

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: **RPT/0007/10/13**

In the Matter of: **Flats and common parts above 34/35 Clifton Street, Cardiff
CF24 1LR**

In the matter of an appeal against Improvement Notices under the Housing Act 2004

TRIBUNAL Chair: Mr. E.W. Paton
Surveyor: Mr. R Baynham
Lay Member: Ms. J. Playfair

APPLICANT: **GENEVA INVESTMENTS (SWITZERLAND) LLP**

RESPONDENT **County Council of the City and County of Cardiff**

HEARING AND INSPECTION DATE: 11th September 2014

ORDER

UPON THE APPLICANT NOT ATTENDING
AND UPON THE TRIBUNAL PROCEEDING IN THE APPLICANT'S ABSENCE,
pursuant to rule 33, Residential Property Tribunal Procedures and Fees (Wales)
Regulations 2012, being satisfied that the Applicant had notice of the hearing

IT IS ORDERED THAT:-

1. On the determination of the preliminary issue directed by order of the Tribunal dated 18th July 2014, it is determined that the Applicant's application and

appeal is an abuse of process; and has also been pursued frivolously, vexatiously, unreasonably and without any grounds.

The Applicant's application and appeal are therefore dismissed in their entirety.

2. Pursuant to Schedule 13 paragraph 12 Housing Act 2004, it is ordered that the Applicant pay the sum of £500 towards the costs of the Respondent in this appeal; by reason of the above findings and the Applicant's previous failures to comply with orders of the Tribunal. This sum to be paid within 21 days of the date of this Order being 2nd October 2014.

DATED: 11TH SEPTEMBER 2014

A handwritten signature in black ink, appearing to read 'E.W. Paton', written in a cursive style.

E.W. PATON

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DECISION

1. This was the Applicant's purported appeal against Improvement Notices issued by the Respondent under the Housing Act 2004, in respect of the above premises, on 1st October 2013. It is necessary to say 'purported' because the application form and 'notice of appeal' received on 23rd October 2013 did not set out any proper grounds for an appeal of the notices under Schedule 1 Part 3 of the 2004 Act. All the Applicant has ever said, in this notice and in his various communications to the Tribunal and Respondent, is that the works required by the notice would be done, or were in the course of

being done.

2. That was not a ground of appeal against the notices. It was if anything a request to the Council for more time or forbearance in relation to the carrying out of the works required by the notice. It has nothing to do with the Tribunal's appeal jurisdiction in relation to the correctness or validity of such notices. Whether the works are done, by a certain date or at all, is an enforcement matter for the Council.

3. Despite this, the matter has dragged on for nearly a year, with occasional correspondence about the apparent progress of the works. The Applicant did not comply, and has never complied, with the Tribunal's original directions order dated 31st January 2014, requiring him to provide some actual Grounds of Appeal. We refer to the order of 18th July 2014 which recites the subsequent history of the matter in some detail. The Tribunal, having received no grounds of appeal, was minded to dismiss the application and appeal as an abuse of process. At paragraph 9 of the order, it gave notice of that 'minded to dismiss' decision, pursuant to rule 42 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012. That rule requires the Applicant to indicate that he wishes to be heard on such a decision to dismiss. The Applicant gave such notice, through its representative Peter Whatley, by email dated 28th July 2014, requesting a hearing date after 1st September 2014, saying simply "I wish to be heard by the Tribunal..." but giving no grounds or explanation of why he wished to be heard, or what he intended to argue to prevent dismissal of the appeal.

The Applicant was given notice of the hearing, at its usual registered address, by letter dated 11th August 2014.

4. Despite this, the Applicant has not attended today. No communication has been received from it. No explanation has been provided. In any events, no grounds for an appeal of the Improvement Notices have ever been filed. Even if the Applicant had attended there was therefore little or nothing it could have

said by way of any appeal against the notices.

5. This has generated a wholly unnecessary hearing, and a pointless site visit, at which, in the absence of the Applicant, the Tribunal and Respondent were unable to view the property. As stated, in the absence of any grounds of appeal, it is hard to see what useful purpose would have been served by an inspection; but the hearing and visit were scheduled to give the Applicant every opportunity to present some sort of case or grounds of appeal if it so wished. It did not do so.
6. There could hardly be a clearer example of a frivolous, groundless and abusive appeal, wasting the time of the Tribunal and the local authority. By the expedient of filing a purported appeal against the notices in October 2013, but never actually providing any proper grounds for that appeal or complying with Tribunal directions, the Applicant has managed to spin this matter out for nearly a year, giving it a potential defence against a prosecution under section 30 of the 2004 Act in the meantime by the mere fact of purporting to file an 'appeal'. The Tribunal correctly detected in this matter a likely abuse of process, in making the order it did on 18th July 2014. It likewise correctly gave the Applicant a final opportunity to be heard before the appeal was dismissed on that basis. The Applicant could then have simply indicated that the appeal was withdrawn. Instead, Mr. Whatley on its behalf positively requested a hearing. Neither he nor any other representative of the Applicant then attended the hearing specially listed for that purpose. That prolonged the matter by a further six weeks, and wasted the Tribunal's time and resources today.
7. We are satisfied that the Applicant had notice of this hearing, and so decided to proceed in its absence, pursuant to rule 33, Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012.
8. In these circumstances, the Tribunal has no alternative but to dismiss the appeal as an abuse of process. It is also found that, in the light of the manner in which the purported appeal has been pursued, without any proper grounds and with repeated non-compliance with directions, it has been conducted

frivolously, vexatiously and in an unreasonable manner.

9. This is therefore an entirely proper case in which the Tribunal can make a costs order against the Applicant in the Respondent's favour, pursuant to Schedule 12 paragraph 13 Housing Act 2004. The Respondent confirmed at the brief hearing that it had incurred internal time costs in responding to the appeal, considerably in excess of £500, so we have no hesitation in making a costs order in that maximum amount - £500 – in this case.

A handwritten signature in black ink, appearing to read 'E.W. Paton'.

E.W. Paton

Chair

11th September 2014