. The LHA has been in contact with Mr Parker regarding the state of the property and its gardens and his intentions in respect of it since 2008. The LHA has given Mr Parker various opportunities to bring the property into a habitable state, which were not taken up by Mr Parker.

13. In June 2011 the LHA inspected the property using the Housing Health and Safety Rating System inspection (HHSRS) which evaluates the potential risk to health and safety from any deficiencies identified in dwellings using objective criteria. LHA identified a range of hazards including damp and mould, excess cold, entry by intruders, food safety and electrical hazards. The hazards were caused by the state of disrepair and the absence of maintenance to the property. The schedule of works to bring the property into an habitable state required the replacement of the windows and doors, the installation of a new kitchen and a new heating system, removal of carpets and a new ceiling in the kitchen which had been damaged by a burst water pipe, electricity safety and upgrade, loft and cavity wall insulation, boundary fencing and redecoration throughout the property.

14. On 26 August 2011 the LHA inspected the property and found no evidence that the necessary works had been carried out on the property. The Tribunal on its inspection discovered that Mr Parker had carried out some of the works but that progress was slow. Mr Parker had removed the damaged carpets, re-plastered the living room and the kitchen but not the ceiling, cut the grass and tidied the gardens and installed cavity wall installation. The property, however, remained uninhabitable.

15. In February, April and June 2010 the LHA enquired of Mr Parker his intentions in respect of the property. Mr Parker did not respond to those enquiries. Mr Parker in a conversation with Mr Taylor in June 2011 mentioned the possibility of selling or letting the property. There was no evidence that Mr Parker had furthered his stated intentions. At the inspection Mr Parker said that his son would occupy the property and carry out its redecoration.

16. Given the present state of the property, the history of Mr Parker's dealings with the LHA and his failure to follow through with his stated intentions, the Tribunal finds that there is no reasonable prospect that the property would be occupied in the near future.

If an interim order is made, is there a reasonable prospect that the dwelling will become occupied?

17. The LHA has identified the works necessary to make the property habitable and the funding to carry out those works, which the Tribunal understands forms part of a voluntary assistance offer to Mr Parker during the interim period.

18. The LHA has a waiting list of 1,704 households and have identified 47 households meeting the exact criteria of the subject property.

19. The Tribunal finds that the LHA would be able to carry out the renovations and allocate a tenant to the property provided Mr Parker makes the property available voluntarily following the making of an Interim EDMO or if need be through a final EDMO. The Tribunal is, therefore, satisfied that if an interim order is made, there is a reasonable prospect that the dwelling will become occupied

Have the LHA complied with section 133(3)

20. On 20 September 2011 the LHA notified Mr Parker of its intention to apply to the Tribunal for authorisation to make an Interim EDMO in respect of the property. The Notice required Mr Parker to provide details of any steps taken to secure that the dwelling is occupied. The LHA also sent with the Notice the following documentation:

- (1) A requisition for information about persons having interests in the property under section 16 of the Local Government (miscellaneous Provisions) Act 1976
- (2) A further request for information documenting the prescribed exemptions to an Interim EDMO.
- (3) EDMO's: Guidance for Residential Property Owners.

21. Mr Parker did not respond to the LHA's correspondence of 20 September 2011. On 3 November 2011 the LHA hand delivered the above documentation to Mr Parker's permanent address, which again elicited no response from him.

22. The Tribunal is satisfied that the LHA has made reasonable efforts to notify Mr Parker of their intentions to apply for authorisation for an Interim EDMO and to ascertain what steps, if any, Mr Parker was taking to secure the property is occupied. The Tribunal finds that the LHA has complied with section 133(3) of the 2004 Act.

Have the prescribed requirements have been complied with?

23. The prescribed requirements are set out in paragraph 4 of The Housing Order 2006. The Tribunal has already made findings in its preceding paragraphs which demonstrate that the LHA has complied with the requirements in paragraphs 4(1)(a), 4(b)(i), 4(b)(ii) and 4(b)(iv).

24. In respect of paragraph 4(b)(iii), the LHA have on a number of occasions offered Mr Parker advice, support, assistance in the form of a loan or tenant finding as well as

guidance on renovations and sales which have not been taken up by Mr Parker. Mr Taylor's letter of 20 September 2011 stated that

"I would again like to take this opportunity to inform you that the Council may be able to provide financial assistance to renovate, and assistance in letting the property out. We can also provide guidance on methods of sale. I would urge you to contact us to discuss these voluntary solutions".

25. In respect of paragraph 4(b)(v) the LHA provided the Tribunal in its Statement of Reasons with the Council Tax Banding of the property which was Band A.

