



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 33 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/EV/22/4295**

**Re: Property at 6 Anderson Place, Alyth, PH11 8GB (“the Property”)**

**Parties:**

**Cullochgold Services Ltd, Registered Office, 6 Atholl Crescent, Perth, PH1 5JN  
 (“the Applicant”)**

**Mr David Osborne Norman, Mrs Lorraine Janet Norman, 6 Anderson Place,  
Alyth, PH11 8GB (“the Respondents”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Mary Lyden (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Applicant is entitled to the Order sought for  
recovery of possession of the property.**

**Background**

1. The Applicant submitted an application under Rule 66 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order for possession upon termination of a short assured tenancy.
2. A case management discussion (“CMD”) took place on 13 March 2023 and reference is made to the Note and Notice of Directions issued on that date.

## **The Hearing – 18 May 2023**

3. The Hearing took place by Webex. The Applicant was represented by Mr Mellis and the Respondents were personally present. The Applicant's representative indicated that he intended to lead evidence from Mr Scott Begg and the First Respondent indicated that he alone intended to give evidence on behalf of both Respondents. The evidence given is summarised below. The summary is not a verbatim account of what was said at the Hearing but rather an outline of the matters relevant to the Tribunal's consideration of the application. At the conclusion of the evidence, the Tribunal adjourned the Hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to parties.

### **Summary of evidence**

#### **Scott Blair Begg**

4. He is the son of the Applicant company's shareholder and is now a director of the Applicant company. A decision was reached a few years ago to liquidate the assets of the company. The Applicant owned numbers 1, 2, 4, 5, & 6 Anderson Place and properties elsewhere. All other residential properties have been sold by the Applicant with the exception of number 6 which is occupied by the Respondents. Mr Begg's father wrote to the Respondents in September 2021 offering to sell the property to them for £202,500. The reason the offer was made was to expedite the sale process and avoid a lengthy eviction process. The company wrote in similar terms to other tenants. At that point, the company had not taken legal or tax advice. In October 2021, the company provided all tenants with 6 months' notice to leave the properties. Although it was not expressly stated, the 6 months' notice was intended to suggest that the properties had to be purchased or vacated within 6 months. Number 1 Anderson Place was sold in April 2022 to a sitting tenant for a reduced price. That tenant had a different type of tenancy agreement, namely a "rent to buy" tenancy. Mr Begg corresponded with the Respondents regarding the sale of the property. He was concerned that the Respondents would be unable to finance the purchase of the property within the timescales required by the company. He told the Respondents in January 2022 that the company required to sell all properties by the end of spring. There was discussion with the Respondents about Mr Begg's father providing a loan of £30,000 to enable the Respondents to purchase the property. However, having taken legal and tax advice, the company realised that was not a viable option. He explained to the Respondents that the sale could not proceed as previously discussed and the company would sell the property for market value. The company had a home report prepared in March 2022 which disclosed a market value of £270,000.
5. In May 2022, the Respondents raised the issue of flooding in the area and the effect that may have on the valuation of the property. The Applicant instructed surveyors to consider the valuation of the property in light of the flooding and was advised that the valuation was unaffected. Tenants of numbers 2, 4 and 5 Anderson Place moved out because they did not wish to buy the properties.

Number 2 was sold for home report value and numbers 4 and 5 were sold slightly above home report value. It is in the best interests of the company to sell the property at market value.

David Osborne Norman

6. He and his wife have lived in the property since December 2012. The contractual rent is £675 per month and has never increased. When the company shareholder offered to sell the property to the Respondents in September 2021, there was no mention of a timeframe within which a purchase had to be completed. Although the Applicant served notice on the Respondents, he and his wife proceeded on the basis that the notices did not apply because they had already told the company that they wanted to purchase the property. The Respondents thought they had until the end of 2022 to complete the purchase. In his email to Scott Begg of 21 February 2022, in relation to financing the purchase of the property, he said "...we will still seek a solution until we run out of time." What he meant by that was the Respondents would try to finance the purchase of the property until the Applicant told them to leave. By this time he knew they were dealing with a timescale of around April or May 2022, but he did not think that was a hard deadline. If the company's shareholder had provided a loan of £30,000 the purchase would have concluded. Following correspondence with Scott Begg, the Respondents had a target date of the end of May 2022. They had a few options as to how they were going to finance the purchase of the property. The first time the Respondents were given a firm timescale from the Applicant was when Scott Begg sent them an email on 25 March 2022. The Respondents considered that was unfair.
7. The occupier of number 1 Anderson Place had only been a tenant for approximately 4 years and was given favourable terms to purchase the property. However, the Applicant was not prepared to continue with discussions about the Respondents purchasing the property. The Respondents viewed that as unfair. Although the Respondents were in a position to conclude the purchase by June 2022, the Applicant was resolutely against a sale below the home report value. The Respondents considered that flooding may have affected the value of the property and asked the Applicant to provide a revised home report. The Respondents contend that Applicant was not truthful in the home report questionnaire. The Respondents were prepared to purchase the property for £232,500 and could have concluded by 1 July 2022. He is prepared to renegotiate with the Applicant in relation to the purchase of the property.
8. The property is occupied by him, his wife and their granddaughter. His personal circumstances are such that he continues to work 7 days a week and is actively trying to sell his interest in a golf centre. The Respondents' children do not have sufficient accommodation to house the Respondents. The Respondents have not made any enquiries about moving to alternative accommodation. They will move into other rented accommodation if they need to and do not consider that they will be homeless if an eviction order is granted. They do not wish to move to a property which has stairs because of mobility issues.

