

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0014/12/16

In the Matter of: 46 Plassey Street, Penarth, Vale of Glamorgan, CF64 1EL
("the Premises")

In the Matter of an Application under Schedule 1, Paragraph 10 of the
Housing Act 2004

TRIBUNAL David Foulds (solicitor)(chair)
 Peter Tompkinson (surveyor)
 Carole Calvin-Thomas (lay member)

APPLICANT/
APPELLANT Mr David Wai Kwong Cheung

APPELLANT REPRESENTATIVE Mr Liam Nolan (from Aspire Residentials)

RESPONDENT The Vale of Glamorgan Council

RESPONDENT REPRESENTATIVE Mr Richard Price (Solicitor) and Mrs
Corinne Davies (Environmental Health Officer)

Date of Hearing 30th March 2017

Date of Decision 6th April 2017

DECISION

1. Upon an application by the Appellant to withdraw the Appeal having been made after the Tribunal had began to consider evidence and upon the Respondent consenting to the withdrawal, the Tribunal consents to the withdrawal of the Appeal.
2. The Respondent having applied for costs of £1,000, the Appellant do provide written representations to the Tribunal and serve a copy on the Respondent **by 12 noon on 21st April 2017** why an order for costs should not be made as requested by the Respondent. The Appellant should include all representations he wishes to make including in particular, but without prejudice to the generality of the foregoing, representations concerning the reasonableness of his conduct in withdrawing the appeal on the day of the hearing together with any representations he wishes to make concerning the amount of the costs sought.

3. The Respondent shall make any representations in reply and file a copy with the Tribunal and serve a copy on the Appellant by **12 noon on 5th May 2017**.
4. The issue of costs will be referred back to the Tribunal to determine on 12th May 2017, to be decided without an oral hearing unless either party applies in writing to the Tribunal requesting an oral hearing on the issue of costs. Any such application must be received by the Tribunal before 12 noon on 12th May 2017.

REASONS

The Application

1. The Tribunal attended at the Premises for a prearranged site inspection at 9:30 AM on the 30th March 2017 prior to the hearing the same day. Mrs Davies for the Respondent was present but there was no attendance by the Appellant and no prior notification had been received by the Tribunal that the Appellant was not to attend. Access to the Premises was therefore not possible as only the Appellant had the keys and did not attend.
2. The Tribunal office telephoned the representative for the Appellant namely Mr Nolan who then attended the hearing which commenced at 11:15 AM.
3. The Tribunal enquired of Mr Nolan as to the status of the appeal and he informed the Tribunal that he had spoken to a member of his legal team approximately 2 or three weeks earlier and they were meant to have notified the Tribunal that the appeal was withdrawn. The Tribunal questioned Mr Nolan as to his authority and he confirmed that the Appellant had given him specific instructions to act on his behalf and withdraw the appeal. He confirmed that he was not legally qualified but it being noted that the application itself had been issued through his office the Tribunal accepted his authority to represent the Appellant. The Tribunal enquired as to whether the Appellant had been informed of the consequences of a withdrawal and Mr Nolan said that he was aware that the Appellant had spoken to his legal team approximately 2 or three weeks ago but he was not privy to the conversation and could not confirm the nature of the advice given to him, if any. He reaffirmed however that he did have the express instructions of the Appellant to withdraw the appeal.
4. Mr Price said that he had spoken to Mr Nolan approximately one week prior and put him on notice that the Respondent would be seeking costs on the basis that it was confident of its opposition to the appeal and that Mr Nolan had indicated that the appeal may be withdrawn. Mr Price asked Mr Nolan to put in writing to the Respondent if the appeal was to be withdrawn but no such written notice had been received.

5. The above evidence not being in dispute between the parties the Tribunal found as a matter of fact that the first time that the Tribunal and the Respondent were aware that the appeal was being withdrawn was when the Tribunal office made a telephone call to Mr Nolan after there was no attendance by any representative for the Appellant at the site meeting on the morning of the hearing and that Mr Nolan could offer no explanation as to why his legal team had not notified the Tribunal or the Respondent of withdrawal prior to the actual hearing.
6. The Tribunal was satisfied that Mr Nolan had authority to represent the interests of the Appellant despite him not appearing in person. The Tribunal considered regulation 35 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 ("the Regulations"). The Tribunal considered that it had begun to hear evidence to the extent that it had visited the site and inspected the exterior of the property. The Tribunal was satisfied that the Respondent consented to the application being withdrawn. The Tribunal considered that it was not within its powers to impose any variation on the Improvement Notice providing that the premises could not be occupied until the works were completed. The Respondent had already provided a statement of reasons for serving an Improvement Notice and the Tribunal noted that it was not dealing with a Prohibition Notice. On balance therefore the Tribunal decided that there was no benefit to be gained by refusing consent for the withdrawal of the appeal and the Tribunal therefore consented to withdrawal.
7. The Respondent made an application for costs. The Tribunal has power to award costs under regulation 34 of the Regulations. The Tribunal decided that it was in the interests of justice that the Appellant be given the opportunity to make representations concerning costs and therefore directions were made as set out in the "Decision" section above.

Dated this 6th day of April 2017



David Foulds
Chairman