

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)
Leasehold Valuation Tribunal (Wales)

First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW.
Telephone 029 20922777. Fax 029 20236146. E-mail: rpt@wales.gsi.gov.uk

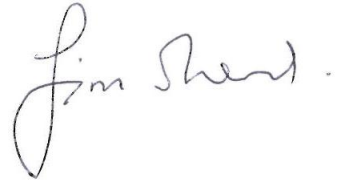
DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL
Housing Act 2004, Sch5

Premises:	87 Minney Street, Cathays, Cardiff CF244EU ("the premises")
RPT ref:	RPT/0012/03/14
Hearing:	23 rd June 2014
Order:	
Appellant:	Mohammed Shahid Munir
Tribunal:	Mr JE Shepherd – Legal Chairman Mr M Taylor MRICS

ORDER

1. The appeal is dismissed.

Dated the 15th day of July 2014

A handwritten signature in cursive script, appearing to read "Jim Sheehy".

Lawyer Chairman

Introduction

1. This is an appeal brought by Mohammed Shahid Munir against the decision of Cardiff Council to grant him a HMO license for a maximum of 8 occupants at 87 Minney Street, Cardiff, CF24 4EU (“The premises”). Mr Munir asserts that the license should have been granted for a maximum of 9 occupants.
2. The tribunal has decided to dismiss the appeal for the following reasons.

Background

3. Mr Munir owns a number of houses in multiple occupation (HMOs) in Cardiff including 87 Minney Street. He purchased this premises on 16th December 2011. He obtained planning permission to construct a 2 storey extension to the premises to provide a single unit of residential accommodation. In fact in July 2012 he let the premises out as a HMO occupied by 10 students. Subsequently he submitted a planning application to seek to regularise the position however this was refused. Mr Munir appealed this decision. After the Residential Property Tribunal hearing the planning inspector refused the appeal. This is dealt with further below.
4. On 14th September 2012 the Appellant applied to Cardiff council for an HMO license. The case was allocated to an officer called Nick Stavrakis. On 20th December 2012 there was an anonymous complaint to the council from one of the students at the premises. The complaint concerned the lack of space and amenities at the premises. On 8th March 2013 Rachel Stickler of the Private Sector Housing division of Cardiff Council made an impromptu visit to the premises and was allowed in by the tenants. They complained to her about the limited space in the living room and kitchen where they wanted to be able to congregate. Ms Stickler carried out a full licensing inspection in order to assess the premises for the number of occupants. She subsequently made enquiries with the Building Control and Planning departments.
5. On 15th April 2013 Rachel Stickler, Stuart Bannister (Planning) and Graham Fox (Building Control) inspected the premises. Mrs Stickler measured the rooms. Later she compared the room sizes to space standards used by the council. Under those standards a kitchen used by 10 people ought to be 17m². In the premises the kitchen was only 10.94 m². The living room for 10 people ought to have been 21.5 m², in the premises it was only 13.4m². She therefore considered that the premises were only suitable for 7 occupants however after discussion with her manager Steve Tudball and Angharad Thomas the Senior Environmental Health Officer it was decided that the premises should be licensed for 8 occupants.
6. On 10th September 2013 a draft license was issued for 8 occupants. The letter accompanying the license invited representations (App5). Following an email from Mr Munir raising issues with the draft license there was a meeting at the premises involving him, Rachel Stickler and Steve Tudball. The ground floor of the premises was inspected. Mr Tudball expressed reservations about the size of the kitchen and lounge and the placement of the cooker hobs. Mr Munir said he could change the layout in order to provide a lounge in place of one of the bedrooms and a dining room

in place of the existing lounge. He said he would provide plans for the new layout in due course.

7. On 4th December 2013 Jennifer Vincent handed in revised plans (C1) to the reception at City Hall on behalf of Mr Munir. These are the same plans that had previously been submitted to the planning department as part of the planning application. In the event although the plans were addressed to Steve Tudball they did not reach him accordingly as far as he was concerned Mr Munir had not made any further representations since the meeting.
8. On 13th February 2014 the council granted a license for 8 occupants (C2). On 8th March 2014 Mr Munir appealed against the terms of the license to the Residential Property Tribunal (RPT). In his appeal Mr Munir's assertions include:
 - That his application was mishandled by the council.
 - That there was not enough liaison about the amenity space in the premises.
 - That the council did not give proper reasons for refusing to grant a license for 9 people.
 - That no information was given about the appeal process.
 - That numerous houses in Cardiff with smaller amenity space had been issued with licenses allowing more occupants.
 - That he was willing to compromise and was only seeking a license for 9 people.
 - That he has been harshly dealt with.
9. In response the council submitted a full statement of reasons as to why eight should be the maximum number of occupants in the premises. They compared the room sizes with their own amenity and space standards; the Amenity Standards for HMOs (IEHO) and Amenities and Space in HMOs (DASH) (all contained at A1) The table on page 13 of the council's statement of reasons illustrates the comparison. They conclude that the kitchen and living room at the premises were inadequate for 10 occupants and were suitable for a maximum of 7 people applying the criteria strictly. They also highlighted the fact that under the Housing Health and Safety Rating System operating guidance (A14.1) lack of space and overcrowded conditions were linked to health risks and there should be enough space for social interaction between members of the household.
10. Although the council maintained that they had not received the amended plans from Mr Munir they considered the plans in their response to the appeal and commented that the kitchen size did not seem to have increased. Concern was also expressed about the fire safety of the ground floor front right side room which was an inner room.

