

**Y TRIBIWNYLS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL**

**In the matter of 39a Welsh Road, Garden City, Deeside, Flintshire, CH5 2HU
And in the matter of an Application under section 143 of the Housing Act 2004**

Reference: RPT/0020/09/19

Applicants: Mrs. Melissa Davies and Mr. Scott Davies

Respondent: Flintshire County Council

**Tribunal: Mr. A Grant (Chairman)
Mr. D Jones (Surveyor)
Mr. B Brereton (Lay member)**

Decision

The Appeal dated the 24th September 2019 is dismissed and the Notice dated the 19th September 2019 is confirmed.

Reasons

Background

1. This is an application by Mr. and Mrs. Davies which seeks to Appeal an Overcrowding Notice dated the 19th September 2019, and which was served upon them by Flintshire County Council ("the Council").
2. Mr and Mrs Davies are the Freehold owners of the Property known as 39A Welsh Road, Garden City, Deeside, Flintshire, CH5 2HU ("the Property"). The Property is a House in Multiple Occupation ("HMO").
3. On the 19th September 2019, the Council served upon Mr and Mrs Davies a notice pursuant to section 139 of the Housing Act 2004 ("the Notice") indicating that in its view the property was, or was likely to become, overcrowded. Schedule 1 to the Notice listed the maximum number of persons that the Council would allow in each of the rooms identified in the schedule.

4. By way of an Application to this Tribunal dated the 24th September 2019, The Applicants sought to lodge an Appeal against the Notice.
5. The Tribunal issued directions on the 12th December 2019 which provided for the Respondent to file its evidence by 4 pm on the 10th January 2020 and for the Applicant to file and serve its evidence by the 31st January 2020. Both Parties filed their evidence in accordance with the direction. The Respondents evidence was received into the Tribunal office on the 8th January 2020 and the Applicant evidence was received on the 30th January 2020.
6. The matter was listed for hearing on Friday the 16th October 2020. Due to the current restrictions which have been put in place in respect of Covid 19, the hearing was held remotely.

The Property

7. The Property was inspected by Mr Jones on the 15th October 2020. Mr Jones is the surveyor member of the Tribunal.
8. The Property comprises of a detached premises with brick elevation under a concrete tiled roof and having UPVC framed double glazing. Mains services are connected and there is a gas fired central heating system.
9. The Property is located at the end of a large cul de sac off Welsh Road in an area with a well-established residential element. Deeside is on the Wales/England border and has large commercial and industrial areas with excellent road links.
10. The Property has been altered to provide shared living accommodation consisting of the following: Ground Floor: shared hallway, shower room, shared kitchen/diner, shared dining conservatory, rear right hand bedroom ("Room 1") and centre right hand bedroom (2.) First Floor: landing, right hand bedroom with en suite, left hand bedroom with en suite, rear centre bedroom with en suite and front centre bedroom with boiler cupboard ("Room 5").
11. There is parking to the front and a garden to the rear of the Property.
12. The dimensions of Room 1 are: 3.95m x 2m and 1.75m x 0.84m (9.35 sq. ms), en suite 1.75m x 1.14m (2sq ms).
13. The dimensions of Room 5 are: 3.3m x 3.2m (10.56 sq. ms), boiler cupboard 0.92m x 0.8m (0.8 sq. ms).

The Hearing

14. The Applicants appeared in person. The Respondent was represented by its barrister, Mr. Moss and Marianne Davies who is an Environmental Health Officer working for the Respondent Council.

Applicant's submission and evidence.

15. The Applicants initially opened by stating that this Appeal sought to challenge the restrictions which had been imposed upon two rooms at the Property, namely Room 1 and Room 5.
16. They said that at all times they had sought to engage with the Council to try and resolve the problems which had been highlighted by the Respondent. They submitted that they were not rogue landlords looking to make a fast buck but wanted to provide decent housing for their tenants.
17. It was submitted that the inspections had revealed that the rooms fell short of the required space requirements by a small margin and they had sought to address this by engaging with the Council and providing plans of proposed alterations to bring the rooms into line with the Council's requirements.
18. It was submitted that they found the Council unresponsive in that it often failed to reply to communications, gave no explanations for their requirements, provided no support and gave no guidance. In short, they felt they had been treated unfairly.
19. They confirmed that there were currently 7 tenants in occupation of the Property.
20. It was submitted that they had been informed by Ms Davies that the only way to resolve this problem was to make an application to the Tribunal hence this Appeal had been lodged.

Cross Examination

21. In response to the question from Mr Moss, the Applicants confirmed that they had purchased the Property as an investment in 2019 with a view to generating revenue.
22. The Applicants confirmed that they had located the Property themselves but had used solicitors during the purchase process. When asked if they were aware of the space requirements when they purchased the property, they confirmed that they had carried out their own research at the time.

