

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

First Floor, West Wing, Southgate House, Wood Street, Cardiff, CF10 1EW.
Telephone 0300 025 2777. Fax 0300 025 6146. Email: rpt@gov.wales

Reference: RPT/0051/09/18

Property: 16 Norman Road, Wrexham, LL13 7BE

Applicant: Ms Nia Lloyd

Respondent: Wrexham Borough Council

COMMITTEE: Chairman Jack Rostron
Surveyor Tom Daulby FRICS
Lay Member Eifion Jones

APPEARANCES FOR APPLICANT: The applicant in person
Councillor Graham Rogers

APPEARANCES FOR RESPONDENT: Robert Johnston – Team Leader Environmental Health
Patricia Thomas – Environmental Health Officer
Dave Miller – Senior Building Control Surveyor

ORDER

Tribunal Confirms the Prohibition Order dated 16 August 2018 but varies it as follows:

The remedial action is to board up the bottom of the stairs to the loft space and install a reduced door having a maximum height of 1200mm.

The administrative charges levied by the Respondent are varied by reducing them 75% bringing the sum owed to £103.75

Application

1. By her application dated 5 September 2018 the Applicant appeals against a Prohibition Order issued by the Respondent in respect of the Property, under section 21 of the Housing Act 2004 ("the Act"). The Order prohibits the use of the second-floor bedroom of the

Property for human habitation. The Applicant also appeals against the demand for recovery of expenses for taking enforcement action under sections 49 and 50 of the Act. The Tribunal allowed the Appeal out of time on 28th September 2018.

Background

2. The Applicant owns the Property, and at the date of the inspection let it out to tenants Gemma Minards and Ross Minards.
3. As a result of complaints from the tenants about the condition of the Property, the Respondent's Environmental Health Officer, Ms Patricia Thomas, inspected the second-floor room on 4 July 2018. The Property was also inspected on 17 July 2018 by Dave Sharp the Respondent's Building Control Officer.
4. Following inspections of the Property a Category 1 Hazards were identified in the Property using the Housing Health and Safety Rating System. A Prohibition Order was made on 16th August 2018 in regard to the second-floor bedroom at the Property. It important to note that the Prohibition Order only related to the second-floor bedroom of the Property.
5. The Prohibition Order specifies remedial works which are stated below. The remedial works apply to an area of the Property not specified in the Prohibition Order. Regarding the area outside that specified in the Prohibition Order there is no other form of enforcement [such as Hazard Awareness Notice] correctly prepared and served on the Applicant.

Remedies Specified by the Respondent

"Either:

1. Carry out works to the staircase leading to the second-floor loft room to protect users from the risk of falling on the stairs and in accordance with the requirements of current Building Regulations. Make good all disturbed surfaces leave the stairway in safe and sound condition.
2. Provide and fix a suitable handrail to the staircase in accordance with the requirements of the current Building Regulations.
3. Provide and fit a mains wired LD3 Grade D fire alarm system as described in BS5839.Part 6.
4. Provide and fit FD 30 fire doors to the first and second floor bedrooms including intumescent strips, and be hung on three 100mm steel hinges. The maximum gap around the door and frame should be no more than 3 mm. The door must be installed in accordance with British Standard 8214.
5. Provide and fit a suitable escape window to the first-floor front bedroom. Escape windows must satisfy the following requirements;
 - Escape windows must have an unobstructed openable window area that is at least 0.33 m² with at least the width and height dimensions being a minimum of 450 mm.
 - The bottom of the openable area (window sill level) must be not more than 1100 mm, and not less than 800 mm above floor level.
 - Windows are suitable for means of escape with a drop from the window to ground level is one story only (not exceeding 4.5 m from first floor level to outside ground level). The ground below the windows must be flat and free from hazards.
 - Windows must not be located in a room behind a lockable door, and must lead to a place of ultimate safety, clear of the building.

All windows must be installed in accordance with current Building Regulation requirements. On completion of the works the contractor shall provide either; a certificate showing that the work is being carried out by an installer who is registered under the FENSA scheme, or a certificate from the local authority that the installation has approval under the Building Regulations.

Construct a wall between the ground floor rear living room staircase. The wall is to be constructed using timbers not less than 69 mm x 44 mm and not more than 600 mm centres incorporating a new FD 33s fire door including intumescent strips and smoke seals, and be hung on three 100 mm steel hinges. The maximum gap around the door and frame should be no more than 3 mm. The door must be installed in accordance with British Standard 8214. Line the studs with 12.5 mm thick plasterboard on both sides, scrim all joints and skim boarding with gypsum plaster to a smooth finish and matching in with adjoining plaster surfaces. All walls are to be taken up to the ceiling proper.

Line the staircase soffit with an approved fireline board and then fill all the joints to give a minimum half hour fire resistance.

