

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision under section 24(1) of the Housing (Scotland) Act 2006

Chamber Reference: FTS/HPC/RP/20/0116

Sasines Description: Blair Atholl Railway Station which subjects form part of ALL and WHOLE that plot or area of ground extending to 1.61 hectares or thereby lying partly in the Parish of Blair Atholl and partly in the Parishes of Logierait and Little Dunkeld in the County of Perth being the subjects more particularly described in, and shown outlined and coloured red on the plan annexed and signed as relative to Notice of Title in favour of Railtrack recorded in the Division of the General Register of Sasines for the County of Perth on 31st December 1996.

House address: Station House, Blair Atholl Railway Station, Blair Atholl, by Pitlochry ('the House')

The Parties

Mr Edward Morrow formerly residing at Station House, Blair Atholl Railway Station, Blair Atholl, by Pitlochry ('the Former Tenant')

Abellio Scotrail Limited, 5th Floor, Culzean Building, 36 Renfield Street Glasgow, G2 1LU, c/o Amey Consulting and Network Rail Infrastructure Limited, 151 St Vincent Street, Glasgow, G2 5NW ('the Landlords')

Tribunal Members

H Forbes (Legal Member)

C Jones (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the 2006 Act in relation to the House, determined that the case should be dismissed as the use of the House has now changed from dwellinghouse to office in terms of the Schedule to the Town and Country Planning (Use Classes)(Scotland) Order 1997.

Background

1. By application dated 13th January 2020, made under section 22 of the Housing (Scotland) Act 2006 ('the Act'), the Former Tenant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act').
2. The Former Tenant considered that the Landlords had failed to comply with their duty to ensure that the House met the repairing standard, in that the House was not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the House (including drains, gutters and external pipes) were not in a reasonable state of repair and in proper working order. Furthermore, within the notification to the Landlords submitted with the application, there was notice that the House did not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and that the House did not have satisfactory provision for giving warning if carbon monoxide was present in a concentration that was hazardous to health.
3. The Former Tenant stated the following:
 - a. *The Windows rattle and let in air when it is windy;*
 - b. *For years there is a train that runs by on a Thursday morning weighing over 1000 tonne causing the house to shake violently which in turn has created cracks on the exterior and interior walls;*
 - c. *Uneven floors on the lower hall, upper hall, kitchen, living room and bathroom;*
 - d. *Ceilings cracked in the bedroom, bathroom and living room.*
4. The Former Tenant stated that the following work was required: -
 - i. *The house was built in 1869 with the original windows which could do with being updated.*
 - ii. *The exterior and interior cracks have to be checked out and rectified along with the uneven floors.*
 - iii. *A monitoring regime was recommended 12/02/2019 but not carried out.*
5. The Former Tenant notified the Landlords of the defects by email dated 16th December 2020.
6. As part of the Application, the Former Tenant enclosed copy tenancy agreement and Form AT5, email correspondence, photographs and copy survey carried out on 12th February 2019.

7. By email dated 6th March 2020, the Former Tenant informed the Housing and Property Chamber (“HPC”) that he was withdrawing his application.
8. The Tribunal considered whether or not to continue with consideration of the application. The Tribunal decided to continue with consideration of the application due to health and safety issues. The Tribunal issued a Minute of Continuation dated 10th March 2020.
9. An inspection and hearing set down for 23rd March 2020 was postponed due to the lockdown in response to the COVID-19 pandemic.
10. The case was set down for a Case Management discussion to take place on 14th January 2021.
11. The Tribunal issued a Direction dated 21st December 2020 requiring the Landlords to provide the following:
 - (i) An update in relation to whether or not any repairs have been carried out to the House in relation to the matters complained of since the application was made;
 - (ii) Information as to whether the House is currently occupied by tenants;
 - (iii) Details of whether or not there are hard-wired smoke and heat detectors in the House.
 - (iv) Details of whether or not there are carbon monoxide detectors in the House;
 - (v) The name and designation of the person that will attend the teleconference Case Management Discussion on 14th January 2021 at 2pm on behalf of the Landlords.
12. By email dated 5th January 2021, Mr Scott Morrison, Portfolio Manager, Abellio Scotrail Limited, provided the following response:

Further to your request for information in relation to the above file. It is my understanding that the Former Tenant Mr Morrow moved out of the property on the 5th Dec and no longer resides at the property. Furthermore there is no intention to re let the property in its current condition and a view is being taken if indeed the property will remain as a residential dwelling.

13. Case Management Discussions (“CMD”) took place by telephone conference on 14th January, 15th February and 16th December 2021. Following discussion, the CMDs were continued to allow the Landlords to provide evidence that the House is no longer to be used for residential purposes, including evidence of change of use from residential to Class 4 Business.

14. By email dated 30th November 2021, legal counsel for the Landlords provided a copy of a planning permission decision from Perth and Kinross Council dated 24th November 2021, which confirmed that the use of the premises is solely restricted to uses that fall within Class 4 of the Schedule to the Town and Country Planning (Use Classes)(Scotland) Order 1997. The use of the premises for any other purpose will require to be the subject of a further planning application to the Council as Planning Authority.

Decision

15. The Tribunal was satisfied that the House is no longer in use as a residential dwelling. In all the circumstances, the Tribunal decided it was appropriate to dismiss the application.

Right of Appeal

In terms of section 46 of the Tribunals (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.

Helen Forbes

Legal Member and Chairperson
Date: 3rd February 2022