

# Housing and Property Chamber First-tier Tribunal for Scotland

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## First-tier Tribunal for Scotland (Housing and Property Chamber)

### Variation of Repairing Standard Enforcement Order (“RSEO”): Housing (Scotland) Act 2006 Section 25

Property at Mid Cottage Warmanbie House (Warmanbie Cottage), Annan DG12 5LL, being the subjects more particularly described in Land Certificate Title Number DMF23699 (hereinafter referred to as “the house”)

#### The Parties

Mr Robert Rome, Strategic Housing Services, Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries DG1 2AD (“the third party applicant”)

Mr Kenneth Barnett and Ms Betty Barnett, spouses, both residing at Longford House, Clay Lane, Moston, Sandbach CW11 3QY, (successors in title to Mr Stephen John Day, Quiech Mill, Alyth, Blairgowrie, Perth and Kinross PH11 8HR) (“the Landlord”)

Reference FTS/HPC/RT/18/2234

#### NOTICE TO Mr Kenneth Barnett and Ms Betty Barnett (“the Landlord”)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) having determined on 15 November 2019 that the Repairing Standard Enforcement Order (RSEO) relative to the house dated 18 December 2018 should be varied, the said **RSEO is hereby varied** with effect from the date of service of this Notice in the following respects:-

1. The period allowed for the completion of the works required by the RSEO is extended for a further **eighteen months from the date of service of this Notice.**

Subsection 25(3) of the Housing (Scotland) Act 2006 as amended applies in this case.

**A landlord, tenant or third party applicant aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

In terms of Section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the preceding page are executed by Mrs Aileen Devanny, legal member of the Tribunal, at Glasgow on Fifteenth November Two thousand and nineteen in the presence of the undernoted witness:-

A Devanny

A Thomson

witness

Legal Member

ABIGAIL THOMSON name in full

GLASGOW TRIBUNAL Address

CENTRE, GLASGOW,

G2 8QT.

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### First-tier Tribunal for Scotland (Housing and Property Chamber)

#### STATEMENT OF DECISION UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006

In connection with

**Property at Mid Cottage Warmanbie House (Warmanbie Cottage), Annan DG12 5LL, being the subjects more particularly described in Land Certificate Title Number DMF23699 (hereinafter referred to as "the house")**

#### The Parties

**Mr Robert Rome, Strategic Housing Services, Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries DG1 2AD ("the third party applicant")**

**Mr Kenneth Barnett and Ms Betty Barnett, spouses, both residing at Longford House, Clay Lane, Moston, Sandbach CW11 3QY, (successors in title to Mr Stephen John Day. Quiech Mill, Alyth, Blairgowrie, Perth and Kinross PH11 8HR) ("the Landlord")**

**Reference FTS/HPC/RT/18/2234**

#### DECISION

The First -tier Tribunal for Scotland ("the Tribunal"), having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order (hereinafter referred to as "the RSEO") in relation to the house concerned, and taking account of the findings of the Ordinary (Surveyor) Member of the Tribunal at the inspection of the property on 31 July 2019, and further considering the nature and extent of the outstanding repairs in the RSEO and subsequent written representations of the Landlord, determined that the RSEO should be varied to extend the period for completion of the works detailed within the Order in terms of Section 25(1)(a) and Section 25(3) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act").

#### Background

1. Reference is made to the Determination of the Tribunal dated 18 December 2018 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act and the RSEO made by the Tribunal which required the

Landlord to carry out works as specified therein. The said works in the RSEO are to be carried out and completed by 11 April 2019.

2. A re-inspection of the property by the Ordinary (Surveyor) Member was arranged for 10 May 2019 but this re-inspection was cancelled as information was received from Mr Stephen Day, the previous landlord, that the house had been sold. The re-inspection of the house by Mr Andrew Murray, Ordinary (Surveyor) Member of the Tribunal took place on 31 July 2019 and in attendance at the re-inspection was a representative for the Landlord and new owners, Mr Kevin Barnett, and Mr Robert Rome. The re-inspection of the house was for the purpose of ascertaining if the works in the RSEO had been completed. A written report on the re-inspection findings was submitted to parties for their written representations thereon. The findings indicated that apart from some chimney and slating repairs, none of the other works detailed in the RSEO had been completed. A copy of the re-inspection report with photographs taken at the re-inspection is attached and is referred to for its terms.

3. In response to the issue of the re-inspection report, the Landlord indicated that he had been unaware of the RSEO when the house was purchased in April 2019. An extension and full refurbishment of the house is planned and, since the house is a listed building, planning permission is required. The Landlord estimated that it would take two years to apply for planning permission, and complete the extension and refurbishment programme. The Landlord acknowledged that the works in the RSEO could be completed within a shorter timescale but it would be more efficient to complete the works as part of the refurbishment works.

4. The Tribunal considered the representations of the Landlord and in all the circumstances, the Tribunal considered that it would be reasonable to vary the RSEO in terms of Section 25(1) (a) of the Act. The variation provides for extension of the time period for completion of work in the RSEO for a further period of eighteen months. This will allow monitoring of the completion of works to the house. The Tribunal did not consider that revocation of the RSEO in terms of Section 25 (1) (b) of the Act is appropriate as the works are still required to the house. The existence of the RSEO registered in the Land Register on 24 January 2019 gives protection that the house will not be re-let as to do so would be an offence in terms of Section 28(5) of the Act.