The Inspection

11. The tribunal inspected the premises at 10.30 am on the day of the hearing. It is an end of terrace 2 storey building of traditional construction with a decorative brick elevation being constructed approximately 1900.
12. There is a 2 storey extension built on the side of the building. This was built in 2011/2012. The building has a cement slate effect tiled roof. There is in addition a single storey extension of similar construction to the rear which also provides access

to a small external yard which at present is enclosed by brick/stone walls. The windows and doors are UPVC. At the front of the building the windows are casement. The barge boards are missing at the front. There was only one student in occupation presently. The rest of the building was vacant.

13. Internally there are 10 bedrooms on three floors, one kitchen and a lounge on the ground floor. There are showers on the ground and first floor and toilets with wash hand basins on the first and second floors. The bedrooms vary in size. The parties agreed the measurements prepared by Rachel Stickler of the local authority which are at page 99 of the council's bundle.
14. There are smoke alarms within the building which apparently are interlinked. There are fire doors but they do not have intumescent strips – accordingly the fire doors are currently of limited value in safety terms. In the kitchen there are two fridge freezers, 2 cookers which are adjacent to each other, 2 sinks and 2 cooker hoods. When we inspected one of the cookers had a note on it saying “do not use”. Apparently this was because the students had cleaned it and did not want it used again before the surrender back to the landlord.

The Tribunal hearing

15. The tribunal hearing began at 11.30 am. Mr Munir did not have representation. The council were represented by Mr Grigg a solicitor. Evidence was given by Mr Munir, Rachel Stickler and Stephen Tudball for the council.
16. Mr Munir introduced his appeal. He explained that the property is currently a 10 bedroom house. Following the meeting with the council after he had received the draft license in October 2013 he had produced revised plans for a nine bedroom property with better amenity space. He submitted the plans to the council who did not respond. His case is that the plans were the same plans that were submitted to the Planning Department in October 2013. These were submitted by Jennifer Vincent marked for the attention of Steve Tudball on 4th December 2013 (see C1 of his exhibits).
17. Mr Munir accepted that the plans for the revised layout had not been received by Steve Tudball or his department. Their department is Regulatory and Supporting Services. This is not part of the Planning Department. They are structurally separate departments but are located in the same building. They use the same reception area. Mr Munir said that he had previously submitted documents to this reception marked for the attention of individuals. Jennifer Vincent who wrote a letter confirming that she had submitted the plans marked for the attention of Steve Tudball on the 4th December 2013 (See C1) was not in attendance at the hearing. Mr Munir accepted in the circumstances that Steve Tudball had not received the plans because he could not suggest otherwise.
18. In any event the parties agreed that the non - receipt of the plans was not a significant issue in the case. The tribunal was able to look at matters afresh and take into account information that was not before the council at the time when they made their decision to grant the license. The council had considered the revised plans in their response to the appeal and decided that they would not have altered their decision to grant a license for 8 people. Therefore the fact that they had not received the plans was of no real effect.