6. Locks on final exit doors from the building must be capable of being opened from the inside without the use of keys.
7. Ensure the door to between the kitchen and living room is a solid close-fitting door.
8. There should be reasonable space at the top of the stairs to enable users to appraise the start and dimensions of the steps to the stairs.
9. Provide and fit a light switch to the top of the staircase. On completion test and leave in proper working order.
10. Carry out works to make safe the second-floor loft bedroom floor in accordance with the requirements of current Building Regulations. Floors should be designed constructed and maintained to be of sufficient strength to support their own weight and that of imposed loads.
11. Ensure the correct thermal insulation has been installed to the second-floor bedroom in line with current Building Regulations.
12. Renew/replace the defective power socket on the second-floor loft bedroom make good any disturbed surfaces. On completion test and leave in proper working order. Carry out an inspection and test of the electrical system in order to check the safety and identify all faults and deficiencies. Record details on a report such as the NICEIC Periodic inspection report form. Carry out work identified as necessary by the report so as to leave the electrical system and installation in sound and safe working order. All checking and any works to be carried out to be done by a qualified and competent electrician, who was a member of the NICEIC, ECA or is a Chartered Electrical Engineer

Or:

1. Remove the permanent second-floor staircase to the loft bedroom and make good the disturbed surfaces to prevent the room being used as a habitable room.
2. Provide and fit a mains wired LD3 Grade D fire alarm system as described in BS 5839 Part 6.
3. Provide and fit a suitable escape window to the first-floor front bedroom. Escape windows must satisfy the following requirements;
 - Escape windows must have an unobstructed openable window area that is at least 0.33 m² with at least the width and height dimensions being a minimum of 450 mm.
 - The bottom of the openable area (window sill level) must be not more than 1100 mm, and not less than 800 mm above floor level.
 - Windows are suitable for means of escape with a drop from the window to ground level is one story only (not exceeding 4.5 m from first floor level to outside ground level). The ground below the windows must be flat and free from hazards.

- Windows must not be located in a room behind a lockable door, and must lead to a place of ultimate safety, clear of the building.

All windows must be installed in accordance with current Building Regulation requirements on completion of the works the contractor shall provide either; a certificate showing that the work is being carried out by an installer who is registered under the FENSA scheme, or a certificate from the local authority that the installation has approval under the Building Regulations.

4. Ensure the door to between the kitchen and living room is a solid close-fitting door.
5. Locks on final exit doors from the building must be capable of being opened from the inside without the use of keys.
6. Ensure there are no openings to the staircase and balustrade through which a 1000 mm sphere can pass through”.

The Law

6. The Act introduced the Housing Health and Safety Rating System (“HHSRS”). This is a system for assessing housing conditions, enabling local authorities to assess the condition of a property based on risk to occupants, with power to serve Notices and Orders on owners requiring action to be taken to reduce risk or restrict the use of a property.
7. The most serious risk of harm creates a category 1 hazard in respect of which it is mandatory under section 5(1) for the local authority to take appropriate enforcement action. All other risks enable the local authority, in its discretion, to take particular kinds of enforcement action. Section 5(2) sets out seven types of action which are “appropriate” for a category 1 hazard. If two or more of these courses of action are available, the authority must take the course which they consider to be the most appropriate. Sections 20 and 21 empower the local housing authority to make a Prohibition Order if a category 1 or Category 2 hazard is found at the property. Such an order prohibits the use of the Property for certain purposes.
8. Section 27 states that Schedule 2 which deals with the service of prohibition orders, and notices relating to their revocation and variation, and with related appeals, has effect. A person served with a Prohibition Order can appeal to a Residential Property Tribunal which “may by order confirm, quash or vary the Improvement Notice” (Schedule 2 paragraph 11 (3)).
9. In exercising its functions under the HHSRS provisions a local authority must have regard to any guidance for the time being given by the appropriate national authority – section 9 (2). There are two sets of such guidance in relation to the HHSRS, issued by the (now) Department of Communities and Local Government: the Operating Guidance and the Enforcement Guidance which is supplemented by Housing Health and Safety Rating System Guide Rent Smart Wales.
10. The Housing Health and Safety Rating System (Wales) Regulations 2006 prescribe the method for calculating the seriousness of hazards. Paragraph 5 deals with inspections and provides that an Inspector must inspect any residential premises with a view to preparing an accurate record of their state and condition. Paragraph 6 states:-

“6(1) where, following an inspection of residential premises under section 4 of the Act, the inspector –

- (a) determines that a hazard of a prescribed description exists: and*

(b) considers, having regard to any guidance for the time being given under section 9 of the Act in relation to the assessment of hazards that it is appropriate to calculate the seriousness of that hazard, the seriousness of that hazard shall be calculated in accordance with paragraphs (2) to (4) of this regulation”

11. Paragraphs (2 to 4) then set out the assessment process which the inspector must follow including assessing the likelihood of a member of the relevant vulnerable group suffering harm as a result of the hazard, assessing the class of harm most likely to be suffered and then using data from the relevant tables to produce a numerical score. Category 1 hazards are those with a score of 1000 or above.
12. Under paragraph 11(2)(a) of part 3 Schedule 2 to the Housing Act 2004, that the Appeal is to be by way of a re-hearing.
13. Under section 49 of the Act:
(1) A local housing authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in:
.....
(b). Making prohibition order under section 20 or 21...
(7) Where a tribunal allows an appeal against the underlying notice or order mentioned in Sub-section (1) it may make such order as it considers appropriate reducing, quashing or requiring the repayment of, any charge under this section made in respect of the notice or order.

