

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0013/03/14-Fair Oak Road

In the Matter of 8 Fair Oak Road, Cathays, Cardiff, CF24 4PY

In the matter of an Application under 62(7) of the Housing Act 2004, Temporary Exemption from Licensing Requirements, dated 13th March 2014.

APPLICANT Mr Salvatore Azzopardi

RESPONDENT Cardiff County Council

**TRIBUNAL Chairman: Mr Richard Payne LL B M Phil
 Surveyor: Mr Mark Taylor PGDM BSc (Hons) MRICS**

Hearing date: 7th MAY 2014.

Appearances: The Applicant in person and Mr Richard Grigg, Solicitor, Miss Lucy Taylor and Miss Angharad Thomas for the Respondent.

ORDER

The Applicant's appeal against the Respondent's refusal to grant him a Temporary Exemption from the licensing requirements in section 61(1) of the Housing Act 2004 is refused.

Determination and reasons.

1. The Applicant is the owner of 8 Fair Oak Road, Cathays, Cardiff ("the property"). The property is currently let to three students and is situated in an area of Cardiff that is subject to additional licensing with regards to Houses in Multiple Occupation (HMO) under the Housing Act 2004 ("the Act"). The Respondent Council require the property to be licensed in accordance with the Act. It is possible under section 62(1) of the Act to seek temporary exemption from the requirement to license an HMO and that is what the Applicant did in this case. However his application for exemption was

refused by the Respondent local authority and he appeals to the Tribunal to challenge that refusal.

Inspection.

2. The Tribunal inspected the property at 9.40am on 7 May 2014 in the presence of Mr Azzopardi and Miss Lucy Taylor, Environmental Health Officer from the Housing Enforcement Department of Cardiff Council. The Tribunal is grateful to the Applicant and to his three tenants (who were all at home at the time of inspection) for their co-operation.
3. The property is a two-storey mid-terraced house of traditional construction under a pitched concrete tile roof, with a small front forecourt leading onto the street. Internally, a loft conversion has added another staircase, bathroom and additional room at the top of the house. There is a small extension to provide a kitchen and small store to the rear under a concrete tile mono pitch roof. Fair oak Road is a busy thoroughfare leading from Cathays to the Fair oak roundabout which is situated between the two major parts of Roath Park, the recreation ground and the flower gardens that lead to Roath Park Lake. Cathays cemetery is directly opposite the property. There was external signage indicating the property is currently for sale.
4. The front door had a Yale lock and a security lock which meant that a key could be needed to exit the property if locked either internally or externally by one of the residents. There were three rooms on the ground floor. From the floor tiled entrance hallway, on the right, the downstairs front room was used as a student bedroom. There was a burglar alarm panel in this room. There was then a lounge/dining area containing settees leading to a kitchen at the rear of the property. The kitchen door exits onto a small backyard which was pebbled and contained a table and chairs. There is an old outside toilet presumed to no longer be in use. It can be seen from an examination of the rear of the property from the back yard, that the property has been converted and extended.
5. Internally, the steep staircase rises from the hall to the 1st floor which contains two main bedrooms. The first bedroom is on the left from the landing looking towards the front of the house and was a double room. The front bedroom looking out over Fair oak Road likewise was a double room. The house benefits from gas central heating and the boiler was situated upon the first floor landing.
6. A second very steep and narrow staircase leads up to the second floor in what would previously have been the loft and roof space. On the left from this second landing is the bathroom which contains a bath with a shower over it, toilet and hand basin. The front room on the second floor was not occupied, and is a small room apparently

used as a spare room, with a small skylight providing light and potential ventilation. There were working smoke alarms above the stairs leading to the first and second floors.

The Application.

7. By an application form dated 13th March 2014 Mr Azzopardi appealed against the decision of Cardiff County Council to refuse a Temporary Exemption Notice (TEN) for the property, communicated to him by letter from the Respondent dated 27th February 2014. The application was accompanied by copies of two letters that the Applicant had written to the Respondent one dated 30th January 2014 and the other undated, but in response to the Respondent's letter of 11th February 2014 as well as the copies of the Respondent's letters referred to. The Applicant appealed on the following basis;
 - a. That the property had been marketed for rent with a reputable professional letting agency and that this agency, when asked, had advised that no HMO licence was required.
 - b. The Applicant surmised that the licensing requirements for the property had not been introduced or enforced via the correct channels (because of the aforementioned position of the agency).
 - c. In any event the property was now for sale and there was no intention to further rent the property out after the tenancy of the current occupants expires in a few months time.

The application did not seek any particular length of exemption from licensing or mention any date in this regard.

