
Compulsory Purchase Order Decision

Inquiry held and site visit made on 29 May 2019

by **John Felgate BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18 July 2018

Case Ref: PCU/CPOH/W4705/3217681

**The City of Bradford Metropolitan District Council
(2 Bull Royd Avenue, Bradford, West Yorkshire BD8 0AX)
Compulsory Purchase Order 2018**

- The Order is made under Section 17 of the Housing Act 1985 and the Acquisition of Land Act 1981.
 - The Order is made by the City of Bradford Metropolitan District Council, and is dated 4 October 2018.
 - The Order authorises the compulsory acquisition of the dwelling known as No 2 Bull Royd Avenue, as shown on the Order Map and described in the Order Schedule.
 - The Order's stated purpose is to bring the property back into use as a housing resource.
 - There is one objection, by Mr Philip Stephens, the owner of the property.
 - The main ground of objection is that the property is Mr Stephens' lifelong home, and is not empty as it contains many of his possessions.
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Decision

1. The City of Bradford Metropolitan District Council (2 Bull Royd Avenue, Bradford, West Yorkshire BD8 0AX) Compulsory Purchase Order 2018, dated 4 October 2018, is hereby confirmed.

Procedural Matters

2. As regards the making of the Order, there is no dispute that the Acquiring Authority has complied with all of the relevant statutory and procedural requirements, including the serving and publication of notices, in accordance with the provisions of the Housing Act 1985, the Acquisition of Land Act 1981, and related secondary legislation. None of these matters has been challenged.
3. During the period leading up to the making of the Order, and up to the date of the inquiry, the objector Mr Stephens was living mainly away from the Order property, and communications with him were conducted primarily via an accommodation address or by telephone. Nevertheless, Officers and administrative staff at both the Council and at the Planning Inspectorate appear to have acted with all due diligence in ensuring that such communications did in fact reach him. At the inquiry, Mr Stephens confirmed that, as far as he was aware, this was so. In these respects I am satisfied that the procedures adopted were the best that could be achieved in the circumstances, and that the objector was not placed at an unfair disadvantage as a result of his situation.

4. I have also paid careful regard to all of Mr Stephens' other relevant circumstances, in so far as these were brought to my attention by him, or were apparent from his submissions and other evidence before the inquiry. Although Mr Stephens appeared on his own behalf, without legal or other representation on the day, he confirmed that he had taken advice prior to the event. In the circumstances, I am satisfied that he was able to make his case as fully as was necessary for me to understand the position. On this basis, I consider that I now have sufficient information on which to make my decision.

Main Issues

5. Section 17 of the 1985 Act empowers local housing authorities to acquire land, houses, or buildings which could be made suitable for the provision of housing accommodation. Having regard to the aims of the enabling legislation and the relevant Guidance¹, the main issues in the present case seem to me to be as follows:
- whether the Order property is currently occupied as a dwelling, or capable of being so occupied, in its present condition;
 - if not, whether there is any reasonable prospect of its becoming occupied as a dwelling, other than through its compulsory acquisition;
 - whether acquisition by the Authority would be likely to succeed in bringing the property back into residential use;
 - whether such action would help to meet a need for housing in the area;
 - whether the return of the property to residential use would have any other benefits to the local area;
 - whether the interference with the objector's human rights would be justified;
 - and overall, whether a compelling case for compulsory acquisition, in the public interest, has been demonstrated.

Reasons for the Decision

Whether the Order property is currently occupied as a dwelling, or capable of being so occupied, in its present condition

6. The facts relating to Mr Stephens' occupation of the Order property at No 2 Bull Royd Avenue, and its current condition, are largely undisputed. From his own account, Mr Stephens grew up in the property when it belonged to his parents, and he has owned it himself since 1965. After his retirement in the 1990s or early 2000s, he started to spend time away from home travelling, and during his absences the house began to be repeatedly broken into, vandalised, and looted. Initially Mr Stephens made good the damage as best he could, but after a few years he found this to be no longer worthwhile, and instead, he started to spend less and less time at the property. At various times, the relevant authorities were called to the property by neighbours during his absence. On three occasions the Council or police boarded up the doors and windows to try to prevent unauthorised entry. In 2010 the water supply was turned off by Yorkshire Water, because of an uncontrolled leak caused by the theft of pipework. In March 2014 there was a fire. Since then, Mr Stephens

¹ 'Guidance on Compulsory Purchase and the Crichel Down Rules': MHCLG, February 2018

has spent most of his time away, visiting the property only occasionally, for no more than a few days at a time.