26. In respect of paragraphs 4(c)(i) and (ii), at the time the LHA made the application for an Interim EDMO Mr Parker had carried out no repairs nor maintenance to the property. Further he made no application to the local authority for permission for structural alterations or building works. The Tribunal formed the view that Mr Parker had only recently commenced the renovation of the property which was after the postponed hearing on 12 April 2012. The LHA had provided detailed reasons why an interim EDMO was necessary, which were unaffected by the recent works to the property, particularly as the property at the time of the inspection was still uninhabitable.

27. The Tribunal is satisfied that the LHA have complied with the prescribed requirements of paragraph 4 of the Housing Order 2006.

Other Considerations

28. The LHA requested information from Mr Parker about whether one of the prescribed exceptions as set out in paragraph 3 of the Housing Order 2006 applied to the property. Mr Parker did not respond to the request for information. At the inspection the Tribunal went through the list of exceptions with Mr Parker who confirmed that none of them applied. The Tribunal is, therefore, satisfied that the property did not fall within one of the prescribed exceptions in accordance with section 134(1)(b) of the 2004 Act.

29. Under section 133(3) of the 2004 Act the Tribunal before making an Interim EDMO must take into account the interests of the community and the effect that the order will have on the rights of the relevant proprietor and may have on the rights of third parties.

30. The state of the property has been one of repeated concern to the Parish Council. The LHA and the Parish Council have received complaints from local residents about the state of the property. The LHA's bundle provided details of those complaints which included overgrown garden, broken fences and rats. The Parish Council fully supported the action of the LHA to seek authorisation of an Interim EDMO. The LHA has 1,074 households on its housing waiting list. The Tribunal agrees with the opinion of the LHA that the neglected and shabby appearance of the property and its gardens, the repeated complaints by local residents and the waste of valuable housing resources demonstrated that the making of an Interim EDMO was clearly in the interests of the local community.

31. Mr Parker has not identified any particular circumstances where his rights would be adversely affected by the making of an Interim EDMO. The Tribunal considers that the renovation and subsequent letting of the property would benefit Mr Parker. He would receive an income for the property after the renovations had been paid for and would no longer be liable for council tax.

32. The LHA have taken reasonable steps to ascertain whether a third party has an interest in the property. The title to the property was not registered with the Land Registry. It would appear that Mr Parker purchased the property prior to the commencement of compulsory first registration for property titles. The LHA required Mr Parker to furnish the information on persons having an interest in the property pursuant to section 16 of the Local Government (Miscellaneous Provisions) Act 1976, which Mr Parker failed to do. On inspection Mr Parker mentioned the possibility of an outstanding mortgage on the property. The Tribunal considers that if there is a mortgagee, the making of an Interim EDMO would not have an adverse effect. The mortgage still continues under the terms of the Interim Order. Further the mortgagee's interest in the property would be better protected if the property is renovated. The Tribunal, however, suggests that the LHA should take further steps to discover the identity of mortgagee, particularly if it proceeds with a Final EDMO.

33. Having regard to the above findings the Tribunal is satisfied that the making of an Interim EDMO would be in the interests of the community and would not adversely affect the rights of Mr Parker.

Decision

34. The Tribunal finds that the property has been empty for a considerable number of years and has fallen into a state of disrepair which adversely affects the interests of the local community. Mr Parker, the proprietor, has been given every chance to render the property habitable but has failed to take them. Mr Parker's intentions in respect of the property were vague, and the Tribunal has no confidence in Mr Parker if left to his own devices would ensure that the property is occupied in the near future. The Tribunal has assessed the LHA's application against each of the legal requirements for the making of an Interim EDMO and is satisfied that the requirements have been met. The Tribunal is satisfied that an Interim EDMO is necessary to bring the property into an habitable and occupied state.

35. The Tribunal, therefore, decides that North Kesteven District Council is authorised to make an Interim EDMO under section 134 of the 2004 Act in respect of the property at 13 Chester Close, Washingborough, Lincolnshire LN4 1SH in the terms of the draft order which was included in the Applicant's bundle at pages 22 – 24 subject to the following variations:

- (1) The operative date of the Order is not to be earlier than the making of the Order following the release of the Tribunal's decision.
- (2) The reference to the rights of appeal of a relevant person is incorrect. There is no right of appeal to the Residential Property Tribunal against the Authority's decision to **make** an order. The right of appeal is restricted the terms of the Order

Continued from page 1

8. Register a Land Charge on the property for the duration of the Interim EDMO or revoke the Interim EDMO

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The Interim Empty Dwelling Management Order comes into force on the date of the Order.