Inspection and Hearing

14. The Tribunal inspected the Property at 09.30am on 15 January 2019 with the aid of the Schedule of Remedial Works attached to the Prohibition Order. The inspection was carried out in the presence of the persons mentioned above and in the presence of the tenants Gemma Minards and Ross Minards. At the inspection the Tribunal found no evidence of the loft being used as a bedroom. There is however photographic evidence provided by the Respondent that at their inspection it was being used as such.
15. A hearing was held at the Catrin Finch Centre, Glyndwr University, Wrexham, LL11 2AW. The Respondent were represented by Mr Robert Johnston, Ms Patricia Thomas, and Mr Dave Miller. The Applicant represented herself with support from Councillor Graham Rogers, who is an elected member of the Respondent.
16. The Applicant informed the Tribunal that to her knowledge the Property had not been let with the loft as a bedroom. She said it had never been intended to be used as bedroom during her ownership and only became aware in the course of the current proceedings. She said the house had been let as a three bedroomed house. On becoming aware of use of the loft space as a fourth bedroom wrote to the tenants on 20 July 2018 asking them not to use it as such. She indicated this was a breach of the tenancy agreement. Councillor Rogers expressed concern at the limited consultation exercised by the Respondent and the high cost of remediation proposed by them.
17. The Respondent reiterated the factors which led them to make a Prohibition Order and the Remedial action necessary to meet their objectives. They essentially repeated the witness statement and documents prepared by Patricia Thomas and Robert Johnson. Mr Dave Miller

gave oral evidence regarding the role of Building Regulations and reiterated the relevant documents submitted.

The Tribunal's Findings

18. The Tribunal determined that no management order existed at the Property.
19. The Tribunal found that the hazards stated in the Schedule to the Order existed at the time of inspection and that the Respondent correctly scored the Property for those hazards.
20. The Tribunal found as a finding of fact that the Respondent's proposed remediation works were wholly disproportionate in extent and likely cost to prevent the second-floor loft being used as a bedroom.
21. The Tribunal found as a finding of fact that the enforcement action had been incorrectly prepared. The Prohibition Order only refers to the "Second floor bedroom". Yet the remedial action attached to the order relates to improvement works located in other parts of the Property and are not related to the part of the Property identified in the order. Such administrative mistakes do not justify the charges levied by the Respondent.
22. For the above reasons the Tribunal varies the remedial action proposed by the Prohibition order as follows:

22.1 The remedial actions proposed by the Respondent are deemed unnecessary. The appropriate remedial action is to board up the bottom of the stairs to the loft space and install a hand rail on the stairs and a reduced door having a maximum height of 1200mm. This will facilitate its use for storage and deter its use as a bedroom.

22.2 The second-floor bedroom is not to be used as a bedroom or for any other form of human habitation.

22.3 The appeal against the administrative charges levied by the Respondent are varied by reducing them 75% bringing the sum owed £103.75

Dated this 15th day of February 2019



J Rostron
Chairman

The Law & Appeal to the Upper Tribunal

1. Section 231 of the Housing Act 2004 allows a party following a refusal to appeal from the Residential Property Tribunal to seek permission from the Upper Tribunal.
2. Regulation 37 of the Residential Property Tribunal Procedures and Fees (Wales) Regs, 2016 explains the appeals procedure.
3. Part 3 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.1. 2010 No. 2600 (L.15) as amended explains the process for making an application to appeal.
4. You must apply for permission to appeal in writing to be received by the Tribunal no later than 14 days after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal to the Applicant.

Contact details are;

Upper Tribunal (Lands Chamber)
5th floor, Rolls Building
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Cyfeirnod: RPT/0051/09/18

Eiddo: 16 Norman Road, Wreccsam, LL13 7BE

Ceisydd: Ms Nia Lloyd

Ymatebydd: Cyngor Bwrdeistref Wreccsam

PWYLLGOR: Cadeirydd Jack Rostron
Syrfêwr Tom Daulby FRICS
Aelod Lleyg Eifion Jones

YN YMDDANGOS DROS Y CEISYDD:

Y ceisydd ei hun

Y Cynghorydd Graham Rogers

YN YMDDANGOS DROS YR YMATEBYDD:

Robert Johnston – Arweinydd Tîm, Iechyd yr Amgylchedd

Patricia Thomas – Swyddog Iechyd yr Amgylchedd

Dave Miller – Uwch-Syrfewr Rheoli Adeiladu

TREFN

Mae'r Tribiwnlys yn Cadarnhau'r Gorchymyn Gwahardd dyddiedig 16 Awst 2018 ond yn ei amrywio fel a ganlyn:

Y gwaith cywiro sydd i'w wneud yw bordio gwaelod y grisiau i fyny i'r atig a gosod drws llai o uchder, sef 1200mm ar y mwyaf.

