

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: RPT/0014/03/14

In the matter of Number 14 Dogfield Street Cathays Cardiff CF24 4QJ ( the Property )  
And in the Matter of an Application under Section 11 of the Housing Act 2004 ( the Act )

APPLICANTS Mrs VANDANA ROY and Mr SANJAY KUMAR

RESPONDENT CARDIFF CITY COUNCIL

TRIBUNAL Mr P H Williams – Chairman  
Mrs Ruth Thomas MRICS - Surveyor

Date of Hearing 1<sup>st</sup> May 2014

#### BACKGROUND

1. This is an appeal against an Improvement Notice ( the Notice ) dated the 28<sup>th</sup> January 2014 served on the Applicants by the Respondent pursuant to Section 11 of the Act in respect of the Property which is owned by the Applicants.
2. At the date of service of the Notice the Property was an unlicensed House in Multiple Occupation ( HMO ) but subsequently the occupancy has reduced to two occupiers so that it is no longer an HMO.
3. The Cathays area of Cardiff has a high proportion of properties that are rented out and crime/burglary in Cathays is 13.3% higher than other areas in the City. Accordingly, the Respondent and the Police are making every effort to improve security and to protect occupiers against fire and other hazards.
4. The Respondent wrote to the Applicants on the 15<sup>th</sup> January 2014 advising of the more urgent improvements that were needed and followed this up on the 28<sup>th</sup> January 2014 with the formal Notice .
5. The Applicants appealed against the Notice on the 21<sup>st</sup> February and a Pre Trial Review was set for the 19<sup>th</sup> May 2014. The Respondent wrote to the Tribunal to state that the hazards were such that the matter should be treated as one of urgency. A full hearing was then set for the 1<sup>st</sup> May 2014 but the Applicants objected as they were not in the country. The Procedural Chairman considered the matter and the Tribunal wrote to the Applicants on the 15<sup>th</sup> April 2014 explaining the reasons for bringing the Matter forward and rejecting the request for an adjournment.

#### THE LAW

6. The Act introduced a new housing, health and safety system for Councils to deal with the condition of Housing in their area. A Local Authority has to consider the effect on the health and safety of occupiers and then decide which of the conditions constitute a hazard and if this is the case, whether these hazards constitute a Category 1 or 2 hazard and decide what action is required. This may be an improvement notice, a prohibition notice, or a clearance or demolition notice. Pursuant to Part 3 of the Act, a person on whom a notice is served may appeal to a residential property tribunal.

## THE INSPECTION

7. The Tribunal inspected the Property on the 1<sup>st</sup> May 2014. Miss Angharad Thomas, an Environmental Health Officer, and Mr Richard Grigg, Solicitor, were present on behalf of the Respondent. One of the two tenants gave us access, despite the fact that he had not been warned of the inspection by the Applicants. However, we were not able to inspect the front two rooms on the first floor as the tenant was in work and the doors were locked.
8. The Property comprises a two storey mid-terrace dwelling of traditional construction and built around 1900. It is typical of the many similar properties in terraces on the immediate outskirts of the city centre of Cardiff.

The Property has been re-clad with a concrete interlocking tiled roof but otherwise many of its original features remain. The windows have been replaced with a mixture of UPVC double glazed units, aluminium sash windows and timber framed single glazed units. There is a small forecourt and a hard surfaced garden at the rear, enclosed by the original stone walls at a height of about 1.5 metres. Externally the appearance of the Property suggests neglect and the lack of maintenance is evidenced by broken concrete tiles, blocked gutters, loose and flaking paint, and weeds and debris in the gardens. Internally the accommodation comprises the usual entrance hall with stairs off to the first floor, three bedrooms and a bathroom. The fireplaces had been blocked off and a combination gas fired boiler provided central heating and the domestic hot water. The boiler is at least 7 years old. The electrics have been updated from the original but some time ago.

There were two physical elements referred to in the Notice relating to the Category 1 hazard of excess cold. The first related to the louvred windows at the front. These were fitted at a high level to the ground and first floor bay windows. We also noted that due to missing or broken locks in the middle and rear living rooms, the windows could not be properly closed to guard against cold. Secondly, the Respondent had identified a problem with perished plaster due to damp ingress in the rear living room which it considered was contributing to excess cold. The Applicants had, in point (e) of their letter of the 22<sup>nd</sup> April 2014, indicated that this was an historic matter and that the external guttering had been replaced to cure the problem, but accepted that they had not replastered. We noted that the internal plasterwork had perished in places but that the affected area was relatively dry. There was also a large louvred vent within the plasterwork. Externally, there was an old metal hopper which collected waste from the bathroom above, and rainwater from a small roof over a ground floor window, before discharging into a narrow downpipe section. The section of rainwater guttering appeared to be new. The hopper size appeared inadequate and there is every likelihood of overspilling occurring. The downpipe did not reach down to fully discharge its contents effectively into the open gully at ground level. This gives an opportunity for splash back onto the wall and could cause penetrating damp.