19. Mr Munir said that he was more than happy to work with the council to ensure that the required amenity space was available. He said that he had previously worked with council officers to find a solution to any issues that had been raised by them. He said on this occasion the council had not been in touch with him and he had simply been sent the license for 8 people after the meeting in October. They had not responded to the plans.
20. Mr Grigg said the license was granted for 8 people on the evidence that was available to the council at the time. The council had not received the revised plans and had not considered them. However having received the plans with the appeal they had not altered their view that the premises should be licensed for 8 people. The council were particularly concerned about amenity space. The big issue as far as the council was concerned was the kitchen. In hindsight the council may have only granted the license for 7 people. Having seen the kitchen at the inspection it was hard to see how 8 people could share it. The council were also concerned about the layout of the kitchen with 2 cookers next to one another with little surface space. If a hot pan was moved there may be limited space to put it.
21. Mr Munir said that the premises had been let to two lots of students since they had been converted in 2011/2012. The plans at B1 of his evidence showed the revised layout. In addition a kitchen company had prepared some drawings of the layout (B2-B4). The plans involved moving the lounge to the space currently occupied by one of the ground floor bedrooms and replacing the existing lounge with a dining room adjacent to the kitchen.
22. Mr Munir said that one of the main problems was that the council had not engaged with him to try and resolve the problems. He had felt ambushed when all of the council departments attended the premises. There had been a lack of communication. If he had been contacted he could have dealt with the matter amicably. After the meeting in October he thought that if he changed the plan for the ground floor the council may agree to him having a license for 9 people. In the event he had no communication from the council except the receipt of the license. He accepted however that if the relevant department had not received the plans there would be nothing to prompt them to contact him.
23. Mr Grigg said the proposed plans for the kitchen at B1 appeared to show that the kitchen was not going to be increased in size. There was a step going from the lounge into the kitchen and they were in effect separate rooms. Mr Munir said that some of the units and the fridge freezers could be moved from the kitchen into the proposed dining room and a unit could be put in under the stairs. Mr Grigg said that the kitchen was still inadequate in size. The kitchen was roughly 11 m² and needed to be 12 m² in order to accommodate 8 people according to the council's space standards. For 9 people the kitchen would need to be 14.5 m². Mr Munir said that the step between the two rooms had not been raised previously by the council. The main issue had been the position of the cookers. If there was a problem with the step he could have it levelled. Mr Munir also suggested that the lobby area in front of the WC/Shower adjacent to the kitchen could be removed in order to increase space. Mr Grigg's view was that this would only increase the space sufficient for 8 people (*i.e* the existing license) rather than for 9 people. Mr Munir maintained that a kitchen /diner arrangement would increase the space available.

24. Mr Munir confirmed that planning permission had been obtained to convert 87 Minney Street on the basis that the intended use was as a single family home. Once the work was carried out he had then made an application to license the premises as an HMO. He said it was a “grey area” in Cathays. The approach he had taken was the route that people took regularly and it had never been an issue. He said that until the planning issue had been resolved he did not intend to re-let the premises.
25. Ms Stickler gave evidence for the council. She said that at the time that she was working on the present case she was part of the Enforcement team but had been working with the Licensing Team. She had since been promoted to an HMO Officer. Mr Munir said that Ms Stickler was not one of the usual officers he dealt with. Mr Stickler confirmed however that she had been working in liaison with Steve Tudball and Angharad Thomas (who Mr Munir had previously worked with). The case had been allocated to Nick Stavrakis but he had gone off sick and the license had to be dealt with and she had been asked to assist. She was qualified to deal with the case. She did not know exactly how many licensing cases she had dealt with before. The number was in single figures.
26. She said that when she assessed the amenity space at the premises she had found that there was only really enough space for seven people (see calculations at page 99) according to the council’s standards. She had discussed the matter with Mr Tudball and Ms Thomas and decided to offer some flexibility and allow a license for 8 people. It was confirmed that the license conditions attached to the license (Page 82) were standard conditions and did not require any increase in the size of the floor area in the kitchen and lounge of the premises. However there was a requirement that the ground floor left side room be made fire safe with an escapable window (reverse of page 81).
27. Mr Munir said that the amenity space in the proposed plans was increased because there was a kitchen /diner and the total amenity space exceeded what was required for 9 people. Ms Stickler expressed concern about the proposed positioning of the cookers on either side of the kitchen. As well as being used as a kitchen people would pass through on their way to the toilet and shower. This could present a hazard. This would be more pronounced if 9 people were in occupation. Mr Munir said that in a commercial kitchen it is not unusual to have a cooker on either side of the room. Ms Stickler however considered that this was a different situation. Occupiers would not necessarily be safety aware. There may be four people cooking at the same time.
28. Steve Tudball also gave evidence for the council. He considered the proposed plans for the premises (page 117). He said that applying common sense and his experience and having inspected the premises again he did not consider that the kitchen and lounge (the proposed dining room) at the premises were a single room. They appeared to be two rooms. There was a narrowing of the doorway between the two rooms and there was a step from one room to the other. There was not one open plan living space. He said that it was difficult to express a view about the proposed plans because they lack detail and required further description. In any event the plans still showed a narrowing between the two rooms and he considered that there were still 2 distinct rooms. He accepted it was a matter of judgment. The plans did not alter his view that the premises were only suitable for a maximum of 8 people. It did not appear that additional space was being provided in the kitchen. He considered that the best

arrangement for the cookers was to have them either side of the room but at staggered positions with a preparation area.

29. After the hearing the council sent the tribunal the appeal decision made by the Planning Inspector Richard Jenkins. He dismissed Mr Munir's appeal. The Tribunal do not consider that the planning appeal outcome has any direct bearing on the decision we have to make which concerns the application of different legal criteria. Accordingly we have not given the appeal decision any weight.

