

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**

References: RPT006/112/18, RPT0055/10/18

Properties: Numbers 94 and 99 Mackintosh Place, Roath, Cardiff, CF24 4RL

And in the matter of an Application under paragraph 31 of part 3 to Schedule 5 of the Housing Act 2004 in relation to conditions incorporated within a HMO Licence.

Tribunal: Trefor Lloyd (Chairman)  
Andrew Lewis (Surveyor)  
Bill Brereton (Lay Member)

Applicant: Mr Assan Khan

Respondent: Cardiff County Council

**SUMMARY OF THE DECISION**

1. In accordance with paragraph 34 of Schedule 5 of the Housing Act 2004 the Respondent is directed to grant a HMO Licence for each of the premises known as Numbers 94 and 99 Mackintosh Place, Roath, Cardiff, CF24 4RL subject to the conditions imposed in the original Licence save as varied as detailed in paragraph 82 of this Decision.
2. For the reasons set out in paragraphs 74-81 of this Decision we Order that the Applicant do pay the Respondent's costs assessed in the sum of £500 (Five Hundred Pounds) to the Respondent within 14 days of the date of this decision.

**Background and Hearing**

3. The evidence in relation to both appeals was heard on the 30<sup>th</sup> April with the inspections of the properties undertaken the following day on the 1<sup>st</sup> May 2019. Mr Khan appeared in person and the Respondent was represented by its solicitor, Mr Richard Grigg. We heard evidence from both Mr Khan and also Ms Rachel Anne Stickler, the Neighbourhood Services Officer for the Respondent Authority. Both appeals relate to the grant and conditions imposed within a HMO Licence for the properties as aforesaid, which are situated on opposite sides of the road at Mackintosh Place in Roath, Cardiff. For the purpose of this Decision the properties are hereinafter referred to as Number 94 and Number 99 where they are referred to individually, or alternatively when referred to together as "the Properties". As both appeals involved the same parties and the Properties were in close proximity to one another and related to similar issues, it was directed that both appeals be heard together. That Direction made on the 18<sup>th</sup> February 2019 was not appealed.
4. However, the Applicant did make a number of applications to vary other Directions, also appeals from earlier case management decisions. All those matters have been dealt with by the President, and in the case of any leave to appeal, the same has been refused.

In the circumstances this Decision is the Tribunal's final determination in respect of both appeals.

5. In relation to both Number 94 and Number 99 the Applicant completed Form RPT9 and at box 7 under the heading "Additional Information" there were 7 separate matters listed in respect of both Number 94 and Number 99. Of the 7, 6 are common to both being the following allegations:
  - (a) The Licence is badly drafted and ambiguous. Difficult to read.
  - (b) The Property is not licensable.
  - (c) There has been lack of disclosure and the Applicant requires documents.
  - (d) The works required are not reasonable required (sic). The timeframe is short and unreasonable.
  - (e) The matters infringe the Human Rights Act provisions.
6. Furthermore, in respect of Number 94 was the following submission:
  - (a) The Licence Conditions states only 3 occupiers for the maisonette, whereas it is adequate for 4 occupants.
7. In addition, specific to Number 99 was the following submission:
  - (a) The Draft Licence Conditions states 6 occupiers, whereas the final version only provided for 4 occupiers.
8. As aforesaid Directions were laid out in early course and despite the Direction for filing witness evidence to support the Applicant's case being extended on the 16<sup>th</sup> January 2019 to the 22<sup>nd</sup> March 2019 in respect of Number 94 and the 8<sup>th</sup> March 2019 in respect of Number 99, the Applicant failed to file any evidence. He did, however, as aforesaid file and serve a number of applications to vary and/or appeal Directions. Those applications in some instances were headed "Witness Statement". Consideration of that material indicated it was only the document headed "Witness Statement/Application for Disclosure Information/Application to Vary Direction" dated the 14<sup>th</sup> January 2019 that commented upon the appeal by making reference to the following:
  - (1) At paragraph 1 an allegation that the "Respondents have taken an aggressive draconian approach ...". The same paragraph goes on to require evidence from the Respondent of justification that the Properties are licensable.
  - (2) At paragraph 4 where again the Applicant states that the works required are onerous, inappropriate and not reasonably required alleging the Respondent had failed to provide acceptable evidence and justification for the required works. The paragraph also states that there are alternative options.
9. Nowhere within the documentation does the Applicant amplify upon these points in issue.
10. The Licence in respect of Number 94 Mackintosh Place was issued on the 26<sup>th</sup> November 2018 and bears Licence Number 528982. The Licence in respect of Number 99 Mackintosh Place was issued on the 9<sup>th</sup> October 2018 and bears the Licence Number 529002. As stated above the Applicant did not provide Further and Better Particulars in relation to his Grounds of Appeal as directed by the Tribunal. It became clear however during the hearing (see further below) that it was common ground that many of the Conditions in the Licences are reasonable, and in essence the bulk of the Applicant's case related to the reasonableness or otherwise of the works required at Appendix A of each Licence in the event that the respective Properties being considered to be a HMO.