Mae'r taliadau gweinyddol a godwyd gan yr Ymatebydd yn cael eu hamrywio a'u lleihau o 75% gan ddod â'r ddyled i lawr i £103.75.

Y Cais

1. Drwy ei chais dyddiedig 5 Medi 2018, mae'r Ceisydd yn apelio yn erbyn Gorchymyn Gwahardd a gyflwynwyd gan yr Ymatebydd yng nghyswllt yr Eiddo, o dan Adran 21 o Ddeddf Tai 2004 ("y Ddeddf"). Mae'r Gorchymyn yn gwahardd defnyddio'r llofft ar ail lawr yr Eiddo i fyw ynddi. Mae'r Ceisydd hefyd yn apelio yn erbyn y cais i adennill costau am gymryd camau gorfodi o dan Adrannau 49 a 50 o'r Ddeddf. Penderfynodd y Tribiwnlys ganiatáu'r Apêl hwyr ar 28 Medi 2018.

Y Cefndir

2. Y Ceisydd yw perchennog yr Eiddo, ac ar ddyddiad yr archwiliad roedd yn gosod yr eiddo i'r tenantiaid Gemma Minards a Ross Minards.
3. O ganlyniad i gwynion gan y tenantiaid am gyflwr yr Eiddo, aeth Swyddog Iechyd yr Amgylchedd yr Ymatebydd, Ms Patricia Thomas, draw i archwilio'r ystafell ail lawr ar 4 Gorffennaf 2018. Cafodd yr Eiddo hefyd ei archwilio ar 17 Gorffennaf 2018 gan Dave Sharp, Swyddog Rheoli Adeiladu'r Ymatebydd.
4. Yn dilyn archwilio'r Eiddo, cafodd Beryglon Categori 1 eu hadnabod yn yr Eiddo drwy ddefnyddio'r System Sgorio Iechyd a Diogelwch Tai. Cafodd Gorchymyn Gwahardd ei wneud ar 16 Awst 2018 ar gyfer y llofft ar ail lawr yr Eiddo. Mae'n bwysig nodi bod y Gorchymyn Gwahardd ond yn berthnasol i'r llofft ar ail lawr yr Eiddo.
5. Mae'r Gorchymyn Gwahardd yn nodi bod angen gwneud gwaith cywiro a ddisgrifir isod. Mae'r gwaith cywiro'n berthnasol i ran o'r Eiddo na ddisgrifir yn y Gorchymyn Gwahardd. O ran y rhan allanol o'r Eiddo a ddisgrifiwyd yn y Gorchymyn Gwahardd, nid oes math arall o orfodaeth [fel Hysbysiad Ymwybyddiaeth o Berygl] wedi'i baratoi'n gywir a'i gyflwyno i'r Ceisydd.

Gwaith Cywiro a ofynnwyd gan yr Ymatebydd

"Naill ai:

13. Gwneud gwaith i'r grisiau sy'n arwain i fyny i'r llofft atig ar yr ail lawr i amddiffyn defnyddwyr rhag y risg o ddisgyn ar y grisiau ac yn unol â gofynion y Rheoliadau Adeiladu presennol. Cywiro'r holl wynebau y gwnaed gwaith iddynt a gadael y grisiau mewn cyflwr diogel a chadarn.
14. Darparu a gosod canllaw addas ar hyd ochr y grisiau yn unol â gofynion y Rheoliadau Adeiladu presennol.
15. Darparu a gosod system larwm tân LD3 Gradd D wedi'i weirio i'r prif gyflenwad trydan, yn ôl y disgrifiad yn BS5839, Rhan 6.
16. Darparu a gosod drysau tân FD 30 ar gyfer llofftydd y llawr cyntaf a'r ail lawr, gan gynnwys stribedi selio rhag tân, i'w hongian ar dri cholyn dur 100mm. Ni ddylai'r bwlch o gwmpas y drws a'r ffrâm fod yn fwy na 3mm. Rhaid gosod y drws yn unol â Safon Brydeinig 8214.
17. Darparu a gosod ffenestr ddianc addas ar gyfer llofft ffrynt y llawr cyntaf. Rhaid i ffenestri dianc fodloni'r gofynion canlynol;
 - Rhaid i ffenestri dianc gynnwys 0.33m² o ffenestr o leiaf y gellir ei hagor yn ddirwysr, gyda'r dimensiynau lled ac uchder yn 450mm o leiaf.
 - Ni ddylai gwaelod y rhan y gellir ei hagor o'r ffenestr (lefel y sil ffenestr) fod yn fwy na 1100mm a dim llai na 800mm uwchlaw lefel y llawr.

