

# **Housing and Property Chamber**

## **First-tier Tribunal for Scotland**



### **STATEMENT OF DECISION UNDER SECTION 25(1)(b) OF THE HOUSING (SCOTLAND) ACT 2006 ("the Act")**

**RE: Property at 18 Brewery Street, Dumfries DG1 2RP, being the ground floor flat part of (i) the tenement of 18, 20 and 22 Brewery Street, Dumfries referred to in the Disposition in favour of James Payne recorded in Dumfries B.R. 16 May 1882 and (ii) 0.023 acre, on the north west of Friars Vennel referred to in Disposition to Robert McGeorge Payne recorded in Dumfries B.R. 5 April 1937. CSS 7595 (hereinafter referred to as "the property")**

**Case reference FTS/HPC/RT/19/3644**

#### **Parties**

**Dumfries and Galloway Council, Municipal Buildings, Buccleuch Street,  
Dumfries DG1 2AD (Third Party Applicant)**

**Mr Sharaz Rasul, 23 Callum Drive, Dumfries DG1 3EF (Respondent and  
Landlord)**

**Mr Adam Turnbull, Gillespie, Gifford and Brown, Solicitors, 135 King Street,  
Castle Douglas DG7 1NA (Respondent's Representative)**

#### **Background**

1. The First-tier Tribunal for Scotland ("the Tribunal") issued a Repairing Standard Enforcement Order ("RSEO") in respect of the property on 6 September 2021. The RSEO required the Respondent as landlord for the property to carry out works to the property within a specified time to ensure that the property met the repairing standard. The RSEO was subsequently varied to extend the time for completion of works specified in the RSEO with the works to be completed by 31 March 2024.
2. The reason for the extension of time for completion of works in the RSEO (referred to above) was that based on the written representations of the Third Party Applicant and the Respondent the property had suffered extensive flood damage which had delayed the carrying out of the works detailed in the RSEO. The Tribunal was satisfied that the property was not being let as a residential tenancy and the Respondent was in the process of selling the property to the neighbouring proprietor of 20 Brewery Street. An informal agreement exists between the Respondent and the neighbouring proprietor for the sale of the

property and meantime the neighbouring proprietor is using the property as a store.

3. The Third Party Applicant has provided evidence from the Assessor and Electoral Registration Officer that the property has been removed from the Council Tax Roll and included in the Valuation Roll and is considered a store and now liable for Non Domestic Rates. No formal planning permission for change of use has been granted. The permission from the Assessor and Electoral Registration Officer states that the property was formerly a flat liable to Council Tax and there was change of use to a store on 1 April 2023. Photographs from the Assessor's permission show the property being used for storage. The permission is undated.
4. The Respondent's Representative has confirmed that the prospective sale of the property to the neighbouring proprietor is still incomplete but the neighbouring proprietor is in possession of the property and the majority of the price has been paid directly between the parties. The conveyancing is yet to be finalised, in part because of the RSEO still in place. Evidence of communications between solicitors acting for the Respondent and the neighbouring proprietor in relation to the conveyancing formalities was produced. A copy of the valuation roll evidencing that the property is a store was produced. Reference is made in communications to a small amount of the price still remaining to be paid.

### **Decision and Reasons**

The First-tier Tribunal for Scotland ("the Tribunal") having received evidence from the Assessor and Electoral Registration Officer that the property appears on the Valuation Roll as a store and that Council Tax is no longer paid on the property, considers that the property does not meet the definition of "house" in Section 194 of the Housing (Scotland) Act 2006 ("the Act") and, consequently, the duties contained in Section 14 of the Act no longer apply. The Tribunal has decided that the RSEO over the property be revoked as the work required by the Repairing Standard Enforcement Order ("RSEO") is no longer necessary. This is in terms of Section 25(1)(b) of the Act.

A notice will be issued to Registers of Scotland to remove the RSEO registered on 21 March 2022 in the Sasine Register from the title to the property.

### **APPEAL PROVISIONS**

**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.**

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.

Signed on this and the two preceding pages at Glasgow on Ninth April, Two thousand and twenty five

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