8. Directions were given, in compliance with which both parties supplied further documentation and statements of case. The Tribunal has carefully considered all of the documentary evidence supplied to it.
9. The Respondents statement of case and supporting documentation was undated but received by the Tribunal on the 25th April 2014. It set out the basis for mandatory and additional licensing of HMO's under the Act and pointed out that the Cathays Community Ward area containing the property was to be subject to additional licensing with an implementation date of 1st July 2010. This was publicised in a number of ways. A public notice was placed in the South Wales Echo and Western Mail on the 11th March 2010, the scheme was advertised in the student newspapers of Cardiff University and the then University of Wales Institute Cardiff (UWIC, now re-named as Cardiff Metropolitan University). The scheme was advertised in the Cardiff Property Mail every fortnight for three months, the Council sent out paper newsletters

and publicised the scheme on its website. All letting agents were informed, the student housing website was updated, presentations were made to the Cardiff Landlord Forum and electronic newsletters were sent out via the All Wales Landlord Accreditation Scheme. The Respondent also included in its hearing bundle the guidance published by LACORS in July 2007 "Temporary Exemption Notices Explained/Housing Act 2004" which it had taken into account in coming to its decision.

10. The Respondent also pointed out that since the introduction of additional licensing, some 1403 properties had been licensed in the Cathays area and that an application pack for an HMO licence for the property had been sent to Mr Azzopardi on the 10th December 2013. The Respondent's letter of the 11th February 2014 had pointed out to the Applicant that the property was not eligible for a TEN and that the Council could not be responsible for advice given by agents. The Respondent pointed out that CPS, one of the agencies that the Applicant referred to, manage a number of licensable properties and are in regular contact with the Council's HMO licensing team. There was further an e mail from John Pinn of CPS Homes/Quin and Co Limited dated 16th April 2014 to Lucy Taylor, indicating that CPS had been involved in a "Let Only" capacity for Mr Azzopardi at 8 Fair oak Road and were not involved in the management of the property in any form and not contracted to advise on the management of the HMO. Mr Pinn continued that he had checked with his colleague who oversees HMO licensing "*who assures me that we would not have advised that this property doesn't meet the criteria for HMO licensing.*"

The hearing.

11. The Applicant repeated the arguments that he had set out in the papers. He maintained that he had been to three agencies that he has paid a fee to in the past and he would expect an agency to advise him of the correct position and feels aggrieved that whilst the Council say that they are not responsible for the agencies advice he is potentially liable to prosecution. He explained that he has owned the property since 2000 and has previously let it to a mixture of people who are friends or families. He confirmed that the current tenants moved in on 15 October 2013 and they have a 12 month tenancy and are due to move out on 14 October 2014. There are three overseas students in the property and they pay £725 per month in rent plus bills.
12. The Applicant confirmed that he had not taken any steps to terminate the tenancy early, that no notices seeking possession had been served and he asserted that he would not make his tenants leave before 14 October 2014. He again said that he

relied upon the services of a professional letting agent and did not think to contact the Council.

13. Mr Grigg for the Respondent stated that the Applicant had knowledge of whether this property needed to come into licensing in December 2013. That even had he applied then for a TEN, that it would only have been granted for a maximum of three months and that the Applicant would still have had to have taken steps to either licence the property or to stop it being licensable. Mr Grigg pointed out that the property had remained an HMO without a licence since December 2013. He also referred to section 62 of the Housing Act 2004 and the discretion given to the local authority who “may” if they think fit serve a TEN where the person having control of or managing an HMO which is required to be licensed but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing the house is no longer required to be licensed. He indicated that the local authority did not think it fit to serve a TEN in this instance.
14. Mr Grigg gave examples of when the Council may consider it appropriate to serve a TEN. These included if an Applicant could demonstrate that works were being done within a demonstrable timeframe or if there was a contract for sale with an exchange and completion date with a view to the property no longer being licensable.
15. Miss Thomas on behalf of the Respondent raised the issue of the agents in this case being engaged in a “find only” capacity. The Applicant accepted that this was correct. He said his contract with CPS Homes was for them to find the tenants only and that after that he would do all the work upon the property. He said that his wife had been to the agency with a check list of matters to raise prior to engaging them and that this checklist had included asking if the property needed a licence. He said that CPS charged him one week’s rent and VAT and the tenants had paid the agency a month’s rent in advance and CPS had taken their fee from that first month’s rent. Thereafter the rent collection is undertaken by direct debit and he has had no further involvement with CPS Homes in relation to the management of the property.
16. The Applicant, having heard Mr Grigg’s representations said that he accepted what the law states and did not dispute that he knew the property was licensable after being informed of the same by the Council. He said that he was not aware that the TEN would only be for three months. He confirmed that the property had been marketed for sale since February 2014 but at present despite having a few viewings he had not received any offers. He made it clear that he was not looking to sell it as a tenanted property. He said that he was aware that a licence was needed for a property let to four people but he had not been aware of the additional licensing scheme for Cathays.

