

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)

First Floor, West Wing, Southgate House, Wood Street, Cardiff, CF10 1EW.
Telephone 0300 025 2777. Fax 0300 025 6146. Email: rpt@gov.wales

Housing Act 2004 – Prohibition Order

Reference: RPT/0026/02/18

Property: Ty Ucha Farm, Tan y Graig Road, Llysfaen, Conwy, LL29 8UD

Applicant: Mr Richard T Hughes

Respondent: Conwy County Borough Council

COMMITTEE: Chairman - Jack Rostron
Surveyor - David Jones
Lay Member - Eifion Jones

APPEARANCES FOR APPLICANT: Paula Mather Advocate & Social Worker

APPEARANCES FOR RESPONDENT: Julia Longworth, Principal Solicitor
Dawn Hayward, Pollution & Housing Officer

REASONS AND DECISION OF RESIDENTIAL PROPERTY TRIBUNAL

1. This is an appeal by the freeholder Mr Richard T Hughes (the Applicant) heard on 31 May 2018 against a Notice of a Prohibition Order (the Notice) dated 23 February 2018 which was served following a Hazard Awareness Notice served in 2013 by the local housing authority, Conwy County Borough Council (the Respondent) in respect of the property known as Ty Ucha Farm, Tan y Graig Road, Llysfaen, Conwy, L29 8UD (the Property).
2. The subject Property consists of a two-storey house built of masonry and brick rendered in pebble dash. It comprises four bedrooms, two reception rooms, kitchen and bathroom. It is believed to have been built pre-1920 and forms part of a series of out buildings which historically had been used for farming. The Property is situated on agricultural land of 35 acres which the Applicant owns. The Property is accessed down a farm track off a metalled highway.

RESPONDENTS STATEMENT OF CASE

3. On the 22 January 2018, the Respondent inspected the Property. As a result of this the Notice was served by the Respondent on the Applicant stating *inter alia*;

... "the property was assessed under the Housing Health and Safety Rating System (HHSRS).

There are a number of hazards at the property which make it unsuitable for human habitation as they have potential of causing serious harm. A Prohibition Order is deemed to be the most appropriate course of action.

... The Prohibition Order... supersedes the Hazard Awareness Notice previously served...2013. Unless an appeal is made it will prohibit the use of the house for human habitation after 20 February 2018 or until such time that adequate remedial works are undertaken and the order is revoked by the authority. The remedial works are specified in the order.

Nature of the hazards: -

1. Structural collapse and falling elements.
2. Dampness.
3. Electrics.
4. Excess cold.
5. Sulphur dioxide and smoke.

The deficiency giving rise to the hazards: -

1. Structural collapse of the main roof inclusive of internal walls.
2. Rising and penetrating dampness affecting most of the walls within the property.
3. Lack of a safe, working electrical installation to the property.
4. (a) Lack of permanent, fixed and affordable to run heating system to the accommodation.
(b) Broken glazing, rotted window frames and cills to all windows.
5. Disrepair to existing chimney flues.

Remedial action which the authority consider would, if taken in relation to hazards, result in their revoking the order: -

1. Employ the services of a suitably qualified building surveyor to carry out a full survey and establish which works are required to rectify the structural collapse of the main roof and all affected walls. Carry out all necessary works to rectify this matter.
2. Employ the services of a suitably qualified damp specialist to ascertain the causes of the rising/penetrating dampness currently affecting the property. Carry out all necessary works to rid the property of dampness.
3. Employ the services of a suitably qualified electrical engineer to rewire the property. Provide...all necessary paperwork on completion.

4. (a) An adequate space heating system must be provided, sufficient to protect the occupiers from excess cold and controllable enough to protect them from excess heat.

To this end, provide a fixed, permanent whole property/flat heating system. This system must be programmable, capable of being controlled by the occupants, efficient and affordable to run.

Where gas central heating is not/cannot be installed; an alternative equivalent electrical system that is also programmable, controllable, efficient and affordable, must be provided which will utilise off-peak electricity tariff.

The system must be permanently fixed capable of heating living rooms and bedrooms to 21 degrees C and to 18 degrees C in bathrooms and kitchens and 16 degrees C in circulation areas.

Individual electric heaters (for example, vector or oil filled) are not acceptable as they are not affordable to run compared to either gas or electric space heating systems.

(b) Replace all windows with new.

5. Employ the services of a suitably qualified flue lining company to inspect all existing flues and place in full working order”.

APPLICANTS STATEMENT OF CASE

4. The Applicant has presented very limited written evidence which is contained in the application form and short written statement was as follows: -

“...I cannot spend money on repairing the property and pay rent for another flat or house while the Prohibition Order is in force. There are internal walls approximately two feet thick upstairs and downstairs. I only use part of the house in winter. I am the only person living in property. My parents lived in the property before I was born. I have lived in the property for 62 years apart from a while I was in college.

