

**HM COURTS & TRIBUNALS SERVICE**

**RESIDENTIAL PROPERTY TRIBUNAL**

**Property:** 34 St Nicholas Road Whiston Knowsley L35 3SW

**Applicant:** Knowsley Metropolitan Borough Council

**Respondent:** Julie Ann Waring

**Case Number:** MAN/00BX/HYI/2012/0014

**Date of Application:** 9<sup>th</sup> July 2012

**Type of Application:** Application for an Interim Empty Dwelling Management Order under Section 134 of the Housing Act 2004

**Tribunal:** Nasrin Ali  
Laurence Bennett

**Date of Determination:** 27<sup>th</sup> December 2012

**DECISION**

- A. The Applicant is authorised to make an Interim Empty Dwelling Management Order for a period of one year in respect of 34 St Nicholas Road Whiston Knowsley L35 3SW. The Order is to be in the form submitted with the application and set out in Appendix A to this Decision**
- B. There is no order for compensation**

### **The Application**

1. The Tribunal has received an application for an Interim Empty Dwelling Management Order ('EDMO') for the Property from the Applicant which is the local Housing Authority for the area in which the Property is situated. The Applicant named the Respondent as the owner of the Property in its application
2. The Respondent has been the registered proprietor of the Property at the Land Registry since the 27<sup>th</sup> September 1999
3. An interim EDMO enables a local authority to take steps with the consent of the owner for the purposes of securing that a dwelling becomes and continues to be occupied. If the local Housing Authority is unable to obtain the owner's consent, it may obtain a final EDMO subject to appeal by the owner to the Tribunal
4. In accordance with the Tribunal's directions dated 27<sup>th</sup> July 2012 The Applicant filed a draft order with supporting documents on the 1<sup>st</sup> August 2012. The Applicant's bundle contained copies of correspondence between the Applicant and Respondent informing her of the Application and the proposed course of action.
5. The Respondent did not correspond with the Applicant nor comply with the Tribunal's Directions of 27<sup>th</sup> July 2012 until she sent a letter dated 29<sup>th</sup> October 2012 (received by the Tribunal on the 19<sup>th</sup> November 2012) in which she stated that she had no objections to the Applicant's application for an interim EDMO in respect of the Property
6. No oral hearing was requested by either party.

### **The Inspection**

7. In light of the consent by both the Applicant and Respondent to the interim EDMO the Tribunal was of the opinion that it was not necessary to carry out an inspection of the Property

### **The Law**

8. The Tribunal must be satisfied of the matters set out in section 133 and 134 of the Housing Act 2004 before it can consider the Application.

#### **S133 Making of Interim EDMO**

- 1 A local authority may make an interim EDMO in respect of a dwelling if
  - (a) It is a dwelling to which this section applies, and
  - (b) On an application by the authority to a residential property tribunal, the tribunal by order authorises them under section 134 to make such an order either in the terms of a draft order submitted by them or in those terms as varied by the tribunal

- 2 This section applies to a dwelling if
  - (a) The dwelling is wholly unoccupied, and
  - (b) The relevant proprietor is not a public sector body
- 3 Before determining whether to make an application to a residential property tribunal for authorisation under section 134 the authority must make reasonable efforts
  - (a) To notify the relevant proprietor that they are considering making an interim EDMO in respect of the dwelling under this section and
  - (b) To ascertain what steps (if any) he is taking or intending to take to secure that the dwelling is occupied
- 4 In determining whether to make an application to a residential property tribunal for an authorisation under section 134 the authority must take into account the rights of the relevant proprietor of the dwelling and the interest of the wider community
- 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)
- 6 An application to a residential property tribunal under this section for authorisation to make an interim EDMO in respect of a dwelling may include an application for an order under paragraph 22 of schedule 7 determining a lease or licence of the dwelling
- 7 In this section 'public sector body' means a body mentioned in any of the paragraphs (a) to (f) of paragraph 2(1) of Schedule 14
- 8 Part 1 of Schedule 6 applies in relation to the making of the interim EDMO in respect of a dwelling as it applies in relation to the making of an interim management order in respect of a house subject to the following modifications
  - (a) Paragraph 7(2) does not apply
  - (b) Paragraph 7(4)(c) is to be read as referring instead to the date on which the order is to cease to have effect in accordance with paragraph 1(3) and (4) or 9(3) to (5) of schedule 7
  - (c) In paragraph 7(6)
    - (i) paragraph (a) is to be read as referring to Part 4 of Schedule 7; and
    - (ii) paragraph (b) does not apply
  - (d) paragraph 8(4) is to be read as defining 'relevant person' as any person who to the knowledge of the local housing authority is a person having an estate or interest in the dwelling (other than a person who is a tenant under a lease granted under paragraph 2(3)(c) of schedule 7)