The law.

17. Section 62 of the Act “Temporary exemption from licensing requirement” states;

- 1) *This section applies where a person having control of or managing an HMO which is required to be licensed under this Part..... but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.*
- 2) *The authority may, if they think fit, serve on that person a notice under this section (“a temporary exemption notice”) in respect of the house.*
- 3) *If a temporary exemption notice is served under this section, the house is (in accordance with sections 61 (1) and 85 (1)) not required to be licensed either under this Part or under Part 3 during the period for which the notice is in force.*
- 4) *A temporary exemption notice under this section is in force –
 - (a) for the period of three months beginning with the date on which it is served, or
 - (b) (in the case of a notice served by virtue of subsection (5)) for the period of 3 months after the date when the first notice ceases to be in force.”*

18. Section 62(5)(b) enables the local authority to serve a second temporary exemption notice to take effect from the end of the three-month period of the first notice if they consider that there are exceptional circumstances that would justify the same.

19. Section 62(8) relates to the conduct of an appeal against the refusal to grant a temporary exemption notice and confirms that the appeal is to be by way of a rehearing that may be determined having regard to matters of which the local authority were unaware. Section 62(9) states that the Tribunal may confirm or reverse the decision of the authority, and if it reverses the decision, must direct the authority to serve a temporary exemption notice that comes into force on such date as the Tribunal directs.

Decision.

20. The Tribunal, having carefully considered all of the oral and documentary evidence before it, refuses the Applicant’s appeal against the Respondent’s refusal to grant him a TEN. The Tribunal accepts the submissions made on behalf of the Respondent and has no doubt that the additional HMO licensing scheme for the Cathays area was widely publicised and that the Council have correctly applied the law.

21. The Applicant, by his own admission, was ignorant of the law and in particular that a TEN could only be granted for a period of three months (extendable for a further three months in exceptional circumstances). The Applicant had not notified the local housing authority of his intention to take particular steps with a view to securing the house is no longer required to be licensed in accordance with section 62 (1) save for indicating that he was marketing the property for sale. The Tribunal agree with Mr Grigg that if there was an imminent date for exchange of contracts and completion of the sale, following which the local authority was satisfied that the property would no longer be licensable, then that may be a suitable case for a grant of a TEN. That was not the case here. The Applicant has no potential purchasers and he made it clear that even if he did, he intends to honour his current tenants' agreement and would not sell until after they vacate on 14th October 2014.
22. It follows that the application was not made upon good grounds. Although the Applicant had made much of feeling let down by professional letting agents, it transpired that this was not the case at all. The Applicant's evidence upon this point was inconsistent. He said in oral evidence that the license issue was one of a number of questions upon a checklist that had been raised by his wife. The statement of case, application and letters put matters more strongly. For example in his statement of case he referred to the final letter he had received from the Council which *"... also outlines that the behaviour of the agencies in this matter is not the responsibility of the Council, the very body that is responsible for administering it. This would suggest that the agency, the front-line of rentals, acting on my behalf and paid for appropriately letting my property, does not face any liability for renting it out without a licence, whereas I, was informed in an early letter... that I could be prosecuted with a possible fine of up to £20,000."*
23. This certainly gave the impression that the agencies had actively managed the property and actively advised that no HMO licence was necessary. As set out above, it was clear at the hearing that the agency CPS Homes had only found the tenants and played no further part in the management of the property. The Tribunal notes the e mail from Mr Pinn to the Council on 16th April 2014 referred to above, and does not accept upon the evidence, that the Applicant or his wife was told by employees of CPS Homes that he did not require an HMO licence.
24. However, for the benefit of the Applicant, even if the Tribunal had been satisfied that an agent had given incorrect advice about the licensing situation, it was accepted that he was aware of the need to license the property from December 2013. (There was no evidence before the Tribunal that the Applicant had completed or initiated that licence application and he had not followed the advice of the Council to do so.)

The Tribunal considers that even if the Applicant had relied to his detriment upon the incorrect advice of an agent in these circumstances, this would not have provided grounds for a TEN to be granted in any event. The Council are correct when they point out that there are numerous sources of information in relation to this matter not least of which is the Council's own website. The Tribunal has no doubt that any enquiry made to the Council about this sort of issue would swiftly lead to the correct advice and legal position being pointed out.

25. In this case there were no steps being taken by the Applicant to secure that the property was no longer required to be licensed as an HMO within the timeframe for which a TEN could be granted. The Appeal is refused.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Chairman

17th June 2014