11. Accordingly, although we have considered the entirety of the Conditions in the Licences and determine that they should be included unless otherwise stated, we have also focused upon the conditions in issue having regard to the respective Properties.
12. The day before the hearing the Applicant by way of an email sought an adjournment as he had a hospital appointment. That application had already been made and refused by the Tribunal President on paper on the 16<sup>th</sup> April. That written application stated the Applicant had a personal hospital diagnostic assessment but provided no further information.
13. The correspondence received at the Tribunal Office at 16.15 pm on the 29<sup>th</sup> April informed the Tribunal that the Appellant would not be present at the site visit which was to commence at 9.30 at Mackintosh Place, but would be present at the Tribunal Office to make a further fresh application to adjourn/vacate before the Tribunal.
14. As a result of this the Tribunal Chairman directed that all parties attend at the Tribunal Office at 9.30 on the 30<sup>th</sup> April to consider all matters with the site visit being postponed.
15. At the hearing which commenced at 9.45 the Applicant produced a letter confirming he was scheduled to have an MRI scan at 11 am at the Spire Hospital in Cardiff. He sought to vacate the hearing upon this basis. When asked why he had not produced the information earlier, he said he felt it should not be in the public domain and/or disclosed to the Respondent Authority as it was "a personal matter".
16. The Respondent Authority opposed the application bearing in mind inter alia the short notice. Eventually, after hearing further submissions it became apparent that the procedure the Applicant needed to undertake would result in him being able to return to the Tribunal hearing by 2 pm. In those circumstances the Tribunal reluctantly put the matter back to 2 pm on the 30<sup>th</sup> April on the strict understanding that irrespective of whether or not the Applicant would be in attendance, the hearing would commence at that time. Enquiries were also made as to the possibility of being able to continue sitting on the 1<sup>st</sup> May. Fortunately, that was possible as Tribunal members were available, and the venue was also available that day. The Applicant initially said he would not be available and would wish the matter to be part heard.
17. Having considered that and further submissions from the Respondent Authority we ruled that the matter would continue on the 1<sup>st</sup> May with further submissions as to the site inspections to be heard at 2 pm on the 30<sup>th</sup>.
18. The hearing commenced at 2 pm and as the Applicant was not present the Tribunal invited opening submissions from Mr Grigg on behalf of the Respondent. The Applicant appeared at 2.10 pm and said he was unsure as to whether or not a site inspection be undertaken on the 30<sup>th</sup> or indeed the 1<sup>st</sup> of May. At that stage he was reminded that we would benefit greatly from a site inspection (as was the norm) and in the absence of such we would have no alternative but to rely upon the plans as drawn by the Respondent Authority and the other descriptions made contemporaneously as a result of earlier visits to the Properties.
19. As a consequence The Applicant said he would try and make some further enquiries.

20. Following on from the above the parties were reminded that appeals of this nature are by way of a re-hearing (see *Clarke -v- Manchester County Council [2015] UK UT 0129 (LC)*) and the Tribunal makes its own mind up, but in doing so hears evidence from both the Applicant and the Respondent, the latter explaining the rationale behind its decision for making the conditions.
21. We then proceeded to hear initially from the Applicant having given him the opportunity to outline his issues in order to expedite matters. In essence he repeated what was set out in his Application Forms.
22. The Premises are mid terraced houses with small forecourts to the front constructed in solid brick and stone walls under pitched slate covered roofs circa 1910. Originally constructed as single private dwellings they have subsequently been converted into flats, with the loft area to the main portion of the houses being converted into residential accommodation.
23. In relation to Number 94, there is a shared/communal ground floor entrance. This leads to a self-contained front flat, having a small kitchen area, living room/bedroom, and shower room/wc; and rear self-contained flat having the same accommodation. A staircase leads to the first floor, which is laid out as a maisonette occupied by one family. The accommodation within the maisonette includes three bedrooms, kitchen, and bathroom on the first floor, with a second staircase rising to the converted loft area, where a further bedroom has been formed.
24. Concerning Number 99, there is a shared/communal ground floor entrance. This leads to a self-contained front flat, having a small kitchen area, living room/bedroom and shower room/wc; and a self-contained rear flat having the same accommodation. A staircase leads to the first floor, which is laid out as one self-contained rear flat having a kitchen area, living room/bedroom, and shower room/wc; and front flat having an open kitchen on the landing, two living rooms/bedrooms, shower room/wc and a second staircase rising to the converted loft area, where a further living room/bedroom has been formed. To the rear of the main structure in the garden a small single storey store has been provided.
25. The description of each property contained within the “Licencing Survey Sheet Flats” included by the Respondent Authority within their bundle appeared accurate.
26. The Respondent Authority had provided layout plans at pages 71 to 73 in respect of Number 94 and page 81 in respect of Number 99. Further, at the Tribunal's request the Respondent Authority provided further copies of the site layout plans referred to above indicating upon them in colour the location of the respective fire doors required.