23. Mr Moss asked if, at the time of purchase, they had carried out their own measurements to see if the rooms met the required standards. The Applicants stated that the Estate Agent had confirmed that all of the rooms conformed to the required standards. They said that there had been some confusion concerning the en suite in Room 1.
24. The Applicant confirmed that the Room 1 was the same size as when the Property was purchased.
25. Mr Moss asked if they accepted that the room sizes were too small to meet the required standards. The Applicants stated that they accepted that Room 1 did not meet the required space standard but they said that in their view, Room 5 met the required standards.
26. Counsel for the Respondent asked if the Applicants appreciated the difference between the numerical space requirements and useable physical space. The Applicants said that they did.
27. Mr Moss put it to the Applicant that their real complaint was not that the notice was unreasonable but rather about the lack of information and help afforded to them by Flintshire County Council. The Applicant stated that they were informed by Ms Davies that the only way to resolve the issue was by making an application to the Tribunal.
28. Mr Jones asked the Applicants how many people occupied the Property at the time of purchase. They confirmed that there were 10 occupants when they acquired the Property. There were two people in Room 1 and two people in Room 5 (being the rooms of particular interest in this Appeal).

Respondent's submissions and evidence

29. In opening, Mr Moss said that the real complaint here was with the process rather than the Notice.
30. He stated that the Respondent's approach was governed by section 65 of the Housing Act 2004 as regards the test for suitability of Houses in Multiple Occupation. He submitted that both Rooms 1 and 5 were below the required size requirements as set out in the guidance which was referred to in the Respondent's evidence.
31. Ms Davies gave evidence for the Respondent. She confirmed the truth of the content of her undated statement. She gave evidence that in deciding to serve the notice she had regard to the prescribed standards and the local guidance as regards the functional space available at the property, both at the time of inspection and again following receipt of the proposed plans to alter the Property which had been supplied to the Council.

32. She was asked if she had paid any regard to the nature of the tenancy agreements in reaching her decision and she replied that had not taken them into account even though it was unusual to find that each tenant had a separate agreement even though they may share a room with an unconnected party.
33. She also confirmed that she had not had any regard to the Housing Health and Safety Rating System when reaching her decision to serve the Notice.
34. She said that she was sympathetic to the position of the Applicants as the Property had never previously been registered or regulated.

Cross examination

35. The Applicant asked Ms Davies what constitutes functional space? Ms Davies responded by saying that the proposed alterations (to Room 1) would add 50cm x 36 cm to the room space and the proposal was to add a bed as well. She said the area was not accessible and was not properly useable. She said that when they inspect a property, they consider functional space namely how a property looks and how it can be lived in.
36. Ms Davies was asked if she had been contacted by the managing agent. She said that she had not been contacted by the managing agent. Ms Davies said that the house first came to their attention in respect of a waste management issue and then it went onto a list for an inspection.
37. The Applicants asked if it was accepted that Room 5 met the required space standards and Ms Davies replied that she did not accept that proposition.

Closing submissions

38. Mr Moss stressed that the ability to serve this type of notice was important. They often deal with tenants that are classed as vulnerable. In this case it is submitted that the notice was validly served and that the Applicants accepted that the two rooms in question do not comply with the required standards under section 65 of the Housing Act 2004 and the accompanying national guidance.
39. The Applicants accepted that Room 1 did not comply with the required standards and they had sought to address this issue with the Council. They do not accept that Room 5 did not comply with the required space standards.

Deliberations

40. The Respondent confirmed in its evidence that it served the Notice pursuant to powers conferred upon it by section 139 of the Housing Act 2004 ("the Act").