The Interim Empty Dwelling Management Order ceases to have effect on † under the provisions of schedule 7, para. 1 of the Act.

A relevant person may appeal to a residential property tribunal against the decision by the Authority to make an interim empty dwelling management order within the period of 28 days beginning with the date specified in the notice on which the decision was made.

This Order is made the _____ day of _____ 20____

SIGNED by _____
in the presence of:- _____

† The order ceases to have effect at the end of the period of 12 months beginning with the date on which the order is made, unless it ceases to have effect at some other time as provided for by Schedule 7, para. 1 of the Act.

These notes are intended as general information to the recipient(s) of this as a summary of their rights of appeal against the notice. The notes are not intended to be definitive and any person(s) considering an appeal are advised to seek independent legal advice and/or refer to the full version of the Housing Act 2004. Further advice can be obtained from the Residential Property Tribunal www.rpts.gov.uk.

133 Making of Interim EDMOs

- (5) The authority may make an interim EDMO in respect of the dwelling despite any pending appeal against the order of the tribunal (but this is without prejudice to any order that may be made on the disposal of any such appeal).

Appeals: decisions relating to EDMOs

- 26 (1) A relevant person may appeal to a residential property tribunal against -
- a decision of the local housing authority to make a final EDMO,
 - the terms of a final EDMO (including the terms of the management scheme contained in it), or
 - the terms of an interim EDMO on the grounds that they do not provide for one or both of the matters mentioned in paragraph 5(5)(a) and (b) (which relate to payments of surplus rent etc.)
- (2) Where an appeal is made under sub-paragraph (1)(c) -
- the appeal may be brought at any time while the order is in force (with the result that nothing in sub-paragraph (3) or paragraph 27 applies in relation to the appeal); and
 - the powers of the residential property tribunal under paragraph 28 are limited to determining whether the order should be varied by the tribunal so as to include a term providing for the matter or matters in question, and (if so) what provision should be made by the term.
- (3) If no appeal is brought under this paragraph in respect of a final EDMO within the time allowed by paragraph 27 for making such an appeal, the order is final and conclusive as to the matters which would have been raised on appeal.

Appeals: time limits for appeals under paragraph 26

- 27 (1) This paragraph applies in relation to an appeal under paragraph 26 in respect of a final EDMO.
- Any such appeal must be made within the period of 28 days beginning with the date specified in the notice under paragraph 7(5) of Schedule 6 (as applied by section 136(5)) as the date on which the order was made.
 - A residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

Appeals: powers of residential property tribunal on appeal under paragraph 26

- 28 (1) This paragraph applies to an appeal to a residential property tribunal under paragraph 26 in respect of an interim EDMO or a final EDMO.
- The appeal -
 - is to be by way of a re-hearing, but
 - may be determined having regard to matters of which the authority were unaware.
 - The tribunal may -
 - in the case of an interim EDMO, vary the order as mentioned in paragraph 26(2)(b), or
 - in the case of a final EDMO, confirm or vary the order or revoke it as from the date of the tribunal's order.

"The operative time" for the purposes of paragraph 9(2)

- 29 (1) This paragraph defines "the operative time" for the purposes of paragraph 9(2).
- If no appeal is made under paragraph 26 before the end of 28 days mentioned in paragraph 27(2), "the operative time" is the end of that period.
 - If an appeal is made under paragraph 26 before the end of that period, and a decision is given on the appeal which confirms the order, "the operative time" is as follows -
 - if the period within which an appeal to the Lands Tribunal may be brought expires without such an appeal having been brought, "the operative time" is the end of that period;
 - if an appeal to the Lands Tribunal is brought, "the operative time" is the time when a decision is given on the appeal which confirms the order.
 - For the purposes of sub-paragraph (3) -
 - the withdrawal of an appeal has the same effect as a decision which confirms the order, and
 - references to a decision which confirms the order are to a decision which confirms it with or without variation.

Advice

If you do not understand this interim empty dwelling management order or wish to know more about it, you should contact the Council. If you want independent advice about your rights and obligations, you should go to a Citizen's Advice Bureau, Housing Aid Centre, Law Centre or a solicitor. You may be able to obtain help with all or part of the cost of legal advice from a solicitor under the Legal Aid Scheme. If you do not know whether you could apply for Legal Aid you can see a solicitor who may be prepared to give you half-an-hour of legal advice for a small fee. If you want to know more about the works the Council require you to do, you may wish to consult a surveyor.

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