- Mae ffenestri'n addas i ddianc allan ohonynt lle gellir neidio un llawr yn unig o'r ffenestr i'r ddaear (dim mwy na 4.5m o'r llawr cyntaf i lefel y ddaear y tu allan). Rhaid i'r ddaear o dan y ffenestri fod yn wastad ac yn rhydd o beryglon.
- Ni ddylid lleoli ffenestri mewn ystafell y tu ôl i ddrws gyda chlo arno, a rhaid iddynt arwain at rywle diogel yn y pen draw, yn ddigon clir o'r adeilad.

Rhaid gosod pob ffenestr yn unol â'r gofynion Rheoliadau Adeiladu presennol. Ar ôl cwblhau'r gwaith, rhaid i'r contractwr ddarparu naill ai; tystysgrif yn dangos bod y gwaith wedi'i wneud gan osodwr sydd wedi ei gofrestru o dan y cynllun FENSA, neu dystysgrif gan yr awdurdod lleol bod y gwaith gosod wedi ei gymeradwyo o dan y Rheoliadau Adeiladu.

Adeiladu wal rhwng grisiau cefn yr ystafell fyw ar y llawr gwaelod. Mae'r wal i'w hadeiladu'n defnyddio preniau o ddim llai na 69mm x 44mm a chanol o ddim mwy na 600mm, yn ymgorffori drws tân FD 33s newydd i gynnwys sribedi selio rhag tân a seliau mwg, ac i'w hongian ar dri cholyn dur 100mm. Ni ddylai'r bwllch o gwmpas y drws a'r ffrâm fod yn fwy na 3mm. Rhaid gosod y drws yn unol â Safon Brydeinig 8213. Dylid leinio'r stydiau gyda phlasterbord 12.5mm o drwch ar y ddwy ochr, sgrimio'r holl uniadau a sgimio'r bordiau gyda phlaster *gypsum* nes ei fod yn llyfn ac yn cydweddu â wynebau plaster cyfagos. Y waliau i gyd i fynd i fyny at y nenfwd ei hun.

Leinio soffit y grisiau gyda bordiau tân cymeradwy ac yna llenwi'r holl uniadau i wrthsefyll tân am hanner awr o leiaf.

18. Rhaid gallu agor y cloeau ar y drwsau tân olaf allan o'r adeilad o'r tu mewn, heb orfod defnyddio goriadau.
19. Sicrhau bod y drws rhwng y gegin a'r ystafell fyw'n ddrws solid a thynn yn ei ffrâm.
20. Dylai fod lle rhesymol ar ben y grisiau fel bod defnyddwyr y grisiau'n gallu gweld ac asesu man cychwyn a dimensiwn y grisiau.
21. Darparu a gosod swîts golau ar ben y grisiau. Ar ôl cwblhau'r gwaith, profi a gadael mewn cyflwr gweithio cywir.
22. Gwneud gwaith fel bod llawr llofft atig yr ail lawr yn ddiogel, yn unol â gofynion y Rheoliadau Adeiladu presennol. Dylid dylunio, creu a chynnal a chadw'r lloriau i fod yn ddigon cryf i gynnal eu pwysau eu hunain a phwysau'r llwythi a fydd arnynt.
23. Sicrhau bod yr inswleiddiad thermol cywir wedi'i osod yn llofft yr ail lawr yn unol â'r Rheoliadau Adeiladu presennol.
24. Adnewyddu / prynu soced trydan newydd yn lle'r un diffygiol yn llofft atig yr ail lawr a chywiro unrhyw wynebau y gwnaed gwaith iddynt. Ar ôl cwblhau'r gwaith, profi a gadael mewn cyflwr gweithio cywir. Cyflawni archwiliad a phrofi'r system drydanol i wirio ei bod yn ddiogel a chanfod unrhyw ddiffygion a beiau. Cofnodi'r manylion mewn adroddiad, drwy ddefnyddio ffurflen adrodd archwiliadau cyfnodol y NICEIC, er enghraifft. Gwneud gwaith sydd wedi'i nodi i fod yn angenrheidiol gan yr adroddiad er mwyn gadael y system drydanol a'r gwaith gosod mewn cyflwr gweithio diogel a chadarn. Yr holl waith gwirio ac unrhyw waith arall sydd i'w wneud i gael ei gyflawni gan drydanwr cymwysedig a chymwys, sy'n aelod o'r NICEIC, ECA neu'n Beiriannydd Trydanol Siartredig.