I have had a new cable fitted from where the main supply comes to the property to the house. The fuse box in the house has been repaired as well as new sockets being installed. Furthermore, a smart meter has been installed by Scottish Power.

With regard to the hazard calculations, the vulnerable age group does not apply...I am the only person living in the property, my age is 62 years.”

THE LAW

5. The relevant law is as follows: -
6. The Housing Act 2004 introduced the Housing Health and Safety Rating System (“HHSRS”). This is a system for assessing housing conditions, enabling local authorities to assess the condition of a property based on risk to occupants, with power to serve Notices and Orders on owners requiring action to be taken to reduce risk or restrict the use of a property.
7. The most serious risk of harm creates a category 1 hazard in respect of which it is mandatory under section 5(1) for the local authority to take appropriate enforcement action. All other risks enable the local authority, in its discretion, to take particular kinds of enforcement action. Section 5(2) sets out seven types of action which are “appropriate” for a category 1 hazard. If two or more of these courses of action are available, the authority must take the course which they consider to be the most appropriate. Sections 20 and 21 empower the local housing authority to make a Prohibition Order if a category 1 or Category 2 hazard is found at the property. Such an order prohibits the use of the Property for certain purposes.
8. Section 27 states that Schedule 2 which deals with the service of prohibition orders, and notices relating to their revocation and variation, and with related appeals, has effect. A person served with a Prohibition Order can appeal to a Residential Property Tribunal which may by order confirm, quash or vary the Notice.
9. In exercising its functions under the HHSRS provisions a local authority must have regard to any guidance for the time being given by the appropriate national authority – section 9 (2). There are two sets of such guidance in relation to the HHSRS, issued by the Department of Communities and Local Government: The Operating Guidance and the Enforcement Guidance.

INSPECTION AND HEARING

10. The Tribunal and representatives from the Respondent assembled at 09.30am to undertake an inspection of the Property. The Applicant attended the inspection and allowed the Tribunal all assistance necessary. The Tribunal inspected all the internal and external parts of the Property mentioned in the Notice.
11. The Tribunal’s inspection confirmed in all respects the hazards identified and remedial works required in the Notice.
12. A hearing was held at Colwyn Bay Town Hall commencing at 10.15am. The Applicant was represented by his Advocate and Social Worker who reiterated the points made in his written evidence. The Applicant’s position at the initial part of the hearing was that he did not wish to leave the Property as it had been his home and indeed his parents home for many years.

13. The Respondents whilst sympathetic to the Applicants desire to continue living in the Property emphasised that the hazards identified presented serious imminent threats to the occupier's health and safety.
14. Towards the end of the hearing and following a short adjournment to allow the Applicant and Respondent to review their relative positions. It was agreed and the Tribunal was encouraged to hear that the Respondent would provide temporary accommodation at the Property by way of a caravan connected to all necessary services. It would also facilitate appropriate advice and assistance to the Applicant to raise capital from sale of some of the land to pay for the remedial works necessary to the Property.
15. It is considered worth noting that the Applicants first language is Welsh but he had indicated in his application for the proceedings to be conducted in English. Whilst the proceedings were conducted in English and the Applicant was represented by an advocate the Welsh speaking lay member of the Tribunal explained its findings to him in Welsh. Every applicant or respondent appearing before the tribunal is entitled to conduct the proceedings in Welsh if they wish and so indicate.
16. Having determined that the Property was not subject to a management order under Chapters 1 or 2 of Part 4 of the Housing Act 2004. Finding the identification of the Hazards justified by the Respondents HHSRS calculations. The Tribunal considered the service of the Prohibition Order justified and therefore dismissed the appeal.

ORDER

17. The Tribunal dismisses the appeal against the Prohibition Order.

Either party may appeal this decision to the Upper Tribunal. An application for permission to appeal should in the first instance be made to this Tribunal within 21 days of the date upon which this decision was made.

1. Section 231 of the Housing Act 2004 allows a party following a refusal to appeal from the Residential Property Tribunal to seek permission from the Upper Tribunal.
2. Regulation 38 of the Residential Property Tribunal Procedures and Fees (Wales) Rags, 2012 explains the appeals procedure.
3. Part 3 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.1. 2010 No. 2600 (L.15) as amended explains the process for making an application to appeal.
4. You must apply for permission to appeal in writing to be received by the Tribunal no later than 14 days after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal to the Applicant.

Contact details are;

Upper Tribunal (Lands Chamber)
5th floor, Rolls Building
7 Rolls Building
Fetter Lane
London
EC4A 1NL

Tel 020 7612 9710

Fax 020 7612 9723

Email lands@hmcts.gsi.gov.uk

Dated this 14th day of June 2018

A handwritten signature in black ink, consisting of several overlapping loops and a final flourish extending to the right.

CHAIRMAN