Residential Property Tribunal Service (Wales)

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DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Housing Act 2004, Schedule 5, Part 3.

Premises:	16 St Helens Avenue, Brynmill, Swansea, SA1 4ND ("the property")
RPT ref:	1023575/St Helens Avenue
Hearing:	4 September 2012
Applicant:	Mrs L Hammond
Respondent:	City & County of Swansea
Members of Tribunal:	Mr R S Taylor – Legal chairman Mrs Ceri Trotman - Jones MRICS Mrs W Hainsworth – Lay member

Upon it being recorded that the Respondent agreed, in a letter dated 14 June 2012 and confirmed to the tribunal at the hearing on the 4 September 2012, that it is content for Schedule 1, paragraph 3 of the HMO licence dated 7 June 2012 ("the HMO licence") to be amended so that the height of 1.92 metres will be acceptable at the purlin at the door frame.

And upon it being recorded that the Respondent agreed at the hearing on the 4 September 2012 to allow until 1 September 2013 for the works at Schedule 1, Paragraph 3 of the HMO licence to be completed, provided that its specified fire alarm system, namely a Grade A LD2, is installed forthwith and that the attic room on the second floor shall not be occupied in the event of the Applicant's failure to complete the dorma extension works by 5 September 2013.

IT IS ORDERED THAT:-

1. The HMO licence shall be varied to allow for the works described at Schedule 1, paragraph 3 only, to be extended until the 1 September 2013. In the event that the works are not complete by this date it shall be a condition of the HMO licence that the attic bedroom on the third floor shall not be occupied and shall be kept securely locked.

2. The HMO licence shall be varied at Schedule 1, paragraph 3 to allow for a head height of 1.92 metres at the purlin only.

3. The licence condition at Schedule 1, paragraph 14, requiring a Grade A LD2 alarm system, is confirmed, save that the time for completion shall be varied to provide for completion of the works to be accelerated to the 1 October 2012.

4. Either party may apply the tribunal for permission to appeal this decision to the Upper Tribunal (Lands Chamber). The application must be in writing and made within 21 days of receipt of this decision to the Residential Property Tribunal (Wales). First Floor, West Wing, Southgate House, Wood Street, Cardiff. CF10 1EW. The application must be signed by the appellant or the appellant's representative and must:-

    a. State the name and address of the appellant and of any representative of the appellant;

    b. Identify the decision and the tribunal to which the request for permission to appeal relates; and

c. State the grounds on which the appellant intends to rely in the appeal.

5 September 2012

Lawyer chairman

REASONS

What this appeal is about.

1. This is an appeal received at the tribunal on the 4 July 2012 against the conditions imposed by the Respondent in an HMO licence in respect of the property.

2. At the hearing the Applicant was present and represented by her husband. On behalf of the Respondent in attendance were Nicola Kerry Phillips, a Senior Environmental Health Officer and her team manager, Paula Livingstone.

3. The appeal has 4 grounds, namely:-

   a. A request for a variation in the minimum headroom clearance to the second floor attic bedroom at the purlin from 2 metres to 1.92 metres. This has been agreed by the Respondent in a letter dated 14 June and requires no further consideration.

   b. A request that the works to the dorma extension required in the HMO licence be extended by 6 months from the January 2013 date. The Respondent conceded at the hearing that it was content to give the Applicant until the 1 September 2013 to complete this work (extending from the licence term of 16 January 2013), provided that its stipulated fire alarm was installed and that any failure to comply with the completion date would mean that the attic room would no longer be occupied as a condition of the HMO licence.

   c. That the HMO licence be varied to allow the Applicant's choice of alarm system to be installed rather than the one stipulated in the HMO licence.

   d. A general complaint about the lack of consultation concerning the draft licence. The Respondent's essential point was that minimum statutory notice periods had been applied and, in any event, the Applicant did not seek to develop this argument at the hearing.

