

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Ref: RPT/0025/02/18, RPT/0027/02/18 and RPT/0028/02/18

In the matter of The Housing Act 2004 – Revocation and refusal to grant an HMO Licence

In the matter of 89 Rhyddings Terrace, 23 Gwydr Crescent and 9 St Albans Road

Tribunal: Andrew Sheftel
Peter Tompkinson
Carole Calvin-Thomas

Applicant: Parvez Akhtar

Respondent: The Council of the City and County of Swansea
Represented by: Christopher Evans (Counsel)

DECISION

The decision in summary

1. For the reasons set out below, the Applicant's appeal is allowed.

Background

2. This is an appeal by the Applicant against a decision of the Respondent's General Licensing Committee dated 24 January 2018 to:

(1) Revoke the HMO licence issued to the Applicant for 9 St Albans Road, Brynmill, Swansea SA2 0BP; and

- (2) Refuse to grant an HMO licence to the Applicant in respect of 89 Rhyddings Terrace, Brynmill, Swansea SA2 0DS and 23 Gwydr Crescent, Uplands, Swansea SA2 0AA.
3. Pursuant to paragraphs 31 and 32 of Schedule 5 to the Housing Act 2004, the Applicant has appealed the above decision by application dated 12 February 2018.
4. The hearing was held on 17 May 2018. The Applicant appeared in person and the Respondent was represented by counsel, Mr Christopher Evans. Also in attendance on behalf of the Respondent were Lindsay Thomas (solicitor), Paula Livingstone and Alice Evans.
5. Pursuant to section 34(2) of Schedule 5 to the 2004 Act, an appeal:
- “(a) is to be by way of re-hearing, but*
- (b) may be determined having regard to matters of which the authority were unaware.”*
6. Accordingly, the Tribunal is not constrained simply to reviewing the decision of the Committee.
7. In advance of the hearing, the Tribunal received witness statements from the Applicant and Paula Livingstone on behalf of the Respondent. Both expanded upon their evidence at the hearing. The Tribunal also heard from Alice Evans, the case officer.
8. Paragraph 34(3) of Schedule 5 to the 2004 Act provides that the Tribunal may confirm, reverse or vary the decision of the local housing authority.

The relevant law

9. The issue in the present case is whether the Applicant satisfies the ‘fit and proper person’ test under the Housing Act 2004.
10. Pursuant to section 64(3) of the 2004 Act, the authority may grant a licence if:

“(a) the house is reasonably suitable for occupation by not more than the maximum number of households or persons [specified in the application or some other maximum number decided by the authority]; [and]

(b) the proposed licence holder is a fit and proper person to be the licence holder...;

(c) ... the proposed manager of the house is either—

(i) the person having control of the house, or

(ii) a person who is an agent or employee of the person having control of the house;

(d) ... the proposed manager of the house is a fit and proper person to be the manager of the house; and

(e) ... the proposed management arrangements for the house are otherwise satisfactory.”

11. Pursuant to section 66, in deciding whether a person is a fit and proper person to be the licence holder, the authority “must have regard (among other things) to” any evidence within subsection (2) or (3)”.

(2) Evidence is within this subsection if it shows that P has—

(a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);

(b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;

(c) contravened any provision of the law relating to housing or of landlord and tenant law; or

(d) acted otherwise than in accordance with any applicable code of practice approved under section 233.

(3) Evidence is within this subsection if—

(a) it shows that any person associated or formerly associated with P (whether on a personal, work or other basis) has done any of the things set out in subsection (2)(a) to (d), and

(b) it appears to the authority that the evidence is relevant to the question whether P is a fit and proper person to be the licence holder or (as the case may be) the manager of the house.