Neu:

7. Tynnu'r grisiau parhaol i'r llofft atig ar yr ail lawr a chywiro'r wynebau y gwnaed gwaith iddynt fel na ellir defnyddio'r llofft i fyw ynddi.
8. Darparu a gosod system larwm tân LD3 Gradd D wedi'i weirio i'r prif gyflenwad trydan, yn ôl y disgrifiad yn BS5839 Rhan 6.
9. Darparu a gosod ffenestr ddianc addas ar gyfer llofft ffrynt y llawr cyntaf. Rhaid i ffenestri dianc fodloni'r gofynion canlynol;

- Rhaid i ffenestri dianc gynnwys 0.33m² o ffenestr o leiaf y gellir ei hagor yn ddirwysr, gyda'r dimensiynau lled ac uchder yn 450mm o leiaf.
- Ni ddylai gwaelod y rhan y gellir ei hagor o'r ffenestr (lefel y sil ffenestr) fod yn fwy na 1100mm a dim llai na 800mm uwchlaw lefel y llawr.
- Mae ffenestri'n addas i ddianc allan ohonynt lle gellir neidio un llawr yn unig o'r ffenestr i'r ddaear (dim mwy na 4.5m o'r llawr cyntaf i lefel y ddaear y tu allan). Rhaid i'r ddaear o dan y ffenestri fod yn wastad ac yn rhydd o beryglon.
- Ni ddylid lleoli ffenestri mewn ystafell y tu ôl i ddrws gyda chlo arno, a rhaid iddynt arwain at rywle diogel yn y pen draw, yn ddigon clir o'r adeilad.

Rhaid gosod yr holl ffenestri'n unol â gofynion y Rheoliadau Adeiladu presennol ac ar ôl cwblhau'r gwaith, rhaid i'r contractwr ddarparu naill ai; tystysgrif yn dangos bod y gwaith wedi'i wneud gan osodwr sydd wedi ei gofrestru o dan y cynllun FENSA, neu dystysgrif gan yr awdurdod lleol bod y gwaith gosod wedi ei gymeradwyo o dan y Rheoliadau Adeiladu.

10. Sicrhau bod y drws rhwng y gegin a'r ystafell fyw'n ddrws solid a thynn yn ei ffrâm.
11. Rhaid gallu agor y cloeau ar y drwsau tân olaf allan o'r adeilad o'r tu mewn, heb orfod defnyddio goriadau.
12. Sicrhau nad oes unrhyw agoriadau i'r grisiau a'r banister y gallai cylch 1000mm basio drwyddynt".

Y Gyfraith

6. Y Ddeddf a gyflwynodd y System Sgorio Iechyd a Diogelwch Tai ("HHSRS"). System yw hon ar gyfer asesu cyflwr tai fel bod awdurdodau lleol yn gallu asesu cyflwr eiddo ar sail y risg i'r bobl sy'n byw ynddynt, gyda phwerau i gyflwyno Hysbysiadau a Gorchmynion i berchnogion yn ei gwneud yn ofynnol iddynt wneud gwaith i leihau'r risg neu gyfyngu ar y defnydd a wneir o'r eiddo.
7. Mae'r risg o niwed mwyaf difrifol yn creu perygl categori 1 lle mae'n orfodol o dan Adran 5(1) bod yr awdurdod lleol yn cymryd y camau gorfodi priodol. Gyda phob risg arall, gall yr awdurdod lleol ymarfer ei ddisgresiwn i gymryd mathau penodol o gamau gorfodi. Mae Adran 5(2) yn nodi saith math o gamau sy'n "briodol" ar gyfer perygl categori 1. Os yw dau neu fwy o'r camau hyn ar gael i'r awdurdod, rhaid i'r awdurdod gymryd y cam mwyaf priodol yn eu barn hwy. Mae Adrannau 20 a 21 yn rhoi pwerau i'r awdurdod tai lleol wneud Gorchymyn Gwahardd os yw perygl categori 1 neu gategori 2 yn cael ei ganfod mewn eiddo. Mae Gorchymyn o'r fath yn gwahardd defnyddio'r Eiddo ar gyfer pwrpasau penodol.
8. Mae Adran 27 yn nodi bod Atodlen 2, ar gyfer cyflwyno gorchmynion gwahardd a hysbysiadau'n ymwneud â diddymu ac amrywio'r gorchmynion hyn, ac apelio yn eu herbyn, yn berthnasol. Gall rhywun y cyflwynir Gorchymyn Gwahardd iddynt apelio i Dribiwnlys Eiddo Preswyl a "allai drwy orchymyn gadarnhau, diddymu neu amrywio'r Hysbysiad Gwelliannau" (Atodlen 2, Paragraff 11 (3)).
9. Wrth ymarfer ei swyddogaethau o dan ddarpariaethau HHSRS, rhaid i awdurdod lleol ystyried unrhyw ganllawiau sydd gan yr awdurdod lleol priodol ar y pryd – adran 9 (2). Mae dwy set o ganllawiau o'r fath yn ymwneud â'r HHSRS, sef Canllawiau Gweithredol yr Adran Gymunedau a Llywodraeth Leol (fel y gelwir hi bellach), a'r Canllawiau Gorfodi a ategir gan Ganllaw Rhentu Doeth Cymru ar y System Sgorio Iechyd a Diogelwch Tai.
10. Mae Rheoliadau System Sgorio Iechyd a Diogelwch Tai (Cymru) 2006 yn rhagnodi pa ddull i'w ddefnyddio wrth asesu difrifoldeb unrhyw beryglon. Mae Paragraff 5 yn delio ag