#### **Assessment of Witness Evidence Generally**

27. As aforesaid the Tribunal heard evidence from the Applicant and Ms Stickler for the Respondent.
28. The Applicant's evidence at times was in our view unreliable, being especially so, when he found himself in difficulty explaining answers given that contradicted documentary evidence in the Trial Bundles. An example was in the light of a question put to him when dealing with Cardiff County Council's recycling process he said he did

not know how it worked, as he did not live in the City, but lived outside. Against this background he was then asked why he had presented various addresses in Cardiff, and a correspondence address for Tribunal documentation as 69 Paget Place, if that was not his home address. In reply he stated that a postal address was different to a home address. Another example was that in evidence he said that in the context of having owned the properties since 2004 and 2005 respectively all consumer boards situated in escape routes were metal, whereas upon inspection, none proved to be so.

29. Conversely, Ms Stickler came across as a credible no nonsense witness prepared to make concessions, and alter her evidence from that contained within her proof of evidence on occasions where she had been mistaken and/or the need arose. In the circumstances and in general where there is a question of fact which cannot be resolved by reference to documentary evidence, or by virtue of the property inspections the Tribunal preferred the evidence of the Respondent.
30. All the evidence was concluded and closing submissions made on the 30<sup>th</sup> April 2019, the Tribunal sitting until 6.45 pm. At that time arrangements were made with the Applicant for a site inspection the next day, so that he could indicate to the Tribunal the areas which were still in dispute, in order that the Tribunal could form its own view as regards any of those requirements.
31. We convened initially at Number 99 on the morning of the 1<sup>st</sup> May at 10.30.

### **Are the Properties Houses of Multiple Occupation?**

32. The Applicant disputes that the premises are HMOs. When asked by the Tribunal why he had applied for the present Licences, his answer was that he would face prosecution if he didn't make the applications and thereby commit an offence.
33. Conversely, the Respondent maintained that the premises are HMOs and as set out in their document headed "Statement of Reasons Response to an Appeal" at page 3 in relation to Number 94 and page 4 in relation to Number 99.
34. The Act provides definition as to what constitutes an HMO in Section 77, 254 to 257. Section 254 states:

#### ***"254 Meaning of "house in multiple occupation"***

- (1) *For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if -*
  - (a) *it meets the conditions in subsection (2) ("the standard test");*
  - (b) *it meets the conditions in subsection (3) ("the self-contained flat test");*
  - (c) *it meets the conditions in subsection (4) ("the converted building test");*
  - (d) *an HMO declaration is in force in respect of it under section 255; or*
  - (e) *it is a converted block of flats to which section 257 applies.*
- (2) *A building or a part of a building meets the standard test if -*
  - (a) *it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;*
  - (b) *the living accommodation is occupied by persons who do not form a single household (see section 258);*

- (c) *the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);*
  - (d) *their occupation of the living accommodation constitutes the only use of that accommodation;*
  - (e) *rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and*
  - (f) *two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.*
- (3) *A part of a building meets the self-contained flat test if -*
- (a) *it consists of a self-contained flat; and*
  - (b) *paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).*
- (4) *A building or a part of a building meets the converted building test if -*
- (a) *it is a converted building;*
  - (b) *it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);*
  - (c) *the living accommodation is occupied by persons who do not form a single household (see section 258);*
  - (d) *the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);*
  - (e) *their occupation of the living accommodation constitutes the only use of that accommodation; and*
  - (f) *rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.*
- (5) *But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.*
- (6) *The appropriate national authority may by regulations -*
- (a) *make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;*
  - (b) *provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;*
  - (c) *make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.*
- (7) *Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.*
- (8) *In this section -*

*“basic amenities” means -*

- (a) a toilet,*
- (b) personal washing facilities, or*
- (c) cooking facilities;*

*“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;*

*“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);*

*“self-contained flat” means a separate set of premises (whether or not on the same floor)*

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- (a) which forms part of a building;*
- (b) either the whole or a material part of which lies above or below some other part of the building; and*
- (c) in which all three basic amenities are available for the exclusive use of its occupants.”*

Section 257 is in the following terms:

***“257 HMOs: certain converted blocks of flats***

- (1) For the purposes of this section a “converted block of flats” means a building or part of a building which -*

- (a) has been converted into, and*
- (b) consists of, self-contained flats.*

- (2) This section applies to a converted block of flats if -*

- (a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and*
- (b) less than two-thirds of the self-contained flats are owner-occupied.*

- (3) In subsection (2) “appropriate building standards” means -*

- (a) in the case of a converted block of flats -*
  - (i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and*
  - (ii) which would not have been exempt under those Regulations, building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and*
- (b) in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).*

- (4) For the purposes of subsection (2) a flat is “owner-occupied” if it is occupied -*

- (a) by a person who has a lease of the flat which has been granted for a term of more than 21 years,*

- (b) by a person who has the freehold estate in the converted block of flats, or*
- (c) by a member of the household of a person within paragraph (a) or (b).*

*(5) The fact that this section applies to a converted block of flats (with the result that it is a house in multiple occupation under section 254(1)(e)), does not affect the status of any flat in the block as a house in multiple occupation.*

*(6) In this section “self-contained flat” has the same meaning as in section 254.”*

