

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

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

Premises: 15 Cosmeston Street, Cathays, Cardiff, CF244LP (“the premises”)

RPT ref: RPT/0002/04/15-Cosmeston Street

Hearing: 22nd July 2015

Order: **The appeal is dismissed.**

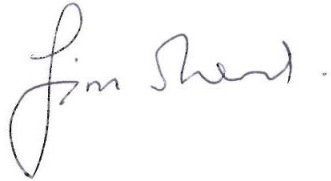
Appellant: **Mr MJ Ashby**

Tribunal: Mr JE Shepherd – Legal Chairman
Mr K Watkins FRICS

ORDER

1. The appeal is dismissed.

Dated this 4th day of August 2015

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

Lawyer Chairman

Introduction

1. The Appellant and his wife are the owners of premises at 15 Cosmeston Street, Cathays, Cardiff, CF24 4LP. He is appealing the decision of the Respondent Council to grant a HMO license for five people only on 12th March 2015. He is also appealing the license condition imposed by the Respondent preventing the Appellant from using the first floor front left room (“first floor front left bedroom”) as a bedroom because it is too small. The Respondents had previously issued a license for six people in 2009. When the license came up for renewal this year a license for 5 people was granted.

The Inspection

2. The Tribunal inspected the premises on Wednesday 22nd July 2015 at 9.30 am. The property is a mid-terraced two storey dwelling house with a two storey projecting front bay and a single storey rear addition having been constructed approximately 110 years ago. It is situated in an area of similar types and ages of property on the outskirts of Cardiff City Centre.
3. The front elevation is of brickwork with painted stonework quoins, heads and cills to the bay, beneath a simple pitched and substitute slated roof covering, with a similar covering to the single storey rear addition. Windows, where seen, are of the white PVC double glazed type, with a glazed canopy over the front entrance door.
4. Over time, the property has been extensively altered: with roof lights having been fitted into the roof coverings, a self - contained flat formed within the main roof frame and a wall taken down between the kitchen and rear sitting room as examples.
5. The Tribunal inspected the first floor front left bedroom. The size of the room was measured at 4.982m². The parties agreed this size. Mr Ashby was originally arguing that the window reveal was also part of the room size but he decided not to pursue this line of argument as the hearing progressed.

The Tribunal hearing

6. The Tribunal hearing commenced at 11.30 am. Evidence was given by Mr and Mrs Ashby and Rachel Stickler and Angharad Thomas for the Respondents. Mr Ashby represented himself and the Council were represented by a solicitor, Mr Grigg.
7. Mr Ashby argued in his written submissions that:
 - (a) Legislation controlling the construction of buildings and the minimum sizes of rooms was not retrospective (he did not pursue this argument during the hearing and accepted that the licensing and HHSRS standards apply to any building even those constructed prior to the coming into force of the Housing Act 2004).
 - (b) That the income that he and his wife derived from the premises was threatened because they could not let the first floor front left bedroom.
 - (c) That the Council had inspected the premises previously when he was carrying out the conversion into an HMO (January 2005) and no issue had been raised about

the size of the room in question. Mr Keogh from the Council had sent a letter following the inspection (Page 5 of the Appellant's bundle). The Council had again inspected in July 2005 and again no mention of the size of the room had been made. A confirmatory letter was sent by Mr Probert on 19th July 2005 (Page 6).

