

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0003/04/17

In the matter of an Emergency Prohibition Order under Section 43 of the Housing Act 2004 dated 15 August 2017

Tribunal: Dr Christopher McNall (Lawyer – Chairperson)

Applicants: Mr Richard Morrison

Respondent: Neath Port Talbot County Borough Council /
Castell-Nedd Port Talbot Cyngor Bwrdeistref Sirol

Property: 86 Cyfyng Road, Ystalyfera, Swansea SA9 2BT

Hearing: Decision on the papers, 25 September 2017

ORDER - DIRECTIONS

IMPORTANT NOTE:

It is important that these directions are complied with. Failure to do so may result in the Tribunal being unable to consider important evidence or documents, which could prejudice your case.

1. The Notice of Appeal dated 21 September 2017 stands as the appeal against the Emergency Prohibition Notice dated 15 August 2017 and shall proceed under the same appeal number as the earlier appeal. Insofar as the Notice of Appeal dated 21 September 2017 is out of time in relation to the Emergency Prohibition Notice dated 15 August 2017, I extend the time for appealing accordingly.
2. The **Applicant** shall, by **4pm on Wednesday 4th October 2017**, file at the Tribunal a document personally signed by the landlord confirming that he believes the facts stated in the notice of appeal to be true. If this is not done, the Applicant shall explain in writing why it has not been done.
3. By no later than **4pm on 11th October 2017** the **Respondent** local authority shall file with the Tribunal (four hard copies) and serve on the Applicant (two hard copies) all its evidence (including any expert evidence) upon which it seeks to rely to support its case that there exist Category 1 Hazards in relation to 86 Cyfyng Road, Ystalyfera justifying the issue of the Emergency Prohibition Order. This shall include the

calculations and details of their hazard scoring under the HHSRS in relation to the identified Category 1 Hazards, and any guidance given to the Respondent local authority and falling under section 9(1) of the Housing Act 2004.

4. By no later than **4pm on 25th October 2017 the Applicant** shall file with the Tribunal (four hard copies) and serve on the Respondent (two hard copies) all his evidence (including any expert evidence) upon which he seeks to rely in his appeal against the Emergency Prohibition Order, including, if he accepts that there is or are any Category 1 Hazards, any evidence as to whether he says that an improvement notice, hazard awareness notice, or demolition order would be the best course of action in relation to that hazard or hazards: see Housing Act 2004 Schedule 2 Paragraphs 7 and 8.
5. Expert evidence is reasonably required for the resolution of this dispute. Both parties have permission to rely on expert evidence. Before Tuesday 7th November 2017 the parties' experts shall meet, whether in person or by phone, and shall produce a joint report identifying (i) any areas of agreement between them; (ii) any areas of disagreement, and, in the latter case, the reasons for that disagreement. The experts are reminded that their overriding duty is to assist the Tribunal, and this duty overrides their duty to any party instructing them or paying them.
6. By **4pm 4th October 2017, the parties** shall provide the Tribunal with dates of availability for a hearing, upon which this appeal shall be listed for hearing before a panel of three on the first available date on or after 22nd November 2017.
7. No site visit or inspection will take place without an appropriate risk assessment being conducted and provided to the Tribunal in advance, and such measures as are identified being put in place which satisfy the Tribunal that a site visit or inspection can take place safely.
8. I have made this Order of my own initiative, and without a hearing, and so either party is at liberty to apply to vary it or set it aside, within 7 days of receiving a copy of it.

REASONS

1. On 18 September 2017, I decided to postpone the site visit and hearing on 20 September 2017, for the reasons set out in that decision notice.
2. It is important for me to stress, simply to dispel any misunderstanding, that the Tribunal is an independent Tribunal, and the decision to postpone the hearing was mine - as a Judge of this Tribunal - and mine alone.
3. It is important that we now move forward. But this appeal has to be put

into a shape which allows it to be fairly determined.

4. Firstly, the present Notice of Appeal is not signed by the landlord. Nor was the previous Notice of Appeal signed by the landlord. Both were signed by persons describing themselves as his representatives. The Statement of Truth on the Notice of Appeal should be personally signed by the landlord, or an explanation given as why it cannot be so signed. I need to be satisfied that this application is being made by the landlord.
5. Incidentally, if Ms Kendall is an occupier, then she is a 'relevant person' for the purposes of Housing Act 2004 Schedule 2 Para 16(1)(a) and so she can appeal in her own right, although she has not formally done so.
6. The Tribunal's powers are by way of re-hearing, and we may confirm, quash or vary the prohibition order.
7. I remind the parties that the Tribunal decides all disputed matters of fact by applying the civil standard of proof: that is, on the balance of probabilities (or, 'likelier than not'). If the burden of proof is on the Respondent local authority, then the Respondent local authority has to satisfy the Tribunal, to that standard, but only to that standard, that any such hazard or hazards exist.
8. It is not presently clear to me whether the Applicant appeals:
 - 8.1 on the basis that no Category 1 Hazards exist in relation to the property at all; and/or
 - 8.2 whether he appeals on the basis that there are Category 1 Hazards, but that the best course of action is something other than an emergency prohibition order - for example, an improvement notice, a hazard awareness notice, or a demolition order; and/or
 - 8.3 if he appeals on some other basis; and, if so, what that basis is.
9. The answer to this point could well have an important bearing on the evidence to be placed before the Tribunal, and the way in which the appeal progresses. This is information which the Applicant is going to have to give the Tribunal. The relevant law is set out in the Housing Act 2004.

10. I have not yet seen any expert evidence / surveyor's evidence, although both parties were ordered to file such evidence by last June. But I have read Mr R Morrison's Witness Statement dated 23 May 2017 and what it says about the evidence of Mr Quigley. The Tribunal will doubtless inquire whether evidence obtained in April or May 2017 is sufficiently up-to-date, or whether circumstances have moved on since then in the way in which the local authority claims: see Paragraph 17 of my earlier decision.

Dated this 26th day of September 2017

A handwritten signature in cursive script, appearing to read 'McNall', written in black ink.

Dr Christopher McNall
Chairman