

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0022/03/22

In the Matter of premises at 14, Alexander Street, Blaina, Abertillery, NP13 3HE

In the Matter of a Prohibition Order under section 20 and 23 of the Housing Act 2004.

APPLICANTS: John Filsell and Jane Filsell

RESPONDENT: Blaenau Gwent County Borough Council

Decision on costs.

Order:

It is ordered that the Respondent Council do reimburse the Applicants the fee of £150 within 14 days of the date of this decision.

1. The Applicants are the owners of 14 Alexandra Street, Blaina, Abertillery, NP13 3HE (“the property”) which was previously occupied by a couple who each had children, resulting in the property being occupied by ten occupants including eight children. The original tenant and five children had lived at the property for around five years subject to a tenancy agreement. The tenant entered into a relationship with another woman who moved in with her three children in March 2021 without the knowledge or consent of the applicants, who became aware of the situation in July 2021.
2. The Applicants issued a notice under section 21 of the Housing Act 1988 to the tenant in July 2021 to seek to recover possession of the house as a result of the overcrowding and owing to further allegations about the tenant’s aggressive behaviour and damage to the house. Although that notice expired in January 2022, the tenant and other occupiers remained in the house. The Applicants took legal action at Blackwood County Court who served a notice of issue of Accelerated Possession proceedings on 6th February 2022 with a hearing date of 6th April, at which the tenant and occupiers were ordered to leave by 11th May 2022. They left on 31st May 2022 when the Applicants were due to arrive with the bailiffs to enforce the order.
3. The Applicants say that when they became aware of the overcrowding in July 2021 that they raised this with the Council, and specifically with the social worker for the tenant’s children who assured them that he had reported the potential overcrowding to the relevant Council department in March 2021.

4. On 23rd February 2022 a suspended prohibition order relating to a category one hazard (overcrowding) was made by the Respondent and subsequently served on the Applicants. The order was suspended until 23rd November 2022. The Applicants appealed to the tribunal against the imposition of the suspended prohibition order by application form dated 21st March 2022 and paid an issue fee of £150.00 to the tribunal. The tribunal stayed the tribunal proceedings and did not give directions given that there were ongoing possession proceedings in the Blackwood County Court at that time.
5. The Applicant Mr Filsell confirmed by e mail to the tribunal on 8th June 2022 that he had regained possession of the property. The Respondent Council confirmed to the tribunal by e mail on 23rd June 2022 that the suspended prohibition order had been withdrawn due to the eviction of the tenant and his family.
6. Mr Filsell e mailed the tribunal on 28th June 2022 raising the issue of the tribunal application fee and the tribunal gave directions and sought further written representations verified by a statement of truth in support of any arguments on costs and the application fee.
7. The Applicants confirmed in their written representations that they were seeking reimbursement of the application fee of £150 and not any other costs. They argued that the Respondent Council acted incorrectly and unreasonably in serving the Suspended Prohibition order, in essence because the Applicants had already taken the only action available to them to reduce the number of occupants, by issuing a section 21 notice in July 2021, over seven months before the suspended prohibition order was served upon them. The Applicants pointed out that the tenant and occupiers remained in the property at the expiry of the section 21 notice obliging them to pursue possession through the courts.
8. The Applicants say that they were obliged to appeal to the RPT because they had no control over when the tenants would leave the house and the appeal period to the RPT expired before the Court hearing date of 6th April 2022. The Applicants were uncertain as to whether the hearing on the 6th April would proceed or what the outcome would be, and if they did not appeal they would have been at risk of prosecution if the tenant and occupiers were still in the house on 23rd November 2022.
9. The Applicants further submit that in the Council's statement of reasons for making the suspended prohibition order, the Council said that it was reasonable to allow the overcrowding of the property to occur for a short period whilst more suitable permanent accommodation was found and a solution was found, and that service of a Prohibition order with immediate effect would render the family homeless. The Applicants argue that this implies that the Respondent Council was going to move the occupants once suitable accommodation had been found but that the Council's preference was that they continue to live in the property until that had been achieved. The Applicants say that they do not understand how serving a suspended

prohibition order on them would facilitate the achievement of finding alternative accommodation.