The relevant law

30. The Housing Act 2004, Pt 2 contains the relevant legislation on Licensing of Houses in Multiple Occupation. Under s. 64 of the Act the local housing authority dealing with an application made under s.63 must either grant a license or refuse to grant a license. Before granting a license the authority must be satisfied amongst other things that the house is reasonably suitable for occupation by the maximum number of households or persons specified in the application or some other maximum number decided by the authority (s.64(3) and (4)). The authority cannot be satisfied that the house is reasonably suitable if they consider that it fails to meet the prescribed standards for occupation by the particular number of households or persons. (s 65(1)).
31. In the present case the relevant standards are included in the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) Wales Regulations 2006 (SI2006/1715) ("The 2006 regulations"). Para 3 of Schedule 3 of those regulations states the following:

Where all or some of the units of accommodation within the HMO do not contain any facilities for the cooking of food—

(a) there must be a kitchen, suitably located in relation to the living accommodation, and of such layout and size and equipped with such facilities, so as to adequately enable those sharing the facilities to store, prepare and cook food;

(b) the kitchen must be equipped with the following equipment, which must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities—

(i) sinks with draining boards;

(ii) an adequate supply of cold and constant hot water to each sink supplied;

(iii) installations or equipment for the cooking of food;

(iv) electrical sockets;

(v) worktops for the preparation of food;

(vi) cupboards for the storage of food or kitchen and cooking utensils;

(vii) refrigerators with an adequate freezer compartment (or, where the freezer compartment is not adequate, adequate separate freezers);

(viii) appropriate refuse disposal facilities; and

(ix) appropriate extractor fans, fire blankets and fire doors.

32. Schedule 5 of the Housing Act 2004 deals with the procedure and appeals relating to the grant and refusal of licenses. Paragraph 31(1) of the schedule states that an applicant may appeal to the tribunal against a decision by a local housing authority on an application for a license – (a) to refuse to grant the license, or (b) to grant the license. Paragraph 31(2) states that an appeal under (b), may in particular, relate to any of the terms of the license. This is the operative provision in the present case.

Application of the law

33. Although Mr Munir’s appeal touches on a number of issues concerning the manner in which the council dealt with his license application he accepted that his principal objection was the fact that they had imposed a limit of 8 occupants in the license. He maintained that the premises were suitable for 9 occupants particularly once the proposed works were carried out in the revised plans at B1. This therefore was the focus of the tribunal’s attention. Indeed it is questionable whether the tribunal had jurisdiction to look at the wider issues concerning the manner in which the application was handled by the council. These issues are probably better dealt with by complaint. The tribunal understands that Mr Munir has been sent a copy of the council’s Corporate Comments, Complaints and Compliments Policy (Page 87).
34. Accordingly this appeal under paragraph 31 (2) of Schedule 5 Housing Act 2004 was limited to addressing Mr Munir’s grievance about the terms of the license granted to him on 13th February 2014.

The Tribunals decisions

The existing layout

35. The council are entitled to rely on their own space standards in determining the suitable number of occupants in an HMO. They are also entitled to rely on other appropriate space standards including those produced by DASH and CIEH. Indeed if the council did not make reference to such standards it is difficult to determine how they could apply the 2006 regulations in a structured manner. The regulations require a kitchen of *such a layout and size* so as to adequately enable those sharing the facilities to store prepare and cook food. Without applying standards the council’s application of these regulations would undoubtedly be subjective and random.
36. The measurements for the room sizes taken by Ms Stickler were accepted by Mr Munir and he did not challenge her application of those measurements as against the space standards referred to above. In accordance with those calculations the council had arrived at the conclusion that the kitchen and living space was only suitable for 7 persons. The council had therefore given some latitude in allowing a license for 8 people.
37. The tribunal can find no fault in the council’s approach.

The revised layout

38. The tribunal carefully considered whether the revised plans would accommodate 9 occupants. In particular regard was had to the question of whether the additional dining space adjacent to the kitchen would render the premises more suitable for a greater number of occupants.
39. There is no doubt that the proposed layout is an improvement on the existing one. The dining area in addition to the lounge would provide occupants with better facilities for socialising and congregating together thereby addressing a specific complaint from previous occupants at the premises. However although the plans are not entirely clear it does appear that the kitchen has not been increased in size. The council's justifiable concerns about the size of the existing kitchen have not therefore been addressed. Furthermore the plans show that the kitchen and dining area will remain essentially separate rooms connected by a doorway. Whilst Mr Munir made various suggestions about the way in which the separation between the rooms could be addressed and about how the kitchen facilities could be extended into the dining area the proposed plans which were before the tribunal did not include these suggestions and it would not therefore be appropriate for the tribunal to consider them.
40. The tribunal can find no fault in the council's interpretation and application of the revised plans.
41. The appeal should be dismissed.