35. We accept the Respondent Authority's evidence that both Properties were originally constructed as mid-terraced houses some time pre the 1920s and were subsequently reconfigured to provide the self-contained flats as described above. Although such change of use does require planning consent we were told and accept the Respondent's evidence that no such application was made. In addition, we were told and accept the Respondent's evidence that there is no record of any Buildings Regulation approval as echoed by email correspondence received from the Building Control Department confirming the position (Appendix A, page 56 in respect of Number 99 and Appendix A, page 100 in respect of Number 94).
36. The Applicant became the Registered Proprietor of Number 94 on the 12<sup>th</sup> November 2004 and became the Registered Proprietor of Number 99 on the 15<sup>th</sup> November 2005 (pages 1 of the respective Appendices A to the Trial Bundles). In addition, at all material times the respective Properties have been banded as single houses (see page 3 of the respective Appendices A to the Trial Bundles).
37. The Respondent asserts that the Council Tax Liability Reports detail earlier predecessors in title to the respective Properties and shows that both Properties were converted by the Applicant. He was cross-examined upon this basis during the hearing and denied the same.
38. Despite our assessment of the Respondent's credibility as detailed in paragraph 28 of this Decision we do not consider that it is necessary to make a finding of fact as to whether or not the Applicant carried out the conversion works to the Properties. It is clear from the paperwork and also the inspection which occurred following the hearing of evidence on the morning of the 1<sup>st</sup> May that the Properties have been converted. There is no evidence to suggest that Building Regulation consent under whichever provision that applied at the time has been sought and obtained. The Respondent's records are clear on that point and Mr Khan does not provide anything to undermine that position. In addition, the Applicant provided no evidence in reality as to why he challenged the HMO status of the Properties. He simply asserted in respect of Number 99 that the Respondent had failed to provide evidence that justified 99 Mackintosh Place was licensable and in terms of Number 94 asserted that as Ms Stickler is not a Chartered Surveyor it is an abuse of process to allow her to determine whether 94 Mackintosh Place requires a Licence.
39. In relation to the former it was of course open to the Applicant to seek leave and adduce his own expert evidence, if he considered that the conversion works complied with the relevant standard. Again, he chose not to do so. During the hearing his explanation for failing to provide this evidence was that no Chartered Building Surveyor would provide anything other than a single joint expert's report making reference to the Civil Procedure Rules and the Practice Directions in the County Court. This Tribunal is not bound by the Civil Procedure Rules and indeed in any event we



find that the Applicant is incorrect in his view as regards the availability of an expert to act for one party. The Royal Institution of Chartered Surveyors have a mandatory Practice Statement for members appearing as expert witnesses before Courts and Tribunals. They commonly appear as experts for one side or the other, and there was no reason whatsoever that precluded the Applicant from following that course of action.

40. In the circumstances we find that the Properties have not been converted in accordance with the prevailing Building Regulations. This finding is based upon the fact that there are no records to substantiate the same, and secondly from the inspection itself it is clear that the conversion works are not compliant.
41. Whilst the Applicant continued to make the point that some records had not been disclosed, having heard evidence from the Respondent Authority and specifically Ms Stickler, we are content that she has made the appropriate enquiries, and in the circumstances it is highly unlikely that there are any relevant undisclosed documentation appertaining to planning consent and/or Building Regulation consent.
42. In terms of 'building work' the Respondent relies upon Section 3 of the Building Regulations 1991 and asserts that Regulation 3(1)(b) has been satisfied due to the conversion into flats that had been undertaken as there are 3 kitchens and bathrooms in Number 94 and 4 kitchens and bathrooms in Number 99.
43. Although the Building Regulations 1991 have been replaced by the Building Regulations 2010, the 2010 Regulations are the same in relation to the matters at issue here to the 1991 Regulations, other than in relation to the provisions for completion certificates which are set out in Regulation 17 of the 2010 Regulations.
44. In relation to the Building Regulations requirements that have not and/or are met the Respondent relies upon Schedule 1, Part B of the 1991 Regulations and in particular paragraph B1 relating to means of escape.  
*B1 The building shall be designed and constructed so that there are means of escape in case of fire from the building to a place of safety outside the building capable of being safe and effectively used at all material times.*
45. The 2010 Building Regulations appertaining to that requirement are only slightly different insofar as the following is referred to:  
*B1 The building shall be designed and constructed so that there are appropriate provisions for the early warning of fire, and appropriate means of escape in case of fire from the building to a place of safety outside the building capable of being safe and effectively used at all material times.*
46. The Respondent submits that the design and construction of both properties are unsafe. More specifically in terms of Number 94 Mackintosh Place the Respondent maintains that the loft to the Property having been converted into liveable space would have to have complied with Building Regulation Standard to ensure the floor was structurally sound, and the roof structure was stable. In addition access to the loft space would have to be via a safe staircase and also a means of escape from fire. In relation to Number 99, due to the layout of the ground floor front unit it would preclude an occupant from escaping from the building to a place of ultimate safety as the bedroom was an inner room to the kitchen, and there is no alternative means of escape from that room. In addition, the kitchen on the first floor front is open to the escape route within

the unit, resulting in occupiers of habitable rooms having to hang and drop or be rescued from the first floor level. Furthermore, the occupants of the second floor room would be trapped, and not able to hang and drop, as the only window to the attic room is a Velux type window located in the roof/ceiling slope.