- (d) The Council had granted a license for 6 people on 29th June 2009 (Page 4, Appellant's bundle). There was no copy of the documents relating to this license in either appeal bundle. It was accepted by the Council that the license had been granted for 6 people. This was a mistake they said.
 - (e) The first floor front left bedroom was suitable for occupation. It was well ventilated, with a good size window and adequate light. The occupier could use the living room/dining room to study.
 - (f) The provision of accommodation in the first floor front left bedroom was assisting younger people in providing accommodation for those who could not afford higher rents. The rent for the first floor front bedroom was £190 per calendar month. The other rooms were let out at £290 per calendar month.
 - (g) The works required to enlarge the first floor front bedroom would be disruptive and costly.
8. The Council argued in their written submissions *inter alia*:
- (a) That an HHSRS assessment for an Overcrowding and Space hazard carried out by Rachel Stickler had found the first floor front left bedroom was a Category 1 Hazard (see Appendix E). It states: "The first floor front left side room measures 4.8m² which is below the standard of 6.5 m². The available space is therefore much less than the norm and there is little room for belongings and personal effects to be stored safely and for studying. The property is lived in on a bedsit with shared facilities and the communal area is not conducive to quiet time to study. The likelihood of an occurrence is judged to be significantly greater than the average".
 - (b) The fact that the Appellant's retirement income may be affected by not using the room in question was not as important as ensuring that a tenant was not put at risk.
 - (c) The fact that neither Daryne Keogh or Ian Probert had raised the issue of the size of the first floor front left bedroom was irrelevant because in 2005 the licensing provisions had not come into force. Further the fact that a license had been granted for six people in June 2009 was an error and the Council now wished to correct the error.
 - (d) The Council relied on a comparative table of single minimum room sizes from various sources including the Housing Act 1985,s.326 (Appendix J - overcrowding provisions); the metric handbook (Appendix M); the IEHO Amenities Standard for HMOs (Appendix J) and the Council's own space and amenities standard (Appendix H) all of these sources suggested that the first floor front left bedroom was too small for one person.

- (e) That the communal area at the premises was not conducive for work and studying by the occupier of the first floor front left bedroom. The open plan kitchen, dining and living space was not adequate additional space for the occupant to use as a study room when there would be others cooking, watching TV etc.
9. In oral submissions Mr Ashby stated that the room was above 50 square feet and therefore the overcrowding criteria under the Housing Act 1985 did not apply. Steve Tudbull for the Council had told him that the Council were bound by the law and could not change the law in relation to room sizes. He also stated that the size of the room was compensated for by the living room where the occupier was able to study. The other rooms in the house were large enough to ensure that the other occupiers seldom used the lounge.
10. Mr Ashby argued that the Council's license decision ran contrary to previous decisions they had made. He had requested that members of the private housing team should visit the house in 2005 as works were underway to ensure that the building would in all respects conform to the requirements for letting 6 rooms in multi occupancy. Plans had been provided to Mr Keogh of the Council. It was pointed out at the time that the top flat let had to be self-contained with its own kitchen since regulations stated that only 5 rooms could be serviced by one kitchen. The confirmatory letter by Mr Keogh dated 27th January 2005 stated "following our meeting please find below a list of works required in order that the property meets with the standards of HMO in Cardiff" this statement according to Mr Ashby was not restricted to fire regulations.
11. Mr Ashby stated that a second visit was requested in July 2005 before finishing the works. Mr Probert the inspector made no mention of the sizing of the rooms though he inspected all of them and knew that the plans showed 6 letting rooms. At the inspection of the house prior to the issue of the HMO license of August 2009 for 6 people no adverse comment was made about the size of the first floor front left bedroom. Mr Ashby therefore stated that 3 Council officers had accepted the first floor front left bedroom as a habitable room. He had relied heavily on the advice of the first and the second Council officers in carrying out works for the house to be made suitable. If Mr Keogh had said the first floor front left bedroom had been too small he would have opened up the room and enlarged it. This would have spoiled the proportions of the larger room next door but it would have been straightforward to carry out.
12. Mr Ashby said that the last occupier of the first floor front left bedroom had been a lady from Hong Kong who had been studying and also teaching. His wife said they did not advertise for students but advertised instead for young professionals. They didn't take students normally except mature students on post graduate courses. Mr Ashby stressed that the low price of the small room (£190 per month as against £290 per month for the other rooms) was attractive to many people. In 10 years of letting the room nobody had complained about the size of it. He was willing to ensure that any term granted to an occupier of the small room would be limited to 3 months so that an occupier would not be tied into the agreement for too long.