7. In July 2017 the Council issued a Prohibition Order, under Sections 20 and 21 of the Housing Act 2004, prohibiting the use of the property for the purposes of human habitation. The Prohibition Order identifies a lengthy list of Category 1 and Category 2 hazards, under the headings of: excess cold, personal hygiene, sanitation and drainage, water supply, entry by intruders, inadequate lighting, fire risk, food safety, damp and mould growth, structural collapse and falling elements, and electrical hazards. The Prohibition Order was not appealed against, and will therefore remain in force unless and until revoked by the issuing authority. The Council contends that the service of the Prohibition Order was necessary, to prevent harm to the health and safety of occupiers, neighbours and the general public. It is also stated that any revocation could only take place on the completion of the remedial actions identified in the Order. I have no reason to doubt these submissions. At the present inquiry, Mr Stephens confirmed that since the date of the Prohibition Order, although he has visited the property, he has not stayed or lived there, because he is aware that to do so would be a punishable offence.
8. On my visit, I saw the full extent to which No 2 Bull Royd Avenue has suffered over this 10-15 year period, from the combination of fire, vandalism, theft, weather and neglect. Externally, the ground floor doors and windows are boarded up, although not securely enough to keep out intruders. On the upper floor, the windows are broken and open to the elements. External leadwork has been removed. Internally, the property lacks any semblance of a functioning kitchen, and has no useable bathroom or toilet facilities. Much of the plumbing, pipework and sanitary fittings has been stripped out. The electricity and water supplies have been cut off, for safety reasons. There is no fixed heating apparatus. The plaster finishes to some of the internal ceilings have collapsed, and other plasterwork is crumbling and dangerous. Ceiling joists and other structural timbers are fire-damaged, as is the remaining wiring. From all that I saw, it is evident that in its present condition not only can the property not be lawfully occupied, but in any event it cannot be regarded as habitable in practical terms, as it does not offer any of the basic amenities which most people would regard as necessary for residential occupation.
9. Photographs produced by the Council, dated 2014 and 2017, although not comprehensive, appear to show the property in a similar condition on both of those occasions. The photographs dated 2014 show the house boarded-up and lacking upper windows, and with furniture and debris scattered around the exterior. This is consistent with Mr Stephens' account of his possessions being moved outside when firefighters were tackling the incident that occurred in that year. The photographs from 2017, said to have been taken in July, show the interior in a similar condition to that which I saw on my visit in May 2019. There are also some earlier photographs, dated 2010, which show the property partly boarded up even then, although these do not show the interior. On the balance of the evidence, it seems likely that the property has been in its present uninhabitable condition since around March 2014, if not earlier.
10. Mr Stephens argues that the Order property is not an 'empty home', because many of his possessions are still there, including furniture, clothing, books, household effects, and also his tools and equipment for woodworking and

metalworking. Although many of these possessions have been damaged beyond repair, and what is left of them has been piled randomly from floor to ceiling throughout the house, nevertheless they include items of personal value to Mr Stephens. He therefore contends that even though the house is not being lived in, it is still occupied, by virtue of his continued use of it to store these items. However, to my mind, any role that the property may have in this respect does not change the fact that, for many years, it has not been occupied as a dwelling, nor is it currently capable of such occupation. As for Mr Stephens' desire to keep his possessions somewhere safe, that requirement could be better met elsewhere; and indeed Mr Stephens confirmed at the inquiry that he already rents space in a commercial storage facility for certain other items.

11. I appreciate that Mr Stephens still regards No 2 Bull Royd Avenue as his home, partly because of his own historical attachment to it, but also because he has no other home to go to. But for the same reasons as already stated, these considerations do not change my view on the question of whether it is, or could be, occupied as a dwelling. In this context, I note that in 2017 the property was de-registered for Council Tax, at Mr Stephens' request, on the grounds that it was uninhabitable, and that this was backdated to March 2014, corresponding to the date of the fire.
12. I have great sympathy for Mr Stephens' situation. There seems little doubt that the initial causes of the property's deterioration were not of his making, and subsequent events have escalated the problems to a level which would be well beyond the ability of many home-owners to deal with. But the confirmation of the present Order would not imply any blame on his part.
13. I therefore conclude that the Order property at 2 Bull Royd Avenue is not currently occupied as a dwelling, and has not been so occupied since at least 2014. Moreover, in its current condition it is not capable of habitation. As such, it represents a wasted resource to the local housing stock.