In respect of the Category 1 hazard of Entry by Intruders, the Respondent identified issues with the front and rear doors, the ground floor window locks, the rear gate and the vegetation in the front garden. We inspected the front door, and this appeared to be a replacement timber door with a single glazed panel on the upper half. There was a small letterbox, a surface mounted Yale type lock with thumb turn, a mortice lock with no key and a door chain. The rear door was a replacement timber door with a single glazed panel on the upper half. It had two mortice locks and a bolt. The mortice locks had keys and the locks and bolts were in working order. The rear gate was a timber ledge and braced door with large bolts at the top and middle braces. The front gate was loose and swung out and rested outside of the boundary of the Property onto the pavement. There was no side post nor latch to retain the gate. There was a large evergreen bush in the front garden which obscured the view into the street and there were lopped branches lying in the forecourt.

In respect of the Category 1 Fire hazard, the Respondent referred to three physical elements, namely the lack of an adequate alarm system, the provision of doors/fire doors and covers to

the electric meters. We noted a simple domestic battery ceiling mounted smoke detector in the rear living room and a second one in the front part of the hall at the foot of the stairs. These were both tested in our presence. The one in the living room was working but the one in the hallway was not. We noted that all the internal doors were replacement doors and were now solid wooden doors. The exception was the kitchen door, which was the original wooden panelled door and there was no door present between the hallway and the rear living room. The incoming electric supply and its meter were positioned on a timber board at a high level in the hall, adjacent to the middle living room, with a fuse box above. There was no casing to the meter nor the fuse box

#### THE HEARING

9. This took place at the offices of the Tribunal in Wood Street Cardiff with Miss Thomas and Mr Grigg in attendance.

#### ISSUES for DETERMINATION

10. To consider the Hazards and their categories and the remedial action proposed by the Respondent.
11. To consider the point that on Page 80 of the Respondent's bundle the Fire Hazard is classed as Category 2 ,yet is classed as Category 1 in the Notice.
12. To consider what variations might be needed as a result of the Property ceasing to be an HMO
13. To consider the objections of the Applicants set out in their letters of the 13<sup>th</sup> March and 22<sup>nd</sup> April 2014.
14. To consider whether the Notice should be confirmed, quashed or varied.

#### DECISION

15. The Tribunal considered the Applicants' objections. It was noted that the Applicants were not objecting to the categorisation of the hazards, nor, in general, the nature of the hazards themselves. As they state in their letter to the Tribunal of the 13<sup>th</sup> March 2014 their main reason for their appeal was that they had the Property on the market for sale. However, a sale may or may not happen and we do not consider that this is a sufficiently good reason for an appeal to succeed. In their letter of the 22<sup>nd</sup> April the Applicants asked that the tribunal consider 6 points :-
  - (a) that they are not professional landlords. However, the fact remains that they are landlords and must comply with the law for the protection of their tenants.
  - (b) that the tenants have not complained. Whilst this may be correct the fact remains that there are hazards and that the Respondent has a duty to issue an appropriate Notice if there are hazards.
  - (c) that there were two smoke alarms at the date of the inspection and that they had subsequently replaced one. It is correct that the Applicants have replaced one alarm but the other was not working at the date of our inspection. The Respondent is seeking two wired smoke alarms in different locations as referred to below.
  - (d) that the tenants had not complained about draughts because the Applicants pay the heating and electricity bills. Again, the Respondent is entitled to consider the question of excess cold and to issue an improvement notice if the hazard exists. At the date of our inspection the central heating system was switched off and there is no corroborative evidence that the bills are paid by the Applicants. Even if there had been we have to consider whether the Property suffers from excess cold notwithstanding the existence of a gas central heating system
  - (e) that the broken guttering had been mended but that the walls had not been replastered. We noted that there was, indeed, a new external pipe and this might have reduced or removed the damp problem in the sitting room. We have amended the remedial action as referred to below, despite the fact that the walls have not been replastered. It remains to be seen as to whether the new pipe has fully resolved this issue.

