**MAN/00CJ/HYI/2012/0015**

**HM COURTS & TRIBUNALS SERVICE**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**HOUSING ACT 2004 – SECTION 133 (1) (b)**

APPLICANT: Newcastle City Council (the “Council”)

RESPONDENT: Kenneth Aubrey Van

PROPERTY: 6 Denwick Terrace Lemington Newcatle upon Tyne NE15 8SQ

APPLICATION: Authorisation for Interim Empty Dwelling Management Orders (“Interim EDMOs”) (Section 134 Housing Act 2004 (the “Act”)

TRIBUNAL: Mr W L Brown LL.B (Chairman)

Mr I R Harris FRICS

DECISION DATE: 28 February 2013

**DECISION**

1. The Applicant, the Council, is authorised to make an Interim Empty Dwelling Management Order under section 134 of the Act in respect of the Property in the form annexed to this decision as varied by paragraph 2.
2. The operative date of the Interim EDMO is not to be earlier than the making of the Order following the issue of this Tribunal’s present decision.

**REASONS**

**INTRODUCTION**

1. The Application dated 19 October 2012 is by the Local Authority for authorisation from the Tribunal to make an Interim Empty Dwelling Management Order under the Housing Act 2004 in respect of the Property (the “Application”). 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 (Housing Act 2004 s132 (2)).
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 this Tribunal. However, this does not prevent the owner appealing to this 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 3 above but without the owner’s consent.
3. Following receipt of the Application, the Tribunal made Directions to the parties on 10 January 2013. There was no request made by either party for a hearing so the Tribunal convened in Newcastle upon Tyne to make its determination.

**THE FACTS**

1. The Applicant submitted in advance a bundle of documents including the following:
2. The application form endorsed with a statement of truth including a statement of reasons for the Application complied by Ben Twizell, Empty Property Officer of Applicant.
3. Land Registry office copy entries f dated 14 January 2013 or the Property and the flat above (Number 4), showing the Registered Proprietor of the freehold to be the Respondent and that no relevant charges are secured against the Property.
4. An outline plan for the Property so as to bring it into occupation
5. Copy correspondence and photographs noted as taken on 25 October 2012 (external) and 27 September 2012 (internal)
6. Draft Interim EDMO
7. The Applicant produced in its bundle of documents as copy of a statement dated 22 August 2012 apparently signed by the Respondent confirming, amongst other matters, that he consented to the making of the Interim EDMO.
8. The Respondent did not reply to the Application, take steps to comply with any of the Tribunal’s Directions, or engage otherwise in the proceedings. In the Application the Applicant indicated that the Respondent resided in the flat above the Property.

**THE LAW**

1. The relevant law is contained in Sections 133, 134 and Schedule 7 to the Act and in The Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements (England) Order SI 2006/367 (the “Regulations”).
2. Section 133 states that a LHA 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.
3. Before making an application for such authority, the LHA 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 that it is considering making an Interim EDMO application in respect of the dwelling (Section 133(3)).
4. 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 to make an Interim EDMO. (Section 133 (4)).
5. It must then satisfy itself that none of the prescribed exceptions referred to in Section 134(1)(b) (the Exceptions”) and set out in the Regulations apply. .
6. To authorise the making of an Interim EDMO the Tribunal must then satisfy itself of the following matters (Section 134 (2)):
7. that the dwelling has been wholly unoccupied for at least 6 months
8. that there is no reasonable prospect that the dwelling will become occupied in the near future
9. that, if an interim order is made, there is a reasonable prospect that the dwelling will become occupied
10. that the authority has complied with section 133(3) and
11. that any prescribed requirements have been complied with.
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’ (as defined in section 132(4)(d)).
13. Finally, the Regulations also set out (at Article 4) detailed information the Applicant has to provide to the Tribunal to satisfy it that the Applicant has complied with section 133(3) viz. the efforts to find the owner, telling him what the Applicant intends to do and what advice has been given to the owner.