Whether there is any reasonable prospect of the property becoming occupied as a dwelling, other than through its compulsory acquisition

14. The Council has costed the works that would be needed to renovate the Order property at around £30,000. Amongst other things, this figure is said to include fully re-wiring the property, fully re-plastering, a new boiler and heating system, new plumbing, new floors, a full new kitchen and bathroom, new rainwater goods, soil and waste pipes, and replacement windows, doors and joinery throughout. The estimated figure has not been challenged.
15. The Council has offered to assist Mr Stephens with the costs of carrying out these works, through either a Home Appreciation Loan (HAL) or an Empty Property Loan (EPL), or a combination of the two. Although an EPL would normally have to be repaid after 5 years, the Council has offered, on completion of the works, to convert the loan to a HAL, which would have no time limit. No monthly repayments would be charged during the term of the loan, but the Council would take a share of the property's increased value whenever it was next sold or transferred. Potentially, this offer could have produced a workable solution, but Mr Stephens explained at the inquiry that he is not keen to take on any form of debt, even on these terms. And in addition, he is concerned that the same problems, of intruders, theft and damage, could recur, either during the renovation works or even after their completion,

especially as he would prefer to maintain his current lifestyle, with frequent lengthy absences.

16. In any event, any prospect of securing the renovation of the property without a change of ownership would depend on Mr Stephens' willingness and motivation to ensure that such works were completed, within a reasonable timescale. Given his expressed reservations, I have serious doubts as to whether pursuing this route any further would be likely to produce a satisfactory outcome.
17. As an alternative, the Council has offered to purchase the property outright from Mr Stephens, on negotiated terms. Their initial offer was based on the valuation carried out in April 2018. Subsequently this was increased by £5,000 in January 2019. But no further dialogue has been entered into by Mr Stephens, and at the inquiry, he confirmed that he does not want to sell, either on the terms offered or any others. I am not in a position to judge whether the Council's offer is or is not a fair price in the current market. However, it is clear to me that Mr Stephens' reluctance to enter into negotiations is not primarily about the amount of money, but is based on his preference to retain the ownership of the property, come what may.
18. In addition, on six occasions between 2005 and 2017, the Council has forwarded to Mr Stephens expressions of interest which they have received from other prospective purchasers. Mr Stephens has chosen not to pursue these options. Clearly, Mr Stephens was under no obligation to enter into discussions with these other parties, and in declining to do so, he acted within his rights. Nevertheless, his lack of interest in hearing what offers might be available reinforces my conclusions as to the prospects of any solution being found other than through the compulsory purchase route that the Council now proposes.
19. In the light of these matters, I conclude that there is little prospect of No 2 Bull Royd Avenue being returned to a habitable condition while it remains in Mr Stephens' ownership. It is also clear that Mr Stephens is unlikely to enter voluntarily into a sale of the property, to the Council or anyone else, at least within the foreseeable future. In all the circumstances, it seems to me that the only possible means by which the property might be brought back into active use as a dwelling is through the use of the Council's powers of compulsory purchase.

Whether acquisition by the Authority would be likely to succeed in bringing the property back into residential use

20. If the Order is confirmed, then after acquiring the property, the Council proposes to sell it by auction, to a small builder or self-builder, subject to a condition requiring the renovation works to be fully completed within 12 months. A restrictive covenant to this effect would be registered on the title. The Council has had previous experience of securing the renovation of other empty properties in this way, and has had some successes in this regard. Advice from a local estate agent confirms that, despite its poor condition, it is considered likely that a buyer could be found. On past experience, the property could be sold, the works completed, and the property brought back into use, within around 18 months.
21. Alternatively, in the event that the property could not be sold at an acceptable price, the Council would undertake the necessary works directly. At the

inquiry, the Council confirmed that funding for the acquisition, and if necessary for the renovation works too, has been allocated in the Council's current year budget, and these funds are protected against any other requirements that may arise.

22. None of the Council's evidence on these matters is challenged. I see no reason to doubt that if the Order is confirmed, the property would be brought back into active residential use within a reasonable period of time, as the Council envisages. The Order would therefore result in a quantitative and qualitative gain to the local housing stock.