13. Mrs Ashby challenged the evidence of the Council at paragraph 7.12 of their submissions which suggested that the letting of small rooms could cause depression. On the contrary she stated people who could not find rooms were likely to suffer depression. The room was affordable for people who came to the UK from outside and could not find work. Occupiers of the first floor front bedroom were able to keep possessions in a large dry secure store at the back of the house (The Tribunal had not been shown the store neither had the Council prior to granting the license). The store was 11ft by 18 ft. It had previously had a padlock on it but the padlock had been removed by the occupiers. Mr Ashby said the store was suitable for infrequently used possessions such as trunks and bicycles.
14. The Ashbys said that they vetted all of their tenants personally and sought to ensure that they were compatible with one another. Mr Ashby said that the tenant of the first floor front left hand bedroom had left on 10th June 2015 and the large room next door had been occupied on 17th June 2015. A week had not been sufficient to carry out works to enlarge the small room. The last occupier had studied on the dining table in the communal area and kept her books on the book shelf in that room. Because other rooms had adequate living space there was, very seldom other people in the dining area. Previously the small room had been let to a Hungarian couple who were desperate for a room. The room was big enough for this according to Mr Ashby. There was storage under the bed. There was a hanging rail and a tall cupboard with drawers at the bottom and shelves above.
15. Mr Ashby said that there was sufficient room to study in the first floor front left bedroom. Most people nowadays studied on a lap top. There was a separate chair and the room was properly laid out and ventilated. Many people were happy to use the room for a short period of time.
16. In response Angharad Thomas for the Council stressed that an HMO is not a family home. An occupier of an HMO should not have to distribute belongings in other places such as the storage space at the back of the premises. This was insecure. Rachel Stickler confirmed that she was a qualified Environmental Health Officer and that she had determined that the size of the first floor front left bedroom represented a Category 1 hazard. She also confirmed that it made no difference to this assessment if the occupier of the room was not a student. She maintained that the Council were entitled to change their decision in relation to licensing conditions. The previous decision allowing 6 occupiers had been a mistake.
17. Mr Grigg emphasised that it was open to the Council to decide that if the room size was a hazard it should not be used as a bedroom. The property was originally constructed as family home. It had been modified since then and was now occupied as an HMO – a higher risk building. If it was a family home the small room could be used for a child. It was not a family home however.
18. Mr Grigg accepted that a mistake had been made in 2009 in granting a license for 6 people but this did not mean the Council were precluded from granting a license for 5 people now. The renewal was an opportunity for the Council to re-consider the license conditions. The Council carries out an inspection on the renewal as if it was a new occupation. The Council are obliged to apply the HHSRS standards.

The relevant law

19. 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)).
20. 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.

21. The Council in the present case are satisfied that the regulations are met in terms of standards of amenities and fire precaution facilities for 6 people however in accordance with their right under s.65(2) they have decided that the house is not reasonably suitable for occupation by 6 people even though the prescribed standards for occupation by that number of persons are met.
22. Under section 67 of the Act the Council can impose conditions on the license if they consider they are appropriate to regulate the use and occupation of the premises to be licensed. In the present case the license contains a condition that the first floor front left side bedroom is not permitted to be used as a bedroom as it is too small.
23. 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

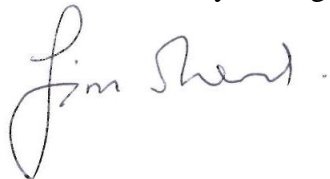
on an application for a license – (a) to refuse to grant the license, or (b) to grant the license. Paragraph 31(2) states that an appeal under (b), may in particular, relate to any of the terms of the license. This is the operative provision in the present case.