S134 Authorisation to make interim EDMOs

- 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 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 has 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 interest of the community, and
  - (b) The effect 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 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
- 5 The appropriate national authority may by order
  - (a) Prescribe exceptions for the purposes of subsection (1)(b)
  - (b) Prescribe a period of time for the purposes of subsection (2)(a) and
  - (c) Prescribe requirements for the purpose of subsection (2)(e)
- 6 An order under subsection (5)(a) may, in particular, include exceptions in relation to -
  - (a) Dwellings that have been occupied solely or principally by the relevant proprietor who is at the material time temporarily resident elsewhere
  - (b) Dwellings that are holiday homes or that are otherwise occupied by the relevant proprietor or his guests on a temporary basis from time to time
  - (c) Dwellings undergoing repairs or renovations

- (d) Dwellings in respect of which an application for planning permission or building control approval is outstanding
- (e) Dwellings which are genuinely on the market for sale or letting
- (f) Dwellings where the relevant proprietor has died not more than the prescribed number of months before the material time

7 In this section .....

### **The Decision**

9. Respondent From the information provided by the Applicant and the consent of the Tribunal was satisfied that :-

- (1) The Property had been unoccupied for at least 6 months before the application;
- (2) There is no reasonable prospect that the Property will become occupied in the reasonably foreseeable future if the interim EDMO is not made
- (3) If the Order is made there is a reasonable prospect that the Property will become occupied
- (4) The Applicant has complied with the provisions of S133 (3) of the Act
- (5) The Property is a blight in a respectable residential area and it is in the interest of the wider community that it should be occupied
- (6) The Property is located in a highly sought after residential area and the Applicant is confident that the Property can be rented out
- (7) The Property does not fall within one of prescribed exceptions set out in the Housing (EDMO) (Prescribed Exceptions and Requirements) (England) Order 2006 No 367 ('The 2006 Order')
- (8) The Application is granted and the Applicant is authorised to make an interim EDMO Order in respect of the Property in the terms of the draft order submitted by the Applicant and attached in Appendix A to this decision

**Nasrin Ali**  
**Chairman of the Residential Property Tribunal**

**27<sup>th</sup> December 2012**

**Housing Act 2004:**

**Section 133 (1):**

**INTERIM EMPTY DWELLING MANAGEMENT ORDER:**

Ms Julie Ann Waring;  
34 St Nicholas Road;  
Whiston;  
Knowsley;  
L35 3SW

being the persons who are the "relevant proprietors" of the premises known as:

34 St Nicholas Road, Whiston, Knowsley, L35 3SW.

Knowsley Metropolitan Borough Council, Yorkon Building, Archway Road, Huyton,  
Knowsley, L36 9PB hereby makes the following Interim Empty Dwelling Management Order  
under Section 133(1) Part 4 of the *Housing Act 2004* in respect of:

34 St Nicholas Road, Whiston, Knowsley, L35 3SW and the lands that form part of the  
amenity of the house.

The effect of the Order is to transfer the management of the house, with the consent of the  
relevant proprietors to the Council in order for the Council to take reasonable steps to secure  
the occupation of the Dwelling, and to ensure it becomes and continues to be occupied.  
While the Order is operative the Council will be responsible for the day to day management,  
which *inter alia* will include:

- The collection of any rents or fees payable in respect of the use of the house or  
lands;
- The payment of relevant expenditure;
- The payment of compensation to third parties whose rights are affected by this  
Order;
- Undertaking all duties and responsibilities expected of a landlord in relation to the  
management of new tenancies made in respect of the dwelling;
- The proper management of the repair and maintenance of the dwelling;

The Council will keep accurate accounts of all financial transactions associated with the  
management responsibilities conferred by this Order.

This order comes into force on the (Date to be determined subject to RPT granting the order)  
and shall cease to have effect at the end of the period of 12 months beginning with the date  
on which it is made, unless it ceases to have effect at some other time as provided for by  
Schedule 7, paragraph 1 of the Act.