12. At the hearing, the Respondent sought to rely principally on the provisions of s55(2)(c) of the 2004 Act insofar as the Applicant has contravened provisions of housing law as set out below.
13. Further, in accordance with section 66(5), in deciding whether the proposed management arrangements for the house are otherwise satisfactory, the local housing authority must have regard to (among other things):
 - (a) *whether any person proposed to be involved in the management of the house has a sufficient level of competence to be so involved;*
 - (b) *whether any person proposed to be involved in the management of the house (other than the manager) is a fit and proper person to be so involved; and*
 - (c) *whether any proposed management structures and funding arrangements are suitable.*

14. It was not disputed that all three properties are reasonably suitable for occupation as HMOs in accordance with the provisions of section 65 of the 2004 Act and were so at the time of the Committee's decision. It should be noted that prior to that some works were indeed identified by the Council and these are addressed further below.

The Local Authority Committee's decision

15. The Committee refused to grant HMO Licences in respect of 89 Rhyddings Terrace and 23 Gwydr Crescent and revoked the existing licence for 9 St Albans Road.
16. In its Decision, amongst the evidence considered by the Committee, reference was made to the fact that:
 - (1) There had been contravention of the 2004 Act by the Applicant leading to prosecution on 22 August 2017 for letting an unlicensed HMO at 89 Rhyddings Terrace contrary to section 72(1) and not returning information required by the Council contrary to section 236(1) of the 2004 Act;
 - (2) The Applicant had been convicted on 19 April 2012 for letting an unlicensed HMO at 23 Gwydr Crescent contrary to section 72(1) and not

returning information required by the Council contrary to section 236(1) of the 2004 Act and failing to comply with a section 16 request for information pursuant to the Local Government (Miscellaneous Provisions) Act 1976;

- (3) The Applicant had been convicted on 19 April 2012 for failing to comply with HMO licence conditions for 9 St Albans Road contrary to section 72(1) of the 2004 Act.
17. In reaching its Decision, the Committee had particular reliance on the following findings:
- (1) The failure to understand the need for an HMO licence to be sought when purchasing an existing HMO;
 - (2) Having held an HMO licence since 2011, it was considered that the Applicant should have known that an HMO licence cannot be transferred;
 - (3) The Applicant should have been more proactive in undertaking works as and when needed;
 - (4) It was felt that he trivialised works identified by Officers;
 - (5) The Applicant initially failed to provide information on the HMO licence application for 89 Rhyddings Terrace which delayed the application process; and
 - (6) The Committee was not satisfied that management arrangements would be in place to ensure compliance.

The parties' submissions

18. The Applicant does not deny the convictions. Indeed, in relation to the prosecution relating to 89 Rhyddings Terrace, it should be noted that according to the Applicant's witness statement in this appeal, he pleaded guilty to certain offences at the Swansea Magistrates Court in August 2017. Nor does the Applicant dispute that his application for a licence in respect of 89 Rhyddings Terrace was not submitted on time.

19. However, he nevertheless maintained that the Committee's decision that he was not a fit and proper person should be overturned.
20. The Applicant is the owner of three HMO properties: 9 St Albans Road, Brynmill, Swansea SA2 0BP; 89 Rhyddings Terrace, Brynmill, Swansea SA2 0DS and 23 Gwydr Crescent, Uplands, Swansea SA2 0AA.
21. He had previously been granted HMO licences for both 9 St Albans Road and 23 Gwydr Crescent and indeed makes the point that the Committee nevertheless decided that he was a fit and proper person in June 2012 when he was granted a licence for 23 Gwydr Crescent and it was decided that his licence for 9 St Albans Road should not be revoked. As set out further below, in the Tribunal's view, this is not without significance.
22. On the Applicant's evidence, he acquired 89 Rhyddings Terrace in or about June of 2016. According to his witness statement, he was aware that the property had an existing HMO Licence and had been empty for a period of approximately one year before his purchase. It was his understanding that the Local Authority would contact him with regard to the HMO Licence following the purchase and he acknowledges that he did not make an application at that time. Pausing there, the point was made on behalf of the Council as to why the Applicant believed the authority would have known about his purchase in order to contact him. The Applicant could provide no satisfactory answer to this question, although in the Tribunal's view, his belief was honestly held, albeit mistakenly and without foundation.
23. According to the Applicant, he was, however, mindful of the need to undertake works to put the property in to an acceptable standard and apparently spent approximately £25,000 in undertaking works. He then decided to rent out the property in September of 2016.
24. On the Respondent's case, a notice was sent to the Applicant in February of 2017, although the Applicant denies receipt of this. However, he accepts that he received a letter from the Council in March 2017 enclosing an application form

