

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0003/04/17

In the matter of a Prohibition Order under Section 20 of the Housing Act 2004

Tribunal: Dr Christopher McNall (Lawyer – Chairperson)

Applicants: Mr Matthew 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, 18 September 2017

ORDER

The site visit and hearing listed on Wednesday 20 September 2017 will not go ahead. They are postponed generally. Either party has permission to apply to the Tribunal, in writing, for that hearing to be relisted.

No site visit or inspection will take place without an appropriate risk assessment being conducted and provided to the Tribunal, and such measures as are identified being put in place which satisfy the Tribunal that a site visit or inspection can take place safely.

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.

This order is to be issued by email to the parties.

REASONS

1. I do not understand it to be in dispute that the land to the rear of 81-96 Cyfyng Road has been subject to a landslip or landslips.
2. On 17 March 2017, the Respondent local authority issued an emergency prohibition order relating to the rear garden of the property. As far as I am aware, that order was not the subject matter of any appeal.

3. On 7 April 2017, the Respondent local authority issued a prohibition order in relation to the dwelling house under section 20 of the Housing Act 2004. It prohibited use of the premises 'for any use' and Schedule 2 specified certain works, namely the commissioning of a structural engineer *'to investigate the stability of the house and land to the rear of the property, and all works recommended in the subsequent report undertaken in accordance with current Building Regulations, to ensure that the building is safe for use for any occupant'*.
4. That order was subject to an appeal.
5. On 29 August 2017, Mr Celvin Davies, an Environmental Health Team Leader for the local authority, wrote to the Tribunal as follows:

"Please note that the Council has revoked the Prohibition Order which was the subject of this appeal, and served an Emergency Prohibition Order on the property instead.

We understand that the application for appeal of the original Prohibition Order has not been withdrawn by Mr Morrison and as such we will be in attendance at the hearing on the 20th September.

For your information, we have served similar Emergency Prohibition Orders on the whole terrace being nos 81-94, and a demolition order has been served on 96. I am informed that you may receive appeal applications in respect of the Emergency Prohibition Orders relating to the other addresses, so it may be worth us trying to deal with these at the same time?

There is a public meeting on the 7th September with all of the residents affected by the landslip in the area invited (circa 150 houses), and it is at this meeting that the risk report will be presented and made public. At this point I will be able to share the information with the RPT and the applicants, and set out our case for opposing the appeal relating to no 86"

6. That email was placed before me, as the Chairman designated to preside at the hearing of this appeal on 20 September 2017.
7. On 2 September 2017, I instructed the Tribunal to write to the parties in the following terms:

"I note the local authority's email dated 29.8.17 informing the RPT that the Notice which is the subject matter of this appeal has been withdrawn.

It is not said when this happened, and there is no evidence that it has happened. This must be provided.

If it has been withdrawn, it is not clear to me where this now leaves the parties.

By no later than 4pm Friday 15th September 2017, the parties shall each inform the Tribunal, in writing, in relation to the its position concerning the following matters:

- 1. If the notice has been withdrawn, can there still be an effective appeal against it? Does the Tribunal still have jurisdiction? If either party says that the Tribunal still has jurisdiction, and that the appeal remains effective, then he or they should explain why, drawing attention to any relevant legislation or decided cases.*
- 2. What is the effect of the emergency order in relation to this property and this appellants? Can the extant appeal be treated instead as an appeal against that order? If so, why? If not, why not?*

I should say that I am not presently attracted to the idea of dealing with other appeals against EPOs on 20th September. Is the timescale sufficient?

Upon receiving the parties' submissions on these points, I shall consider whether the hearing is or is not to go ahead. Without expressing any view on the merits, or without anticipating any of the submissions which will be made, I am reluctant to convene a hearing which may end up proving legally or factually futile."