A relevant person (as defined in the Act) may apply to Knowsley Metropolitan Borough  
Council to vary or revoke the Order (paragraphs 6 and 7 of Schedule 7 to the Act), and may  
appeal to a residential property tribunal against a decision by the Council to vary or revoke  
the Order, or against its refusal to do so (paragraph 30 of Schedule 7).

The relevant proprietors may also apply to a residential property tribunal for an order declaring that an amount shown in the accounts of the Council (which paragraph 5 (6) of Schedule 7 to the Act requires it to keep) as expenditure of the Council does not constitute "relevant expenditure" (paragraph 5 (7) of Schedule 7).

A relevant person may appeal to a residential property tribunal against the terms of this Order if it does not provide for matters mentioned in Paragraph 5(6)(a) and (b) of Schedule 7 to the Act; which relate to payments of surplus rent etc.

This order is made on the (Date to be determined subject to RPT granting the order):

.....  
Authorised Signatory:

Dated:

**Mr Mike Harden**  
*Executive Director of Corporate Resources and Acting Executive Director of  
Regeneration Economy and Skills*

**Knowsley Metropolitan Borough Council Strategic Housing Department**  
**Yorke Building**  
**Ardway Road**  
**Huyton**  
**Knowsley**  
**L38 9FB**

**Tel: 0161 443 5837**

## **EXPLANATORY NOTES**

(Unless otherwise stated, statutory references are to the Housing Act 2004.)

### **Dwelling**

A dwelling is defined under section 132 4(a) and (b) of this Act.

### **Application of an Empty Dwelling Management Order**

An Empty Dwelling Management Order applies to a Dwelling if it meets one or more of the criteria defined under sections 133 of this Act.

### **Operation of the Order**

If there is not an appeal, the order will become operative at the end of 28 days from the date it is served.

If there is an appeal and the Residential Property Tribunal confirms the order, it will not become operative until the period for appealing has expired without such an appeal being brought or when a decision is given confirming the order.

If you start an appeal to the Residential Property Tribunal and then withdraw it, it will not become operative until the period for appealing has expired or on the day on which it would have become operative if the tribunal had confirmed the order or a variation of the order.

### **Effect of the Order**

The effect of the order is that the Council are taking control of this property from you. You remain the legal owner of this property. The council will undertake any works it feels necessary at the property and manage it, or arrange for it to be managed on its behalf. The Council will receive all rents from the property, however they are only entitled to grant a tenancy or a license of the dwelling with prior written consent from the Relevant Proprietor. (No consent is needed once a Final EDMO has been granted).

Whilst the order is effective, you, as the relevant proprietor, are not entitled to receive any rents or other payments from persons occupying the house. You are not entitled to exercise any rights or powers with respect to the property and may not create any leases, tenancies or licences with respect to the property.

### **Period of the Order**

This interim order will remain in force for 12 months from the date it was made unless it is revoked at an earlier date. If the Council feels that the property is not likely to be reoccupied, they may apply for a Final Empty Dwelling Management Order, which lasts for a period up to 7 years.

### **Financial Arrangements**

Whilst the order is in force, the Council must keep full accounts of their income and expenditure in respect of this house. The Council must pay to the Relevant Proprietor any monies left over after deductions to meet relevant expenditure.

### **Appeals**

The Relevant Proprietor has a right of appeal to the Residential Property Tribunal against certain decisions regarding Empty Dwelling Management Orders (*Housing Act 2004*, schedule 7, paragraphs 28, 30 and 34). If you disagree with the decision you have 28 days in which to appeal to the Residential Property Tribunal, beginning with the date specified in the notice as the date on which the decision was made.



The Residential Property Tribunal contact details are as follows:

Residential Property Tribunal Services  
First Floor  
5 New York Street  
MANCHESTER  
M1 4JB

Tel: 0845 100 2614

Fax: 0161 237 3656 or 0161 237 9491

Email: [northern.rap@communities.gsi.gov.uk](mailto:northern.rap@communities.gsi.gov.uk)

**Relevant Proprietor**

The relevant proprietor is defined (section 132 (4) (c) of the Act) as the freeholder or, if the dwelling is let under one or more leases with an unexpired term seven years or more the lessee under whichever of those leases has the shortest unexpired term.

**Advice**

If you do not understand this 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 Citizens Advice Bureau, Law Centre, Housing Aid 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.

**Land Charge**

When the order becomes operative it will be a local land charge on the premises to which it relates. This means that it will be recorded in the register of local land charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. Purchasers will normally search this register.