10. The Respondent's submissions were contained in the detailed witness statement and enclosures of Mr Hugh Griffin, Specialist Environmental Health Officer for the Respondent Council, dated 20th July 2022. Mr Griffin said that the Council was made aware in October 2021 that a section 21 notice had been issued by the Applicants in July 2021 which expired on the 17th January 2022. Mr Griffin visited the property on the 9th November 2021 and identified a category one hazard under the Housing Health and Safety Rating System (HHSRS) of overcrowding. On review on the 23rd February 2022 the tenants were still in occupation of the property and they needed a five- or six-bedroom property for rehousing, of which the Respondent have only one of each, so that the timescale for rehousing the family was going to be difficult to obtain.
11. Mr Griffin argues that the service of the Suspended Prohibition Order on the 23rd February 2022 was a reasonable, justified and proportionate course of action considering the overcrowding hazard identified, the hazard calculations and the options available. He notes at his witness statement paragraph 24 (c) *"Even though the Applicants were taking the appropriate course of action to regain possession of the property, the Council still had the legal obligation to inspect the property and to take the appropriate action due to the presence of a category one hazard. The Council cannot avoid taking legal action because the Applicants are taking legal proceedings to evict the tenant."* Mr Griffin says that whilst long term overcrowding may cause adverse health effects particularly to the children, that the short-term harm outcomes of being made homeless is considered to be a greater potential health hazard and that the service of a Prohibition Order with immediate effect would have rendered the family homeless.
12. Mr Griffin notes that the order was not revoked by the Council's own conduct but due to the actions taken by the Applicants in order to regain possession of their own property. Mr Griffin says that the Council's decision to make a Suspended Prohibition Order was in accordance with Local Authorities Coordinators of Regulatory Services (LACORS) guidance on Regulation of "Crowding and Space" and was supported by the case of *Khadija Ali v Bristol City Council* [2007] CC where Bristol City Council served a suspended Prohibition Order in respect of crowding and space.

Decision and reasons.

13. Rule 51 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016 says that *"....a tribunal may require any party to the application to reimburse any other party to the extent of the whole or part of any fee paid by that party in respect of the application."* In accordance with Rule 51, I order that the Respondent do reimburse the Applicants with the fee of £150.00 within 14 days of the date of this decision.

14. Mr Griffin's witness statement says that on review on 23rd February 2022 *"..the tenants were still in occupation of the property. The eviction time period had passed."* This is not strictly true- the time period for vacating under the notice had passed but that notice was always likely to require further enforcement action through the County Court, and the fact that the tenant and other occupiers did not move out upon the expiry of the notice was not the fault of the Applicants. Indeed, as noted above, Mr Griffin says that the Applicants were taking the appropriate action to regain control of the property. Had the Council themselves found appropriate alternative accommodation for them at this time, then it is likely that the occupiers would have vacated.
15. Mr Griffin argues that the Council did not act vexatiously throughout the case and that their actions had been reasonable and practical throughout. There is no suggestion that the Council acted vexatiously and as the Applicants' statement makes clear, it is only the reimbursement of the application fee that is being sought and not further costs. Whilst Mr Griffin refers to the case of *Khadija Ali v Bristol City Council*, he does not provide a full case reference nor a copy of the decision, and in any event each case, including this one, is to be determined on its own facts and circumstances.
16. In this case, the Applicants acted swiftly to regain possession as soon as they became aware of the overcrowding in July 2021, by issuing the section 20 notice. They then followed the accelerated possession procedure to obtain a possession order and it appears that they were then going to enforce a warrant but the tenant and occupiers left before the bailiffs enforced the warrant. On the evidence, the Applicants had taken the only steps available to them to seek to regain possession many months before the decision was taken to make a suspended prohibition order. It is not explained by Mr Griffiths nor made clear at any stage why the suspended prohibition order was made in February 2022 when the Applicants were still pursuing the only remedy available to them. There is no suggestion in Mr Griffith's statement that the Council considered waiting for the result of the Court case in April 2022 before deciding whether to then issue the suspended prohibition order. The Council had been aware for many months that the property was overcrowded and had been content not to serve an order. If the Applicants had been asked to take steps to ameliorate the overcrowding and were indifferent to this then the timing of the notice in February 2022 would have been understandable, but as it was, it appears from the evidence filed by both parties, that the Council were going to serve the notice irrespective of any actions taken by the Applicants.
17. The tribunal accepts the reasons given by the Applicants for pursuing the appeal against the order to the tribunal. The suspended prohibition order was withdrawn following the successful possession action that had been initiated by the Applicants before the involvement of the Respondent Council's Environmental Health Department. In these circumstances it is appropriate **to order that the Respondent Council reimburse the Applicants the fee of £150 within 14 days of the date of this decision.**

DATED: 17th October 2022

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CHAIRMAN