archwiliadau ac yn nodi bod yn rhaid i Archwiliwr archwilio unrhyw eiddo preswyl gyda golwg ar baratoi cofnod cywir o gyflwr yr eiddo hwnnw. Yn ôl Paragraff 6:-

"6(1) Lle mae'r archwiliwr, yn dilyn archwilio eiddo preswyl o dan Adran 4 o'r Ddeddf -

- (a) yn penderfynu bod perygl o ddisgrifiad penodedig yn bodoli: a*
- (b) yn credu, ar ôl ystyried unrhyw ganllawiau sydd ar gael ar y pryd o dan Adran 9 o'r Ddeddf ar gyfer asesu peryglon, ei bod yn briodol asesu difrifoldeb y perygl hwnnw, rhaid asesu difrifoldeb y perygl hwnnw'n unol â pharagraffau (2) i (4) o'r rheoliad hwn"*

11. Mae paragraffau (2 i 4) yna'n disgrifio'r broses asesu y mae'n rhaid i'r archwiliwr ei dilyn, gan gynnwys asesu pa mor debygol y byddai aelod o'r grŵp bregus perthnasol o ddiodef niwed o ganlyniad i'r perygl, asesu dosbarth y niwed y byddai'n fwyaf tebygol o gael ei ddiodef, ac yna'n defnyddio data o'r tablau perthnasol i greu sgôr rhifol. Peryglon Categori 1 yw rhai gyda sgôr o 1000 neu fwy.
12. O dan baragraff 11(2)(a) o ran 3 o Atodlen 2 i Ddeddf Tai 2004, bydd yr Apêl yn digwydd ar ffurf ail-wrandawriad.
13. O dan Adran 49 o'r Ddeddf:
 - (1) Gall awdurdod tai lleol godi unrhyw dâl rhesymol ag y mae'n ystyried iddo fod yn briodol er mwyn adennill costau gweinyddol a chostau eraill a achoswyd ganddynt drwy:*
 -
 - (b) Gwneud gorchymyn gwahardd o dan Adran 20 neu 21...*
 - (7) Lle mae tribiwnlys yn caniatáu apêl yn erbyn yr hysbysiad neu'r gorchymyn y sonnir amdano yn*
 - Is-adran (1), gall wneud unrhyw orchymyn ag y mae'n ystyried i fod yn briodol i leihau, diddymu neu ofyn am ad-dalu unrhyw dâl a wnaed o dan yr Adran hon o dan yr hysbysiad neu'r gorchymyn.*

Yr Archwiliad a'r Gwrandawriad

14. Archwiliodd y Tribiwnlys yr Eiddo am 09.30am ar 15 Ionawr 2019 gyda chymorth yr Atodlen o Waith Cywiro oedd ynghlwm wrth y Gorchymyn Gwahardd. Cafodd yr archwiliad ei wneud yng ngŵydd y bobl y sonnir amdanynt uchod ac yng ngŵydd y tenantiaid Gemma Minards a Ross Minards. Yn ystod yr archwiliad, ni ddaeth y Tribiwnlys o hyd i unrhyw dystiolaeth fod yr atig yn cael ei ddefnyddio fel llofft. Fodd bynnag mae'r Ymatebydd wedi darparu dystiolaeth ffotograffig ei fod, pan wnaed eu harchwiliad hwy, yn cael ei ddefnyddio fel llofft.
15. Cynhaliwyd gwrandawriad yng Nghanolfan Catrin Finch, Prifysgol Glyndŵr, Wrecsam LL11 2AW. Roedd yr Ymatebydd wedi eu cynrychioli gan Mr Robert Johnston, Ms Patricia Thomas a Mr Dave Miller. Roedd y Ceisydd yn cynrychioli ei hun gyda chymorth gan y Cynghorydd Graham Rogers, sy'n aelod etholedig gyda'r Ymatebydd.
16. Dywedodd y Ceisydd wrth y Tribiwnlys nad oedd yr Eiddo, hyd y gwyddai hi, wedi'i osod gyda'r atig fel llofft. Dywedodd tra'r oedd hi'n berchen ar yr Eiddo, nad oedd erioed yn fwriad defnyddio'r atig fel llofft a daeth i wybod am hynny dim ond yn ystod yr achos presennol. Dywedodd fod y tŷ wedi cael ei osod fel tŷ tair llofft. Ar ôl dod i wybod bod yr atig yn cael ei ddefnyddio fel pedwaredd llofft, ysgrifennodd at y tenantiaid ar 20 Gorffennaf 2018 yn gofyn iddynt beidio. Dywedodd fod hyn yn torri'r cytundeb tenantiaeth. Lleisiodd y

Cynghorydd Rogers bryder bod yr Ymatebydd wedi ymgynghori cyn lleied a hefyd gyda chost uchel y gwaith cywiro oedd mewn golwg.