41. Section 139 of the Act allows an overcrowding notice to be served if, having regard to the rooms available, it considers that an excessive number of persons is being, or is likely to be, accommodated in the HMO concerned.
42. At the time that the Notice was served the evidence showed that the Property was not overcrowded as there were seven occupants in situ. However, the Respondent took the view that it was likely that overcrowding could occur if a Notice was not served given the proposed number of occupants intended to reside in rooms numbered 1 and 5 at the Property. Indeed, the Tribunal was told that at one stage (prior to Mr and Mrs Davies ownership) the Property had previously housed ten tenants.
43. In its written evidence the Respondent stated that the guidance adopted by Flintshire County Council in these matters is set out in a document called "Prescribed Standards for Licenced Houses In Multiple Occupation Category A2 – bed – sit type HMO (Individual Let Rooms) – Applicable Standards ". This appears as exhibit Doc 1 in their written evidence. In that document, the minimum space standard set for a room to be occupied by 2 individuals was 11m². In the current application, Room 1 had a floor space of 9.35m² and Room 5 had a floor space of 10.56 m². In this situation, when applied to the Standard adopted by Flintshire County Council, neither room met the required minimum space requirement.
44. In the Applicants' written evidence, it was submitted that the standard adopted by the Respondent, namely 11msq, was higher than the minimum standard set in England and was higher than the standards adopted in eight other Welsh Local Authorities which ranged between 10.2msq and 10.5 msq and they had been provided with no reason for the application of the higher standard and it was, essentially, arbitrary.
45. When considering the issue of overcrowding, the Tribunal noted that section 326 of the Housing Act 1985 provided that the minimum space requirement for two persons sharing a single room (for the purposes of that section) was 10.2msq. This may perhaps explain why this figure had been widely adopted as the minimum standard by other local authorities.
46. However, it is important to note that these are minimum standards, they are not maximum standards and indeed Local Authorities appear to have a wide degree of discretion when setting minimum standards within their locality having regard to a number of factors. Therefore, it is open to the Respondent to set the space requirement at 11msq when seeking to discharge their duties under section 65 of the Housing Act 2004. The Tribunal cannot see that applying a standard of 11sqm is unreasonable in the circumstances of this case.
47. Given the above comments, Room 1 does not meet the minimum space requirement under the applicable standard. This was accepted by the Applicants in any event.

48. The Applicant maintains that Room 5 does meet the required standard if one takes into account the space available within the cupboard which houses the boiler. The Respondent does not accept this as they say the area around the boiler is not useable space. The Tribunal agree with that position but in any event, this is an issue over which the Respondent has a discretion by issuing local guidance. If one refers to section 326 (4) of the Housing Act 1985 it states that regulations may provide for the exclusion from computation or the bringing into computation at a reduced figure, of floor space in a part of the room which is less than a specified height not exceeding 8 feet. The Respondent has explained in its evidence why it has disregarded the space beneath the boiler (para 3, page 2) and it seems to the Tribunal that the Respondent was entitled to take the approach that it did. However, that said, it is noted that there is no reference in the guidance exhibited to the statement of Ms Davies setting out how the Respondent will treat reduced areas of space in a room. Had such a statement been present, it may have assisted the Applicants understanding of the Respondents approach to this issue.
49. The Tribunal take the view that the Respondent is correct to disregard the space within the boiler cupboard as it is not sufficient to add materially to the space available within the room. The regulations are not in place as an exercise in box ticking but are designed to improve housing conditions for what are often vulnerable members of society. Space must be useable and functional.
50. In light of the above, it is determined that Room 5 does not meet the required space standards which are in place.
51. We must also have regard to the proposals put forward by the Applicant to rectify the situation because it touches upon whether the requirements for service of the Notice under section 139 were satisfied.
52. The proposals put forward by the Applicants would result in a floor area for Room 1 being between 11.08 and 11.33msq and in respect of Room 5, the floor area would increase to 11.39sqm.
53. On the face of matters, this would exceed the minimum space requirement for each room.
54. However, as regards both rooms, the evidence indicates that the increased space has very little practical utility in either room. The evidence of Ms. Davies was that the space gained in Room 1 (aside from an extra bed space) would be 50 cm x 36 cm. It was submitted that this would create access issues as regards the increased space and would have no practical impact on the useable space within the room.
55. The increased space in Room 2 was similarly of little practical use, the evidence indicating that the space would have a height limit of 1.5 metres being the area below the boiler cupboard, resulting in little material gain of functional space.

56. Other issues were aired in the written evidence relating to issues of mental health of tenants and the nature of tenancy agreements being used but the Tribunal did not find any of this evidence useful in addressing the issues to be determined.
57. In the circumstances, the Tribunal determine that the proposed alterations would not be sufficient to render service of the notice invalid.
58. In light of the above, the Tribunal find that Room 1 and Room 5 are below the required standard space requirements and that the proposed alterations would make no material difference to that position. In those circumstances, the Appeal is dismissed and the Notice dated the 19th September 2019 is confirmed.
59. In reaching this conclusion, the Tribunal wishes to make clear that it does not consider the Applicant to have behaved in any way unreasonably. The Tribunal acknowledge that the Applicants have engaged with the Respondent at all stages and have co-operated in trying to resolve the issues without recourse to this Tribunal. Unfortunately, that has not proved to be possible.
60. Any party wishing to appeal this decision must make the appeal to the Upper Tribunal. In the first instance, a written application seeking permission to appeal must be made to this Tribunal within 21 day of the date of this decision.

Dated this 3rd day of November 2020.

A Grant
Chairman.