8. That email was sent to the Council, but, through an administrative oversight in the Tribunal's office, was not sent to the Appellant until Wednesday 13 September 2017.
9. A response was received by email from the Council at 4.08 on Friday 15 September. Even though this came a few minutes after the deadline, without any explanation or apology for the lateness, I have considered it. It is not clear to me whether this was copied to Mr Morrison, and I have instructed the Tribunal's office that it should be. Neither party should communicate with the Tribunal in writing without, wherever practicable, copying the same to the other party.
10. Nothing was received or heard from Mr Morrison before the deadline.
11. On 15 August 2017, the Council revoked both the emergency prohibition order, and the prohibition order, and served a new emergency prohibition order. Emergency prohibition orders were served in relation to the whole terrace, 81-94, and a demolition order was served in relation to number 96. The council's position is that the whole terrace - and not just Mr Morrison's property - are at serious risk.
12. Section 25 of the Housing Act 2004 permits a council to revoke a prohibition order. Section 25(5) states that '*A revocation under this section comes into force at the time when it was made*'. On the face of it, that was 15 August 2017. Schedule 1 of the revocation order gives the reasons for the revocation, and identifies a number of alleged Category 1

hazards 'which did not form part of the prohibition order dated 7 April 2017'. One of these is said to be damage to a sewerage system at the rear of 81-96 Cyfyng Road causing the discharge of foul water.

13. I have considered the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 (SI 2012/531 W8) and my obligation to seek to give effect to the overriding objective of dealing fairly and justly with applications: Rule 3. I also have regard to my case management powers under Rule 27, which include the powers to take any step or make any other decision which the Tribunal considers necessary or desirable for the purpose of managing the case, which may be exercised by me of my own initiative, and as a single member.
14. When it comes to the consideration of appeals, the Tribunal does not have a general 'roving' power to investigate. Its jurisdiction is to decide on an appeal against the notice, and its powers are to confirm, quash, or vary the prohibition order.
15. In this case, the notice appealed against - the April 2017 notice - has been revoked. Hence, as a matter of fact and a matter of law, there is no April 2017 notice to confirm, quash, or vary: see Housing Act 2004 Schedule 2 Paragraph 11(3)
16. In the absence of representations from Mr Morrison, I have considered what points could be made in his favour. One would be that a local authority could, in effect, frustrate appeals against prohibition notices by issuing notices, waiting for appeals, then revoking them.
17. Doing the best that I can on the basis of the information and materials before me, and acknowledging that I have not heard any oral evidence or submissions, it nonetheless does not seem to me as if this is what has happened in this case. I do not consider the revocation to have been done so as to frustrate the appeal. It simply seems to me as if the original - April 2017 - notice has been overtaken by events, with the identified hazard being bigger and more hazardous than originally thought. That is why notices have been served on the other houses in the terrace; and a demolition notice in relation to the end terrace.
18. The council says that it has received advice as to increased risk, leading to the issue of other emergency orders in relation to other properties. Its position is that the matters dealt with in the new emergency order '*are legally and technically different to the original prohibition order*'. I make no findings as to whether this is correct or not, but for present purposes it seems to me that I cannot ignore the council's position.
19. I do not consider it would be appropriate for me to strike out the appeal, or otherwise dismiss it in the absence of the parties, and indeed the Council does not ask me to do so. It may, for example, be the case that the notice of appeal can be suitably amended so as to deal with the new

prohibition notice thereby avoiding the need for a completely fresh appeal. But I make no decision in that respect.

20. That is not to say that there is no right of appeal against the new notice. The ordinary time for an appeal is 28 days beginning with the date specified in the prohibition order as the date on which the order was made, but subject to a discretion to admit a late appeal if the Tribunal *'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)'*: see Housing Act 2004 Schedule 2 Paragraph 10. I make no decision in that respect but I note the Council's position that - at least as of last Friday afternoon - it had no objection to a late appeal submission from Mr Morrison, or indeed any of the owners of the affected terrace. As far as I am aware, no such appeals have been received.
21. Taking all the above into account, it does not seem to me as if the hearing on Wednesday 20 September will perform a useful purpose. The notice appealed against has been revoked. A new, different, wider, notice has been issued. The situation 'on the ground' has changed in the last six months or so. The evidence and submissions in support and/or in opposition to the new notice may well be different.
22. Accordingly, and of my own initiative, I postpone the hearing on 20 September 2017. I give the parties permission to apply to reinstate it on a different date. But, given what I am told about the condition of the properties, the geological conditions, and the continuing risk of landslips, no site visit or inspection will take place without an appropriate risk assessment.