5. The Landlord is reminded of the requirement in Section 14(2) of the Housing (Scotland) Act 2006 which includes a duty to make good any damage caused by carrying out any work for the purposes of complying with the repairing standard.

6. The Tribunal comprised Mrs Aileen Devanny, Legal Member, and Mr Andrew Murray, Ordinary (Surveyor) Member. The members of the Tribunal were unanimous in their decision.

A Devanny

Mrs Aileen Devańny  
Legal Member  
15th November 2019

# Housing and Property Chamber First-tier Tribunal for Scotland



**Housing (Scotland) Act 2006: Re-inspection Report**

**Property: Mid Cottage Warmbie House Annan DG12 5LL**

**Chamber Reference : FTS/HPC/RT/18/2234**

**Re-inspection as at 31 July 2019 at 10.00 am.**

**Weather conditions – dry and bright.**

**In attendance:**

**Tribunal Member (Surveyor): Andrew Murray**

**Home Owner's Rep : Mr Kevin Barnett**

**Local Authority Rep : Mr Robert Rome**

**Tribunal Clerk: Rebecca Forbes**

## **Repairing Standard Enforcement Order (RSEO)**

### **Works required by the RSEO:**

- (a) To instruct a suitably qualified damp proof contractor to carry out a full inspection of the House to identify the source of the penetrating or rising dampness and thereafter to carry out such repairs as are necessary to eradicate the dampness evident in the kitchen, rear habitable room and bathroom;
- (b) To eradicate the dampness and black mould evident on the ceiling in the bathroom of the House, treat same with a fungicide and re-paint;
- (c) Install mechanical extractor fans in the kitchen and bathroom to ensure adequate ventilation;
- (d) To insulate the southern area of the attic space;
- (e) To remove the defective mortar pointing on the rear wall head gable and renew it, to ensure the House is wind and watertight and in all other respects reasonably fit for human habitation;
- (f) To repair or renew all defective sections of guttering, joints and corner joints and to replace the missing downpipe;
- (g) To repair and replace all decaying sections of the timber fascia below the guttering and securely re-fix the gutter;
- (h) To repair and seal the holes in the stonework on the East elevation of the House at ground level and repair or replace the air vent cover there;
- (i) To repair the mortar bedding around the chimney haunch, pots and copes, to ensure the House is wind and watertight and, in all other respects, reasonably fit for human habitation;
- (j) To install sufficient smoke alarms and a heat detector that are mains wired and interlinked all to comply with the relevant fire legislation;

- (k) To instruct a suitably competent electrician (such as NICEIC, SELECT or NAPIT registered) to inspect, test and thereafter repair, renew or upgrade the electric appliances in the House to ensure that they are in a reasonable state of repair and in proper working order and produce an unqualified electrical safety certificate (EICR);
- (l) To commission and produce for the Tribunal, a Gas Safety Report for the House from a suitably qualified Gas Safe registered engineer in which the overall assessment of the gas installations in the House are safe in all respects;
- (m) To install a septic tank compliant with all current SEPA requirements;
- (n) On completion of all the above works, to restore all affected finishes and decoration.

**Observations/comment:**

An initial discussion with Mr Barnett revealed his parents owned the house but that he intended to extend and refurbish the property over the course of the next 2 years, with a view to living there himself. It was not anticipated that the property would be rented out at any time in the future. Mr Barnett tabled architect drawings showing the extension etc proposals.

Mr Barnett pointed out that the property was Grade B Listed as of historic interest and, as such, some of the works identified in the RSEO could not be undertaken until Planning consent was sought and approved. Mr Barnett enquired if it was possible to put the RSEO "on hold" for a 2-year period whilst he carries out the extension and full refurbishment. Mr Barnett acknowledged that the RSEO works could be carried out in advance of the proposed works, but that, given the extent of the refurbishment proposals, some of the RSEO repair works would have to be done again, and it would clearly be more efficient to carry out all of the RSEO works at the same time as the rest of the proposed works.

In respect of the outstanding RSEO works, it was noted that some chimney repairs have been carried out to prevent water penetration through the roof. Some minor slating repairs have been done. Internally, some areas have been coated with emulsion paint to try and identify where the dampness problems lie. None of the other RSEO issues have been addressed to date.

Mr Rome queried the septic tank situation. It was historically thought that the foul waste drained to a cesspit, but Mr Barnett confirmed that it drained to septic tank, and revealed the tank lid. The rear garden ground had been recently cleared to allow an inspection. Mr Rome suggested that Mr Barnett check that the septic tank is SEPA registered, and Mr Barnett agreed that he would do so.

Mr Murray noted Mr Barnett's above-mentioned comments on the RSEO issues and confirmed they would be considered by the Tribunal in due course.

This report will be distributed to the parties and their representatives for their comment. The report and comments received will be referred to the Tribunal for consideration and further action.

Report written by Mr Andrew Murray FRICS, MIFireE, Ordinary Tribunal Member, on 31 July 2019.

**Photographs as at 31 July 2019**



**1 The front elevation**



**2 The repaired chimney**



3 The painted bathroom



4 The septic tank cover