- (f) That the Property is on the market. As stated above this is an insufficient reason for the appeal to succeed.

#### THE NOTICE

16. We then considered each of the Hazards and the remedial action that was needed

##### Item 1 Excess cold

17. The Respondent accepted that as the Applicants had renewed an external pipe that the second paragraph of the remedial action relating to dampness could be removed. We agree and quash the second paragraph; but confirm the first paragraph of the remedial action.

##### ITEM 2 Entry by Intruders

18. The Respondent accepted that as the Property was no longer an HMO then some of the remedial action needed amending. Following a discussion we substitute the following :-  
Upgrade the mortice lock on the front door and supply a key to both occupiers  
The letterbox must be fitted with a security cage or cowl on the inside of the door  
Replace the glazing within reach of the locks on the front door with 6.4mm laminated glass.  
Alternatively provide a suitable grille or other form of protection to fit over the glazed area.  
As an alternative to the preceding three sentences relating to the replacement of the glazing or the provision of a grille, and in the event of your deciding to change the front door then the replacement door must be certificated to a PAS 24:2012 standard ( with a thumb turn being optional ). This front door must , in addition, have :-

1. A letterbox fitted with a security cage or flap and
2. The front door must not be capable of being unlatched or opened from the outside unless the key is used. Any external handle must not retract the latch bolt unless the key is used.  
Many doors are capable of upgrading by the replacement of handle and spindle sets ; other doors may require replacement of the locking mechanism ( Your local master locksmith will be able to advise you on the works required to your door – see [www.locksmiths.co.uk](http://www.locksmiths.co.uk) to find your local locksmith ).

The Respondent accepted that following improvement works, the back door does not need further overhauling and that this remedial action can be removed from the Notice. We confirm that this paragraph shall be quashed.

The Respondent requested that the subsequent 4 paragraphs of remedial action should remain and we confirm their retention.

##### ITEM 3 Fire

19. We first considered the fact that the Respondent, on page 80 of its submissions, calculated the Fire hazard as Category 2 yet classed it as Category 1 in the Notice. Miss Thomas could not explain this discrepancy but maintained that it was a Category 1 hazard. There is clearly a Fire hazard at the Property and it is arguable that Section 230 of the Act allows a Tribunal to redesignate the hazard as a Category 2 hazard and to amend the Notice to include a statement to the effect that it incorporates Section 12 as well as Section 11 of the Act. We also considered the possibility of adjourning the Hearing and to order the Respondent to do a full recalculation of the scoring of all the hazards. However, we are also mindful that the Applicants have not contested the existence of the hazards nor their categorisation. Further, it is clear that, as a generalisation, the Upper Tribunal ( Lands Chamber ) considers that it is not for residential property tribunals to raise issues that have not been raised by the parties and that if a Tribunal considers that an issue must be raised then both parties must be allowed time to consider their responses. In this instance the Applicants were not present at the hearing and delay could be detrimental to the occupiers, and quite possibly dangerous. The Respondent has already pressed the urgency of the matter and so we decided to proceed on the basis of a Category 1 hazard. As regards the remedial action, the Respondent stated that as the property was no longer an HMO, it was reasonable to reduce some aspects. It proposed the following amendments :-

Provide and install a LD3 Grade D Fire Alarm in the Property. This system must comprise a smoke detector in the ground Floor Hallway and on the landing. All detectors must be mains wired with a battery back up, and must be interlinked. On completion a qualified contractor must provide certification documentation.

Fit a door between the lounge and the hallway, of sound, close fitting, conventional construction. The Respondent also proposed that the final paragraph of the remedial action relating to the meters and consumer units be removed.

We confirm the above variations and quash the final paragraph of the remedial action

20. The Tribunal confirmed the Notice subject to the above amendments.

#### COSTS

21. On the application of the Respondent the Tribunal orders the Applicants to pay the Respondent the sum of £176.00p as demanded in the Notice of the 28<sup>th</sup> January 2014 within 30 days from the date of this decision.

#### TIMESCALE

22. On the application of the Respondent the Tribunal orders that the Applicant shall complete the remedial action contained in the Notice, and as varied herein, within 30 days from the date of this decision.

23. Either party may appeal this decision to the Upper Tribunal ( Lands Chamber ) . An Application for leave to appeal should in the first instance be made to this Tribunal and must be made within 21 days from the date of this decision

24. This decision was made on the 1<sup>st</sup> May 2014.

DATED this 7th day of May 2014



CHAIRMAN