Whether bringing the property back into residential use would help to meet a need for housing in the area

23. The Council's evidence indicates a high level of housing need throughout Bradford. The District's population has grown rapidly over the last decade, but the supply of new housing has not kept pace, due to the difficult financial climate. Across the District as a whole, there is said to be a need for at least 2,200 additional dwellings per year, but since 2009 the net increase has seldom exceeded 1,500 units in any 12-month period, and has more often dropped below 1,000 units. As a result, like many other large urban areas, the demand for homes exceeds the supply. This is manifested in lengthening waiting lists, and rising levels of overcrowding and homelessness. In the Clayton and Fairweather Green Ward, where the Order property is located, 5.6% of households are classed as living in overcrowded conditions.

24. The need to make better use of empty homes throughout the District is identified by the Council as a key priority, in its Housing and Homelessness Strategy, Empty Homes Action Plan, and Local Investment Plan. Over the District as a whole, empty homes represent 2.06% of the total housing stock. In the Clayton and Fairweather Green Ward alone, No 2 Bull Royd Avenue is one of 97 empty properties. Similar action has been taken by the Council, or is currently being pursued, against a number of other empty or unused residential properties, to bring them back into active use.

25. Again, the Council's evidence on these matters is undisputed, and I have no reason to doubt that there is a need for more housing in the District. If the Order is confirmed, and the property brought back into use as a dwelling, it would provide a home for one additional family, and in so doing would make a small but valuable contribution to meeting the area's unmet housing needs.

Whether the return of the property to residential use would have any other benefits

26. From the records produced by the Council, No 2 Bull Royd Avenue has attracted complaints from neighbours, or has prompted them to call for assistance from the relevant authorities, on more than 20 occasions since 2004. These complaints and calls have related variously to: rubbish and fly-tipping, scrap vehicles, overgrown vegetation, blocking of the pavement, broken windows, unauthorised entry, squatting, theft of contents, drug-dealing, discarded needles, leaks and overflows, fire, vermin, smells, visual blight, and the property's general condition.

27. Officers of the Council have attended on all of these occasions, in some cases accompanied by the police or other emergency services. As well as the Prohibition Order that was issued in 2017, against occupation of the property,

the Council has also served other legal notices relating to the property on four further occasions. These include notices requiring the property to be secured, under S.29 of the Local Government (Miscellaneous Provisions) Act 1982, in February 2004 and May 2010, and requiring action in respect of vermin, under S.4 of Prevention of Damage by Pests Act 1949, in November 2004 and January 2016. It is therefore evident that dealing with the property, and the hazards and nuisances that it presents, has taken up a good deal of the time and resources available to the Council and other public authorities.

28. A petition supporting the present Order has been signed by 25 local residents, all with addresses in Bull Royd Avenue, Bull Royd Crescent, or Allerton Road. The petition refers to continuing issues of rubbish and overgrown vegetation, and the property attracting crime and antisocial behaviour. A further four individual letters are before me, which refer to similar issues. It is clear from these that the condition of the property is a source of concern to nearby residents.
29. On my visit, I saw that the property stands in a prominent position, at the entrance to Bull Royd Avenue and the Shuttleworth Hall Estate. The front garden was heavily overgrown and strewn with refuse and items of furniture. With its boarded and broken windows, and general air of neglect and decay, it is evident that the property casts a blight on its surroundings. In addition, I saw that the property is open at the side, giving easy access to its rear garden, which is secluded due to the overgrown hedges and trees, and thus presents opportunities for crime and other unwelcome activities. I also noted that, via the rear garden, access is obtainable to the private communal open space serving the Estate. My observations on these matters bear out the comments expressed by neighbours and local residents, in their written representations and at the inquiry.
30. In all these respects, I am also especially concerned by the fact that the Order property is semi-detached. As such, the blight and adverse impacts that it imposes on the neighbourhood as a whole are likely to be suffered even more heavily by the owners and occupiers of the property which forms the other half of the pair. In my view, the distress and anxiety that must have been caused over the years to these adjoining neighbours in particular, is an important consideration.
31. Bringing No 2 Bull Royd Avenue back into active residential use would relieve the surrounding area of these adverse impacts. Whilst this on its own would not justify the proposed Order, it is clear to me that in its present condition the property has a significant negative effect on the whole area, and that the confirmation of the Order would provide the means of alleviating that impact. The Order would therefore have a beneficial effect on housing and living conditions in the area, over and above its benefits to the property itself.