47. Having had the benefit of an inspection we find as a fact that the present design and layout of the Premises would make escape difficult or impossible in the event of fire in the kitchen on the first floor of Number 94, and the kitchen in the first floor front unit of Number 99.
48. For the reasons as aforesaid we find as a fact that Numbers 94 and 99 qualify as HMOs as defined by Sections 77, 254 and 257 of the 2004 Act. As a result, the provisions requiring the Applicant to have a Licence and comply with any Licence Conditions are relevant to the Properties.

### **Licence Conditions**

49. The question for the Tribunal is the appropriateness of conditions sought to be imposed where the same is non-mandatory.
50. Section 67 Licence Conditions.  
***“67 Licence conditions***

*(1) A licence may include such conditions as the local housing authority consider appropriate for regulating all or any of the following -*

- (a) the management, use and occupation of the house concerned, and*
- (b) its condition and contents.*

*(2) Those conditions may, in particular, include (so far as appropriate in the circumstances) -*

- (a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;*
- (b) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;*
- (c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;*
- (d) conditions requiring such facilities and equipment to be kept in repair and proper working order;*
- (e) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;*
- (f) conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233.*

*(3) A licence must include the conditions required by Schedule 4.*

- (4) *As regards the relationship between the authority's power to impose conditions under this section and functions exercisable by them under or for the purposes of Part 1 ("Part 1 functions") -*
- (a) *the authority must proceed on the basis that, in general, they should seek to identify, remove or reduce category 1 or category 2 hazards in the house by the exercise of Part 1 functions and not by means of licence conditions;*
  - (b) *this does not, however, prevent the authority from imposing licence conditions relating to the installation or maintenance of facilities or equipment within subsection (2)(c) above, even if the same result could be achieved by the exercise of Part 1 functions;*
  - (c) *the fact that licence conditions are imposed for a particular purpose that could be achieved by the exercise of Part 1 functions does not affect the way in which Part 1 functions can be subsequently exercised by the authority.*
- (5) *A licence may not include conditions imposing restrictions or obligations on a particular person other than the licence holder unless that person has consented to the imposition of the restrictions or obligations.*
- (6) *A licence may not include conditions requiring (or intended to secure) any alteration in the terms of any tenancy or licence under which any person occupies the house."*
51. As referred to above the Applicant did not see fit to amplify upon which of the Conditions he found to be unreasonable, and also the extent of time that would have been reasonable for complying should the same stand prior to the commencement of the Hearing.
52. It became clear however during the course of his evidence that his main issue was in respect of the work required to be undertaken within the 3 month period from determination of the appeal in relation to the respective Properties. As a result we considered it an appropriate use of our time to concentrate upon those specific items (see further below). A number of the requirements are the same for both Properties and in the light of the Applicant being cross-examined and also questioned in relation to the same he submitted that now it had been explained to him, he considered them to be reasonable. In the circumstances we only dealt with the requirements that the Applicant continued to assert were unreasonable. In doing this it has to be noted that in the case of some items the Applicant's evidence was that the works had already been undertaken (by way of example upgrading all ceilings throughout Number 99 to provide 30 minutes fire protection, ensuring electric consumer units within escape routes were of metal construction).
53. In the circumstances we consider that where the Applicant has simply provided evidence that such works have already been undertaken, he considers such work to be reasonable. Therefore by default accordingly if it transpires such work has not been undertaken a requirement to do so must be reasonable. Accordingly, we proceed upon this basis to deal with only the items that Mr Khan considers unreasonable as detailed below.

**Conditions Common to both properties which the Applicant submits are unreasonable**

**Ceilings**

54. The Applicant in his evidence submitted that all the ceilings had been upgraded and where necessary compartmental structures had also been upgraded. The Respondent's case requires the Applicant to upgrade where necessary ceiling and compartmental structures.
55. Having had the benefit of a site visit we formed the view that some, but not all of the ceilings and compartmental structures in the Properties had been upgraded. In the circumstances we consider the Condition as drafted to be reasonable and can remain unaltered.

**Consumer Units**

56. The Applicant in his evidence submitted that all consumer units were of metal construction. The Condition required by the Respondent Authority was that all such consumer units in common escape routes and within the routes from individual flats have a 30 minute fire protection. At the inspection it was clear none of the consumer units were adequately protected or of metal construction. In the circumstances we consider this Condition to be reasonable as currently drafted and can remain.

**Fire Doors**

57. The Respondent Authority provided a revised plan indicating in colour the location and detailing the nature of the fire doors required. The inspection revealed that there were some fire doors of varying quality. We consider the provision of fire doors to be essential, and therefore confirm that the Condition is reasonable. In addition we direct that the Respondent attach a copy of the coloured plans to the respective licences so that they form part of the same.