Application of the law

24. The Tribunal has decided to dismiss the appeal. This is for the following reasons:
25. Firstly upon inspection by the Tribunal the premises did not appear suitable for occupation by six people. The first floor front left bedroom appeared extremely small. It was inadequate for anything other than sleeping in. The storage space in the room was inadequate. Although it would appear that items could be stored in the store at the back of the premises this was plainly an insecure facility because the occupiers had taken the padlock off. This was inappropriate in an HMO where the occupiers did not know each other. Security in this environment is paramount. Moreover Mr Ashby accepted that the items stored in the shed/garage would be infrequently used like bikes and trunks. Thus there would be no proper area to store day to day possessions needed by the occupier of the first floor front left side room.
26. The room would also be too small to study in. The Tribunal does not accept that a chair and table could be incorporated into the room. Neither does it accept that an occupier of the room could work satisfactorily in the lounge/dining area. This room will be shared with at least 4 other people who will use it for cooking, eating and watching TV etc. The natural light in the lounge/dining area is poor. It is not an appropriate work environment. Even if the small room was occupied by a person who was not a student the tribunal considers it is inappropriate to use it as a bedroom in an HMO for the reasons given in relation to the lack of proper storage space.
27. The removal of the first floor front left hand bedroom from use in the building necessarily means that the building cannot support six people and is only suitable for five people. No submissions were made to the tribunal to the effect that the other bedrooms were double bedrooms.
28. Secondly the fact that the first floor front left side room has been designated a Category 1 hazard under the HHSRS by a qualified Environmental Health Officer is plainly relevant. It is difficult to envisage a situation where notwithstanding this designation the room in question could be allowed to be used under an HMO license. Although the HHSRS provisions are separate from the licensing provisions under the Housing Act 2004 the designation as a Category 1 Hazard cannot be ignored. Accordingly the Council were entitled to make it a condition of the license that the room was not used.
29. Thirdly it is relevant that the various guidance on room sizes relied upon by the Council support the fact that the first floor left hand bedroom is undersized in relation to the usual standard expected for a single person bedroom. Of course the guidance cannot be determinative of the Tribunal's decision and it is not. Having inspected the room the tribunal consider that it is too small and that it should not be allowed to be let as a bedroom pursuant to the license, neither is the premises itself suitable for more than more than five people.

30. Fourthly the fact that Mr Ashby was granted a license for six people in 2009 is not directly relevant to the issue that the tribunal is considering. The current license was granted following a renewal after the five year term. It is entirely correct that the Council review the license conditions on a renewal. The purpose of the renewal is not just to consider whether the license holder is entitled to hold the license but to reassess the license conditions. The Council's position is that the license granted in 2009 mistakenly allowed occupation by six people. It cannot be the case that the Council are forever bound by this mistake. The Appellant has not been prejudiced by the mistake because he has been able to let out a room when he should not have been able to. It may be correct that if he had known the correct license position in 2009 he would have carried out works to increase the size of the first floor front left hand bedroom and those works may be more expensive to carry out now. However this is not a matter for the tribunal to determine.
31. The fact that two Council officers gave Mr Ashby advice in 2005 and did not object to the size of the first floor front left hand bedroom is similarly irrelevant in the view of the Tribunal. The advice was given before the license provisions under the Housing Act 2004 came into force. Moreover as indicated above the Tribunal consider that the Council is entitled to review the position on a renewal.
32. Finally the Tribunal considers that the remaining arguments put forward eloquently by Mr Ashby are not relevant to the issue being decided. He argued that the income his wife and he obtain from the premises would be affected if he was not allowed to use the first floor left hand bedroom. As already indicated, to some extent the couple's income has in fact benefitted from the mistake made by the Council in 2009. It is open to Mr Ashby to carry out works to enlarge the room which will make it of habitable size. Mr Ashby also argued that the room was in demand because it was cheap. This is accepted however the Tribunal considers that the Council are correct in stating that the safety of the occupiers of the room and indeed the premises is of more importance.
33. The appeal is dismissed.
34. Neither party asked for their costs and therefore no order is made.

Dated this 4th day of August 2015



CHAIRMAN