Whether the interference with the objector's human rights would be justified

32. The compulsory acquisition of the Order property would represent an infringement of Mr Stephens' rights under Article 8 and under Article 1 of the First Protocol, of the European Convention on Human Rights (the ECHR), as incorporated in to UK national law by the Human Rights Act 1998. Article 1 concerns the protection of private property, and Article 8 concerns respect for private and family life. But the rights granted by these provisions are 'qualified' rights, and thus some interference is permissible in some

circumstances, including where such interference is in accordance with the law, and is necessary in the public interest.

33. In the present case, although Mr Stephens regards No 2 Bull Royd Avenue as his home, the reality is that he does not and cannot currently live in it, and has chosen not to do so for many years. And whilst the property could potentially provide him with a home if it were returned to a habitable condition, there appears no prospect of that happening without the intervention now proposed. Although Mr Stephens also sees the property as somewhere to store possessions, again the reality is that the house is not really used in that way, because the items that are there are largely no longer usable or accessible. Understandably Mr Stephens clearly has a strong emotional attachment to the property, but beyond this, it is difficult to see that it provides him with any actual utility. As far as the financial value of the property is concerned, Mr Stephens would be compensated in accordance with the statutory code. Consequently, in terms of any tangible effects, the extent of the infringement of Mr Stephens' rights would be limited.
34. On the other hand, the compulsory acquisition of the Order property would help to meet an established local housing need, and would contribute to improving the quality of the housing stock. In these respects the acquisition would accord with the aims of the enabling legislation in the 1985 Act. The confirmation of the Order would also serve the wider public interests of the local community, in terms of public health, public safety, crime prevention and economic well-being, and would serve to protect the rights of others living in the area.
35. From the evidence before me, I am not aware of any lesser action that could be taken, in place of compulsory acquisition, which would serve the same purposes. The confirmation of the Order would therefore represent a proportionate response to the issue.
36. In the circumstances, I conclude that the interference with Mr Stephens' rights under the ECHR is justified.

Overall, whether a compelling case for compulsory acquisition has been demonstrated

37. For the reasons explained above, I have found that the Order property at No 2 Bull Royd Avenue has not been occupied as a dwelling for many years, and is currently uninhabitable. There is a clear need for housing in the District, and to bring unused properties back into full residential use. While the Order property remains in its present condition, it represents a wasted housing resource, which could otherwise provide a decent home for a local family. The acquisition of the property by the Council, followed by its re-sale and renovation, would provide a means of securing the property's rehabilitation. The evidence suggests that this course of action would be likely to succeed in bringing the property back into use.
38. As well as producing a quantitative and qualitative gain to the local housing stock, the return of the property to residential use, coupled with its physical renovation, would also alleviate the present severe blight on the surrounding area, and the attendant problems suffered by neighbouring residents. This would be a significant social and environmental benefit to the area.

39. As long as the Order property remains in Mr Stephens' ownership, there is no apparent prospect of it being restored to a habitable condition. The Council has tried, by all the means reasonably available to it, to purchase the property by agreement, but to no avail. Consequently, although the use of compulsory purchase should always be a last resort, in my judgement, the point has now been reached where that last resort has become the only way forward.
40. Although Mr Stephens' rights under the ECHR would be infringed, such an infringement is justified in this case, by the benefits to the wider public interest. In addition, bearing in mind Mr Stephens' own written and oral references to his age, I have also had due regard to the Public Sector Equality Duty that arises under the Equality Act 2010. However, for the same reasons as set out above, I consider that any negative impact on him is outweighed by the public benefits that I have identified.
41. In the circumstances, I find that the case made out by the Council for the use of compulsory purchase powers in this case is compelling.

Conclusion

42. For the above reasons, I conclude that the Order should now be confirmed, as set out in paragraph 1 of this decision.

J Felgate

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Riley Smith, of Counsel Instructed by Ms Shereen Sheikh, Legal Officer

He called:

Ms Frances North Environmental Health Officer

Mr Yusuf Karolia Head of Housing Access, Strategy and Homelessness

FOR THE OBJECTOR:

Mr Philip Stephens The objector; owner of the subject property

INTERESTED PERSONS:

Mr Alan Whitrick Clerk to the Shuttleworth Hall Estate Charity

DOCUMENTS TABLED AT THE INQUIRY

- 1 Opening Submissions for the Council
- 2 Letter from Mark Brearley & Co, dated 5 March 2019
- 3 Braithwaite v Secretary of State for Communities and Local Government [2012] EWHC 2835 (Admin)