**Refuse Collection**

58. The provisions for refuse collection Condition in the Licence is the same for both Properties. The Applicant's case is that this is unreasonable, and he seeks to rely on the Authority of **Warren -v- Keene [1957]** submitting that waste belongs to the tenant and is not the landlord's responsibility. Unfortunately the Applicant did not provide the Tribunal with a full citation for the case he relied upon. Having conducted a case search the nearest match involving a Judgment by Lord Denning is the case of **Warren -v- Keene (Court of Appeal) [1954] 1 QB 15**. That case relates to landlord and tenant implied terms of repairs and waste in that context.
59. During the site visit this matter was explored further and in relation to Number 99 it was clear that an outside building to the rear could be used as a storage area. Unfortunately, no such provision is possible in relation to Number 94.
60. Ms Stickler indicated that should the individual tenants make contact with the relevant department within the Respondent Authority they would be provided with kerbside food caddy bins. Having considered the provisions in the round we consider that it is reasonable to have a management of general household waste Condition. However, in

relation to Number 94 it is not possible to provide a storage area. During the site visit we saw a number of kitchen caddy boxes which were in turn placed outside for emptying and formed the view that in the case of Number 94 that is sufficient.

61. In relation to Number 99 although there a storage area it would be unreasonable to treat the Properties independently, therefore we do not consider that a storage area is necessary. It is quite clear that each tenant is utilising the respective caddies and placing them outside. Further, based upon Ms Stickler's evidence that the Respondent Authority will provide the tenants with appropriate receptacles, we propose to change that requirement of the Licence so that it reads as follows:

*"The landlord shall notify all new tenants and insofar as necessary assist in obtaining kitchen caddies for the storage of recyclable waste and also we amend the 4<sup>th</sup> bullet point of the Condition to delete the word "ensure".*

**Conditions specific to either Number 94 or Number 99 which the Applicant submits are unreasonable**

**Number 94**

**Number of occupants in the maisonette at Number 94**

62. In evidence Ms Stickler indicated that she had not actually taken the measurements for the respective flats but relied on the evidence of her colleagues. We measured the loft bedroom of the maisonette at Number 94 and contrary to the measurements contained at page 73 in the bundle find as a fact that the usable length of the room, i.e the area which exceeds 1.5 metres in height was 4.113m and the width was 4.354m. Deducting the area for the stairwell and the chimney breast the available useable area was 15.158 m<sup>2</sup>. The LACORS Guidance on regulation of "Crowding and Space" in residential premises (Appendix A, page 102) states that in the absence of a National Standard the Local Authority should set their own space and amenity standard. The Respondent Authority sets it out in the Cardiff Council Space and Amenity Standard for Licence of a HMO (copy at Appendix A, pages 103 to 104). Applying its own standards it is clear having carried out the measuring exercise that the Applicant is correct insofar as the Maisonette can accommodate 4 persons rather than 3. In the circumstances we direct that the condition is amended to up to 4 persons to occupy the maisonette at Number 94.

**Fire Escape Window**

63. The Respondent seeks the installation of a fire escape window in the ground floor front bedroom of Number 94. Upon inspection we found one to already be in place and in the circumstances the requirement to carry out this specific item of work will be deleted. However, for the avoidance of doubt the requirement for such a provision to be in place shall remain.

**Mechanical ventilation in the bathroom – First and Second Floor Maisonette**

64. The Respondent seeks the overhaul of the mechanical ventilation in the bathroom of the First and Second Floor Maisonette. During our inspection we noted that there was an opening window in the bathroom and accordingly mechanical ventilation is not required. Therefore, this Condition is to be deleted from the Licence.

## **Number 99**

### **Number of Occupants Permitted to Occupy Number 99**

65. During the course of Miss Stickler's evidence she conceded that due to an administrative error the Licence for Number 99 stated 4 occupiers, whereas the draft had stated 6 occupiers. Ms Stickler clarified the position insofar as the correct number of occupiers was 6 and not 4 and confirmed that the error had been rectified and a further copy Licence issued to The Applicant. Accordingly, that was no longer a live issue before us.

### **Secure wiring to prevent permanent collapse**

66. The Applicant during his evidence submitted that this requirement was unreasonable. Having had the benefit of viewing the Property we find the existing wiring to be unstable and potentially hazardous. In the circumstances we form the view that the Condition is reasonable and should remain as drafted.

### **Provide an escape window ground floor front bedroom**

67. Upon inspection we found that an escape window already exists and in the circumstances we delete this item from the works required as a condition of the licence. However, for the avoidance of doubt the requirement for such a window to be in place shall remain.

### **Provide fire door to the cupboard under the stairs**

68. The Applicant submitted that this was unreasonable due to the height of the door. We consider fire protection to be paramount and whilst there may be some difficulty in sourcing a smaller fire door the problem is not insurmountable, and on balance fire safety takes priority. In the circumstances we find that the Condition remains as drafted.