for a Licence. This was sent back to the Council in an incomplete state and was consequently returned by the Local Authority with a requirement that he complete the document within 14 days. The Applicant did not meet this deadline, citing that it coincided with his daughter's wedding, although the form was subsequently returned.

25. At the hearing the Respondent submitted that in view of his earlier applications for an HMO licence, the Applicant ought to have been aware of the need to apply and should have taken it upon himself to do so. The Respondent sought to adduce paperwork which apparently would have been supplied at the time of the initial licence application in 2012 which stated explicitly (amongst other things) that licences cannot be transferred. The Applicant did not deny that he might have received this, but could not remember. Further, he contended that he did not appreciate the point 4 years later when he acquired 89 Rhyddings Terrace. As noted above, he contended that he was, however, aware that works would be required to the property to bring it up to standard, which were for the most part carried out before the property was let.
26. According to the Respondent's evidence, however, when inspected on 20 September 2017, 23Gwydr Crescent had a number of issues which were contrary to the HMO Licensing requirements or the Management Regulations or which presented hazards under Part 1, Housing Act 2004. At the hearing, it was stated that certain works were also required to 89 Rhyddings Terrace. According to the Respondent, various items were identified to the Applicant during the course of the inspections and he was aware of what works were required. The Applicant had apparently not carried out all the required work by the time of the committee meeting on 8 December 2017. However, when re-inspected on 15 December 2017 necessary works work had been carried out.
27. For the Applicant's part, he contended that he never received written confirmation of what works were carried out following the inspections in September 2017. Following the matter being raised again at the Committee hearing in December, he contended that the works were attended to within a few

days. At the hearing before the Tribunal, the Respondent accepted that there was no record that the inspections carried out in September were followed up in writing with what the Applicant was required to do. In the circumstances, in the Tribunal's view, the Applicant should not be criticised for his actions or approach to the works following the September inspections, in light of the fact that he was not provided with a written schedule of works. Moreover, as noted above, the works were subsequently carried out very quickly and the Respondent has accepted, there are no issues with regard to the state of any of the properties.

28. Finally, the Tribunal notes that the Applicant in his witness statement raises an issue regarding notification of the Committee's decision. Pursuant to section 8 of Schedule 5 to the 2004 Act, notices must be served within the period of seven days beginning with the day on which the decision is made. At the hearing, Alice Evans gave evidence on behalf of the Respondent that the notification was in fact delivered on time, by hand. The Applicant did not seriously dispute this and in any event, it does not appear that anything turns on this point given that the Applicant has in any event appealed the decision on substantive grounds.

The Tribunal's determination

29. The Tribunal reaches this decision by a majority of 2-1.
30. Contraventions of the 2004 Act are a serious matter.
31. According to section 66(2)(c) of the 2004 Act, one of the factors expressly required to be taken into account in applying the fit and proper purpose test is whether the applicant has contravened any provision of the law relating to housing or of landlord and tenant law. This was the provision relied on by the Respondent at the hearing. It should be noted, however, that the Respondent did not seek to argue that the fact of such a conviction meant that it automatically followed that the Applicant could not be a fit and proper person. As noted above, section 66 of the 2004 Act states only that the authority must 'have

regard' to such matters – and as the Applicant pointed out, he was granted licenses in 2012 notwithstanding the existence of relevant convictions.