## **Submissions**

### **Submissions on behalf of the Applicant**

9. It is reasonable for the Applicant to seek vacant possession so that it can sell the property. The intention is for the company to be wound up. The Applicant was prepared to sell to the Respondents in September 2021. There was no formal agreement between the parties. It is reasonable for the Applicant to follow the advice given by professional advisers. The Applicant had the property valued. It is reasonable for the Applicant to accept that value and to sell the property on the open market. The Applicant has given the Respondents a great deal of notice and is cognisant that there will be a delay in executing the eviction order if granted by dint of the provisions of the Cost of Living (Scotland) Act 2022. The Applicant's representative invited the Tribunal to make the Order sought. It was submitted that the conditions of section 33 had been satisfied and that it was reasonable in all of the circumstances for the Tribunal to grant the order.

### **Submissions on behalf of the Respondents**

10. A big issue has been made of the timing of the purchase but the Respondents were unaware of the time constraints. The Respondents were deterred from purchasing the property in April 2022 although they could have concluded a purchase. The Applicant could sell the property to the Respondents or to a third party. The Respondents have been model tenants. The Applicant has never tried to market the property with the Respondents as sitting tenants.

## **Findings in Fact**

11. The parties entered into a short assured tenancy which commenced on 1 December 2012.
12. The Applicant's representative served a Notice to Quit and Notice in terms of section 33 of the Housing (Scotland) Act 1988 on the Respondents by recorded delivery post on 29 July 2022.
13. The short assured tenancy had reached its end.
14. Tacit relocation was not operating.
15. No further contractual tenancy is in operation.

## **Reason for Decision**

16. A significant part of the evidence focussed on discussions and email exchanges between the parties regarding the Respondents' potential purchase of the property. There was very little in dispute between the parties. It was accepted that the Applicant wanted to sell the property. It was accepted that the Respondents wished to buy the property, albeit a sale to them did not come to pass. The dispute centred around the actions of each party in relation to

negotiations. The Applicant's position was that the company had been fair in allowing the Respondents an opportunity to purchase the property but that the Respondents had been dilatory in concluding the purchase. The Respondents' position was that they were unaware of the constraints and were able to conclude a purchase by June 2022 and that the Applicant had been unreasonable. The Respondents considered the Applicant's treatment of them was unfair, particularly given that a neighbouring resident purchased a property at a price significantly below market value. During the negotiations between the parties, the Applicant took legal and tax advice and that advice was that the property should not be sold for below market value. The Applicant intends to follow that advice, which means that the sale cannot proceed on the terms which were previously discussed. Perhaps understandably, the Respondents are disappointed that the Applicant has adopted a different approach to the sale of the property.

17. The Applicant company intends to liquidate all of the company assets and has managed to sell all other residential properties owned by it. Although the initial correspondence from the Applicant introduced the idea of selling to the Respondents at a discounted price, the Respondents did not have an entitlement to a discount on the purchase price. No formal offer was made to purchase the property. There was no binding agreement between the parties for the Respondents to purchase the property. The Applicant told the Respondents in January 2022 that the company wished a sale concluded by spring. The Applicant gave the Respondents 6 weeks from 25 March 2022 to conclude the purchase of the property. On 10 May 2022, Mr Begg told the Respondents by email that if they wished to purchase, the sale price would be the home report value. An explanation was given as to why the company's shareholder could not provide a loan of £30,000 to the Respondents to enable them to purchase the property.
18. Whilst it is unfortunate that the parties did not agree formal terms for the sale of the property, the Tribunal did not regard the Applicant's office holders as having behaved unreasonably. Understandably, the Respondents were disappointed that the proposed purchase price of the property changed twice during the course of the email correspondence between the parties. They were also disappointed to learn that the tenant at number 1 Anderson Place purchased his property from the Applicant at a discounted price. However, an explanation was provided as to why number 1 Anderson Place was sold at a discounted price. The sale of that property concluded in April 2022, which is within the timeframe required by the Applicant.
19. The Tribunal was satisfied that the conditions of section 33 of the Housing (Scotland) Act 1988 had been met. The Tribunal considered the issue of reasonableness.

20. The Tribunal took account of the Respondents' personal circumstances. Although the Respondents' preference was to buy the property, they would not be homeless in the event of an order being granted.
21. Account was also taken of the Applicant's circumstances. A decision was made some time ago to sell the assets of the company so that the company could be wound up. The property which is the subject of the present application is the last remaining residential property belonging to the Applicant.
22. Balancing both parties' interests, the Tribunal concluded that it was reasonable in all of the circumstances to grant the order evicting the Respondents from the property.

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party 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.**

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**Legal Member/Chair**

**1 June 2023**  
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**Date**