17. Soniodd yr Ymatebydd unwaith eto am y ffactorau a arweiniodd at wneud Gorchymyn Gwahardd a'r gwaith cywiro oedd angen ei wneud i gwrdd â'u hamcanion. Yr hyn a wnaethant mewn gwirionedd oedd ailadrodd y datganiad tyst a'r dogfennau a baratowyd gan Patricia Thomas a Robert Johnson. Rhoddodd Mr Dave Miller dystiolaeth lafar o rôl y Rheoliadau Adeiladu gan ailadrodd y dogfennau perthnasol a gyflwynwyd.

Canfyddiadau'r Tribiwnlys

18. Dyfarnodd y Tribiwnlys nad oedd gorchymyn rheoli'n bodoli ar gyfer yr Eiddo.
19. Canfu'r Tribiwnlys fod y peryglon a nodwyd yn yr Atodlen i'r Gorchymyn yn bodoli pan wnaed yr archwiliad a bod yr Ymatebydd wedi sgorio'r Eiddo'n gywir ar sail y peryglon hynny.
20. Canfu'r Tribiwnlys fel mater o ffaith bod y gwaith cywiro yr oedd gan yr Ymatebydd mewn golwg yn gwbl anghymesur o ran maint a chostau tebygol ar gyfer atal atig yr ail lawr rhag cael ei ddefnyddio fel llofft.
21. Canfu'r Tribiwnlys fel mater o ffaith bod y camau gorfodi wedi eu paratoi'n anghywir. Cyfeirio at "llofft yr ail lawr" yn unig y mae'r Gorchymyn Gwahardd. Ond eto, mae'r gwaith cywiro ynghlwm wrth y Gorchymyn yn cyfeirio at waith gwella mewn rhannau eraill o'r Eiddo nad oes ganddo ddim i'w wneud â'r rhan o'r Eiddo a nodir yn y Gorchymyn. Nid yw gwallau gweinyddol o'r fath yn cyfiawnhau'r taliadau a godwyd gan yr Ymatebydd.
22. Am y rhesymau uchod, penderfynodd y Tribiwnlys amrywio'r gwaith cywiro o dan y Gorchymyn Gwahardd fel a ganlyn:

22.1 Ystyrir nad yw'r gwaith cywiro sydd gan yr Ymatebydd mewn golwg yn angenrheidiol. Y gwaith cywiro priodol i'w wneud yw bordio gwaelod y grisiau i fyny i'r atig a gosod canllaw ar y grisiau a drws llai o uchder, sef 1200mm ar y mwyaf. Bydd hyn yn hwyluso ei ddefnyddio fel storfa ac yn atal ei ddefnyddio fel llofft.

22.2 Ni ddylid defnyddio llofft yr ail lawr fel llofft nac ychwaith ar gyfer byw ynddi mewn unrhyw ffordd arall.

22.3 Mae'r apêl yn erbyn y taliadau gweinyddol a godwyd gan yr Ymatebydd yn cael eu hamrywio a'u lleihau o 75% gan ddod â'r ddyled i lawr i £103.75.

Dyddiedig 15fed Chwefror 2019.



J Rostron
Cadeirydd

Y Gyfraith ac Apelio i'r Uwch Dribiwnlys

5. O dan Adran 231 o Ddeddf Tai 2004, lle mae'r Tribiwnlys Eiddo Preswyl wedi gwrthod hawl i apelio, gall parti ofyn am ganiatâd gan yr Uwch Dribiwnlys.
6. Mae Rheoliad 37 o Reoliadau Gweithdrefnau a Ffioedd Tribiwnlys Eiddo Preswyl (Cymru) 2016 yn egluro'r drefn apêl hon.
7. Mae Rhan 3 o Reolau Gweithdrefnau Tribiwnlys (Uwch Dribiwnlys) (Siambr Tiroedd) Offeryn Statudol 2010 Rhif 2600 (L.15), fel y'i diwygiwyd, yn egluro'r broses o wneud cais apêl.
8. Rhaid i chi anfon cais ysgrifenedig am ganiatâd i apelio at y Tribiwnlys o fewn 14 diwrnod i'r dyddiad yr anfonodd y tribiwnlys, a wnaeth y penderfyniad sy'n cael ei herio, yr hysbysiad yn gwrthod caniatâd i apelio at y Ceisydd.

Y manylion cyswllt yw;

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