### **Additional Conditions**

69. At the inspection we asked the Applicant to set off the smoke alarms in both Properties so that we could ascertain whether or not they were interlinked in relation to the common parts. In respect of Number 99 the test revealed that the smoke alarms were interlinked and were functioning properly insofar as they were setting one another off. However, in relation to Number 94 the test revealed that either the smoke alarms were not interlinked or were not functioning properly.
70. At the end of the inspection we asked the Applicant to file and serve up-to-date Gas and Electricity Certificate together with the Fire Risk Assessment in relation to both Properties. To date the Applicant has failed to do so.
71. In the circumstances we consider it appropriate to insert an additional Condition into the Licence in respect of Number 94 that the Applicant as owner either installs an interlinked smoke detector system within the common parts, or if appropriate rectifies any defect so that the smoke detectors in the Property operate in an interlink basis. Such works to be undertaken within three months from the date of this Decision.

### **Time for Compliance with Conditions**

72. The Applicant submitted that 3 months was too short a period for compliance with the conditions attached to both Licences. He drew attention to the 18 months period for his application for the Licence to be granted by the Respondent Authority. The Respondent considered that the 3 month period to be adequate especially bearing in mind the additional time the Applicant has been given since being aware of the requirements, and the further potential extension in time should there be an appeal. In his submissions at no stage did the Applicant indicate what he considered a more reasonable period to be, simply asserting that the 3 months was unreasonable.
73. Having considered the matter carefully we are of the view that the 3 month period is reasonable in the circumstances. In coming to this conclusion we take into account and are mindful of the nature of the works required. Also, the fact that the Applicant has on any view known of the potential requirements on his part since the respective Licences were initially granted and the earlier delays, which in part had resulted due to his failings to provide Energy Performance Certificates.

#### **Application for Costs**

74. At the end of the submissions Mr Grigg for the Local Authority made a costs application based upon the following matters:
- (1) The Hearing was due to start at 9.30am and had everything gone to plan would likely have been completed within normal working hours. The loss of 4 hours was unreasonable.
  - (2) The Applicant's application to adjourn/vacate was the 4<sup>th</sup> such application and made very late in the day. As a result although the live evidence had been concluded there was a need to return for a second day for a site visit.
  - (3) The Applicant had failed to particularise his reasons for objecting to the Conditions. He had filed no evidence in support of his contentions resulting in the hearing having to go through the items of work that formed part of the Licences in respect of the Properties.
  - (4) Had the Applicant filed and served a detailed Witness Statement a considerable time could have been saved, and the Respondent Authority would have known which way to respond. Due to the absence of any meaningful evidence on the part of the Applicant the Respondent Authority had to essentially deal with all possible avenues of challenge whereas it transpired that during the hearing the Applicant acceded and agreed that a great deal of the "work conditions" were reasonable.
  - (5) The Applicant's contention that he did not understand the Licences was not to be believed. That was especially as he had already undertaken essentially the same process of not submitting any evidence, and thereafter dealing with the Conditions at a hearing in the case of other properties on Mackintosh Place being Numbers 152 and 154 on the 27<sup>th</sup> June and 19<sup>th</sup> July 2018.
  - (6) Mr Grigg concluded his submissions by indicating that as a result of the additional work, including having to sit on until 6.45pm to deal with all the live evidence and submissions, also having a site visit the next day, together with the manner in which the Applicant conducted his case the Respondent Authority on any view had incurred additional costs. Such costs exceeded £500 but the Respondent understood that that the Tribunal is limited to a maximum figure of £500 and applied for that figure.

75. The Applicant in response said that he had injured his leg, had to attend at the appointment and was not prepared to disclose the details of his appointment at an earlier stage in case it would be disclosed to others as it was personal.
76. He stated he was appearing in person and the Licences were ambiguous and difficult to understand.
77. At no stage did he address the Tribunal as to his failure to provide the relevant evidence.

**Rule 34 of the Residential Property Tribunal Procedure & Fees (Wales) Regulations 2016**

78. We remind ourselves that in relation to costs Regulation 34 of the Residential Property Tribunal Procedure & Fees (Wales) Regulations 2016 is set out as follows:
- (1) The Tribunal must not make a determination under paragraph 12 of Schedule 13 to the 2004 Act in respect of a party without first giving that party an opportunity of making representations to the Tribunal.
79. In turn paragraph 12 of Schedule 13 of the Housing Act 2004 is set out as follows:
- 12.1 A Tribunal may determine that a party to proceedings before it is to pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph 2.
- 12.2 The circumstances are where:
- (a) He has failed to comply with an Order made by the Tribunal;
  - (b) In accordance with Regulations made by virtue of paragraph 5(4) the Tribunal dismisses or allows the whole or part of an application or appeal by reason of its failure to comply with a requirement imposed by Regulations made by virtue of paragraph 5;
  - (c) In accordance with Regulations made by virtue of paragraph 9 the Tribunal dismisses the whole or part of an application or appeal made by him to the Tribunal; or
  - (d) He has in the opinion of the Tribunal acted frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably in connection with the proceedings.
- 12.3 The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph must not exceed:
- (a) £500;
  - (b) Such other amount as may be specified in procedure regulations.
80. Having considered the matter, we are satisfied that this is a matter where a costs award is appropriate, and therefore award the Respondent Authority £500 in costs. In coming to this conclusion we bear in mind the entire history including the lateness of the application(s) to vacate, the absence of any evidence in Witness Statement format provided by the Applicant, his conduct in the proceedings and the fact that during the hearing he accepted that the bulk of the Conditions were reasonable (albeit he succeeded in relation to some). In addition, the flagrant disregard by the Applicant of directions made by the Tribunal, for example the Directions made in respect of filing evidence. Instead of complying with the Directions the Applicant continuously sought to resubmit the same application to vary directions and/or appeal decisions and adjourn rather than dealing with the salient points.