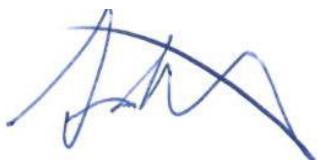
32. In the present case, the Applicant has been convicted of offences in relation to all three properties in question – indeed, the only HMO properties that he owns.
33. However, the most recent offence was concerned with administrative matters (his failure to apply for a licence) rather than health and safety concerns regarding the property. Indeed, there was no evidence before the Tribunal that there had been anything remiss with regard to the state of any of the three properties. This is not to lessen the importance of complying with the provisions of the 2004 Act which the Applicant has transgressed.
34. There was no suggestion that his failure to apply for a licence was motivated by any attempted gain, given that he appreciated the need for and did spend monies on works to 89 Rhyddings Terrace. The Applicant also stated that he has applied for a Rent Smart Wales licence. There was some confusion about the current status of the application, although on the Applicant's evidence, he has undertaken the necessary training.
35. While it is correct that one of his convictions in 2012 (9 St Albans Road) related to his failure to carry out works, the Council was prepared to hold him a fit and proper person in 2012 notwithstanding this conviction and the convictions relating to 23 Gwydr Crescent. The only additional transgression now, relates to the offences relating to the failure to obtain a licence in relation to 89 Rhyddings Terrace (and again, use of the word 'only' is not intended to diminish the significance of those offences).
36. In answer to this, the Council made, in essence, two submissions: (i) that the Applicant is out of his depth with regard to the requirements for managing an HMO; and (ii) that the repeated convictions show a pattern of behaviour and the Applicant has had too many chances.
37. With regard to the first charge, the majority rejects the Respondent's assertion:

- (1) As noted above, with regard to the works required in 2017, the Applicant was not provided with a written statement of what was required following the September inspections, but the works were completed in a matter of days following the initial aborted Committee hearing;
- (2) there was no evidence before the Tribunal of any issues being raised by tenants as to the standard of management of the Applicant or the state of the properties at any time.
38. As to the second issue, this was more finely balanced. It is undoubtedly the case that the Appellant has had repeated breaches of the applicable legislation and it could be argued that he failed to learn the lessons on his 2012 breaches, although admittedly, the circumstances of the breaches in 2017 were not identical. On balance, the majority of the Tribunal does not accept the Respondent's submission in this regard, although notes that it could prove very hard to sustain such a conclusion should the Applicant commit any further transgressions.
39. Ultimately, the majority concludes that his 2017 transgressions do not take the Applicant's case over the line such that he should not be regarded as a fit and proper person. The majority reaches this conclusion for the reasons set out above and in particular: (i) that the Council considered him a fit and proper person in 2012, notwithstanding the 2012 convictions; (ii) that the properties are all in a satisfactory condition; (iii) that there was no evidence of any complaints as to the state of the properties from any of the tenants at any time; and (iv) that although the Applicant committed further offences in 2017, this was not by reason of any attempted gain, given that he had spent considerable sums on renovating the property.
40. In contrast, the dissenting member of the Tribunal, for whom the previous convictions weighed heavy against the Applicant, concluded that the Applicant had had enough chances to know his responsibilities under the 2004 Act, yet remained vague about his obligations – and accordingly would have dismissed the appeal.

Consequences of the Decision

41. Pursuant to paragraph 34(4) of Schedule 5 to the 2004 Act, on an appeal under paragraph 31 of the 2004 Act (i.e. the refusal to grant a licence), the Tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct. At the hearing, the issue was raised with the Respondent as to whether, if the Tribunal considered the Applicant a fit and proper person, it should nevertheless impose conditions on the granting of a licence. However, this was rejected by the Respondent, maintaining that he was not in fact fit and proper.
42. Accordingly, in view of the findings above, the Tribunal, by majority decision, determines that the HMO licence issued to the Applicant for 9 St Albans Road should be restored, and that he should be granted licenses in respect of 89 Rhyddings Terrace and 23 Gwydr Crescent, Uplands, Swansea.

Dated this 6th day of July 2018

A handwritten signature in blue ink, appearing to read "J. Williams".

CHAIRMAN