**INSPECTION AND FINDINGS**

1. On 28 February 2012 the Tribunal inspected the Property externally and limited internally (other than where noted below) in the presence of Ben Twizell and Gwen Durin of the Applicant.
2. The Tribunal found the Property to be a mid-terrace ground floor flat located in a residential area. The neighbouring dwellings appear to be occupied and maintained to a reasonable standard. At the time of inspection the Property appeared not to be occupied.
3. The Property has boarded up windows. There were visible signs of defect to the chimney, roof tiles, guttering and front door.
4. The Tribunal was unable to carry out an internal inspection because of a health and safety risk.

**THE COUNCIL’S CASE**

1. The Property and the upper flat have been in the ownership of the Respondent since around 1975.
2. The Applicant’s Council Tax department has confirmed that the Property is classed as Band A and that the earliest records available showed it has been empty since April 2005.
3. The Applicant had used its statutory powers in 2009, 2010 and 2012 to undertake works to the Property for various environmental protection matters. Since 2003 some 22 complaints had been received about the state of disrepair of the Property. A prospective sale of the Property by the Respondent in 2011 had fallen through due to defects identified on survey.
4. By way of a letter dated 28 May 2012, following a meeting on 21 May 2012, the Applicant had given written notice that it was considering making an Interim EDMO in respect of the Property. A further meeting with the Respondent was held on 6 June 2012 to enquire of the Respondent as to his intention to make the Property habitable and to secure that the Property became occupied once more. By a letter dated 17 September 2012 the Applicant had invited the Respondent to indicate if any of the “Exceptions” (see paragraph 13) applied. The Respondent had not replied to that letter.
5. The Applicant did not consider any of the “Exceptions” applied. It confirmed that advice and assistance had been offered to the Respondent for the purpose of having the Property occupied once more.  The Property in its current condition has a negative impact on neighbouring properties. Adverse social consequences would arise if the Property was not renovated and occupied.
6. There is no evidence that the Respondent or anyone else is in occupation of the Property or had any intention to take steps to bring it into occupation. It would be in the interests of the community to bring the Proper back into occupation. In October 2012 there were approximately 9,588 people on the Applicant’s housing waiting list. Demand is strong for occupation in the locality of the Property.
7. If the interim EDMO is made the Applicant will invest resources to renovate the Property to a decent standard for letting out at a rent of approximately £350 - £400 per calendar month, to be managed by the Applicant’s in-house team.

**THE RESPONDENT’S CASE**

1. The Respondent did not reply to the proceedings.

**DETERMINATION**

1. In accordance with Section 134(2) the Tribunal is satisfied that:
2. that the Property has been wholly unoccupied for at least 6 months;
3. that there is no reasonable prospect that the Property will become occupied in the near future;
4. that, if an Interim EDMO is made, there is a reasonable prospect that the Property will become occupied;
5. that the Applicant has complied with Section 133(3) and
6. that prescribed requirements have been complied with.
7. The Tribunal finds that bringing the Property back into occupation will be in the interests of the community because it will improve the amenity of the local area for the Property to be repaired and lived in, rather than empty and boarded-up. The making of an Interim EDMO will not be unduly detrimental to the rights of the owner given that he wishes the order to be made and has not communicated any alternative plans for the Property.
8. Having considered all relevant matters, the Tribunal concludes that it is appropriate for an Interim EDMO to be made in respect of the Property, and it accordingly authorises the Applicant to make the order as set out in paragraph 1 of this Decision. However, the Applicant is required to vary the draft order it provided to the Tribunal as set out in paragraph 2 of this decision.
9. As there is no known “third party” (as defined by section 132(4)(d) of the Act), whose rights will be interfered with by the order, it is not appropriate for the Tribunal to make an order for the payment of compensation.
10. As there was no request to the Tribunal to make an order in respect of the costs of the Application the Tribunal makes no such order.

Mr W L Brown LL.B ........................................................ Dated: 28 February 2012

Chairman of the Residential Property Tribunal