81. We also find that the Applicant's conduct was unreasonable in the circumstances, not least of all by seeking to adjourn a Final Hearing at 4.15 on the previous day and unilaterally confirming he would not attend a site visit that had been arranged for 9.30 that morning.

### **Conclusion**

82. In accordance with the matters as aforesaid we find as follows:
- (i) Number 94 and Number 99 Mackintosh Place are licensable Houses in Multiple Occupation (HMO's)
  - (ii) The Applicant requires and should be granted a HMO licence under Part 2 of the Housing Act 2004 subject to conditions appertaining to both properties.
  - (iii) In relation to Number 94 the licence conditions should be the same as the ones included within the licence granted on the 26<sup>th</sup> November 2018 (Licence number 528982) save as for the following amendments:  
Appendix A – Adequate Means of Escape From Fire
    - (a) Save as for the matters referred to in (b) below the Condition remains as drafted but we direct that the revised plan as referred to in paragraph 57 of this Decision is attached to and forms part of this Condition.
    - (b) For the reasons set out in paragraph 63 of our Decision the requirement to install a fire escape window in the ground floor front flat (second bullet point under the heading Ground Floor Front Flat) be deleted.
    - (c) For the reasons set out in paragraph 64 of our Decision the requirement to overhaul the mechanical ventilation in the bathroom of the First and Second Floor Maisonette be deleted.
    - (d) For the reasons set out in paragraphs 70 – 71 of this Decision we consider appropriate to insert an additional condition in the following terms:-  
*To install an interlinked smoke detector system within the common parts or if appropriate rectify any defect so that the smoke detectors in the Property operate in an interlink basis.*

### **Appendix C - Management of General Household Waste**

- (a) In accordance with our findings at paragraphs 58-61 of this Decision the condition shall be amended so as to delete the first three bullet points, the insertion of a new first bullet point that it reads as follows:  
  
*The Landlord shall notify all new tenants and insofar as necessary assist in obtaining kitchen caddies for the storage of recyclable waste.*
- (b) Amendment of the (as currently drafted fourth bullet point) to delete the word “ensure”.

### **Number of Occupants in the Maisonette**

- (a) for the reasons as set out in paragraph 62 of this Decision the Licence is amended to allow for up to 4 persons to occupy the Maisonette.
- (iv) In relation to Number 99 the licence conditions should be the same as the ones included within the licence granted on the 9<sup>th</sup> October 2018 (Licence number 529002) save as for the following amendments:  
Appendix A – Adequate Means of Escape From Fire

- (a) Save as for the matters referred to in (b) below the Condition remains as drafted but we direct that the revised plan as referred to in paragraph 57 of this Decision is attached to and forms part of this Condition.
- (b) For the reasons set out in paragraph 67 of our Decision the requirement to install a fire escape window in the ground floor front flat (second bullet point under the heading Ground Floor Front Flat) be deleted.

### **Time for Compliance with Conditions**

83. For the reasons set out in paragraph 72 – 73 of this Decision the time for compliance with the Conditions remains un-altered. In the circumstances the deadlines for compliance with the Conditions in the Licences will commence 28 days after the date of this Decision.


### **Costs**

84. For the reasons set out in paragraphs 74-81 of this Decision we Order that the Applicant do pay the Respondent's costs assessed in the sum of £500 (Five Hundred Pounds) to the Respondent within 14 days of the date of this decision.
85. In addition we wish to make one final observation. Whilst we cannot Order the same it would be of considerable benefit if the Conditions contained within the Appendices to the respective Licences were numbered rather than simply being denoted by bullet points. Utilizing a numbering system would have made it much easier to deal with the matters in dispute during the Hearing and also in terms of cross referencing for the purposes of producing this written Decision.

### **ORDER**

86. In accordance with paragraph 34 of Schedule 5 of the Housing Act 2004 the Respondent is directed to grant a HMO Licence for each of the premises known as Numbers 94 and 99 Mackintosh Place, Roath, Cardiff, CF24 4RL subject to the conditions imposed in the original Licence save as varied as detailed in paragraph 82 of this Decision.
87. For the reasons set out in paragraphs 74-81 of this Decision we Order that the Applicant do pay the Respondent's costs assessed in the sum of £500 (Five Hundred Pounds) to the Respondent within 14 days of the date of this decision.

**Dated this 11<sup>th</sup> day of June 2019**



**CHAIRMAN**