4. The main live issue at the hearing was therefore the type of alarm system which should be installed. The Respondent has required a Grade A LD2 system to be installed, whereas the Applicant contended for a Grade D system.

The alarm systems under consideration.

5. A Grade A system is described in the LACORS (Local Authority Coordinators of Regulatory Services) fire safety booklet ("LACORS") (page 24) as being "A fire detection and alarm system that is designed and installed in accordance with the recommendations of BS 5839: part 1 (2002) except clauses relating to alarm audibility, alarm warnings for the hearing impaired, standby supplies, manual call points and radio-linked systems, which are replaced by Part 6. This comprises a system of electronically operated smoke and/or heat detectors which are linked to a control panel. The control panel must conform to current BS 5839: (part 4 (or equivalent). In general the system must incorporate manual call points which should be located next to final exits, and, in larger multi story properties, on each landing. The alarm signal must achieve sound levels of not less than 65dB (A) in all accessible parts of the building and not less than 75dB (A) at all bed heads when all doors are shut, to arouse sleeping persons."

6. LACORS describe a Grade D system as "A system of one or more mains-powered smoke (or heat) alarms with integral battery supply. These are designed to operate in the event of mains failure and therefore could be connected to the local lighting circuit rather than an independent circuit at the dwelling's main distribution board. There is no control panel."

7. The terms of the HMO Licence at Schedule 1 paragraph 14 further provided, *inter alia,* that there be a minimum of 9 interlinked, mains operated smoke alarms (with battery backup) to the escape route.

8. It was the Applicant's case that a Grade A system was too cumbersome and unnecessary and that a highly specified Grade D system in all rooms would be more than adequate.

9. The cost of a highly specified Grade D system was stated by the Applicant to be in the region of about £1,300 and a Grade A system about £2,700. The Applicant was clear that cost was not the issue but a matter of principle as to what was the correct system to install.

Background.

10. The property became subject to additional HMO licensing conditions in 2009.

11. The Applicant signed 4 individual tenancy agreements with prospective student tenants on or about the 19 January 2012, for tenancies to commence on the 1 July 2012.

12. A term of the standard form tenancy is that "Where the property is a House of Multiple Occupation (HMO) the Tenant will have exclusive occupation of his/her designated room and will share with other occupiers of the Property the use and facilities of the Property (including such bathroom, toilet and sitting room facilities as may be at the property)." We do not read into this term any condition that there shall be sitting room, although as described below, the configuration and marketing of the property would suggest to a prospective tenant that there were 4 bedrooms and a sitting room and the rent would have been fixed upon that basis.

13. There are several additional non standard provisions included in the tenancy, one of which states, "No smoking or candle burning or use of deep fat fryers at this property as these are deemed as fire hazards as stated by the fire brigade."

14. The tenancies are organised and managed by 1 Stop Letting Shop, a local letting agent in the Swansea area.

15. A request for information in respect of the property was served by the Respondent on the 2 March 2012 which resulted in an application by the Applicant for a HMO licence. A HHSRS assessment was undertaken by Mrs Phillips on the 17 May 2012. Mrs Phillips concluded that there was Category 1 Fire Hazard, *in part* arising from the lack of an integral fire alarm system and on account of the very low ceiling on the staircase from the bedroom on the second floor, which ranges from 1.55 metres to 1.60 metres. These defects resulted in the HMO licence condition of an alarm system and a dorma extension to increase the head height accessing the bedroom on the second floor.

Definitions of different types of HMO property.

16. The text in the introduction to HHSRS Assessment also concluded that the property was a "bedsit type" property using LACORS definitions, rather than a "shared property." This conclusion was reached by Mrs Phillips applying her

judgment to the circumstances of the property as she found them, in particular four unrelated individuals with their own lockable rooms, individual tenancies and shared facilities.

17. The LACORS guidance defines HMOS into three categories. Shared, 'bedsit type' and bedsits. The categorisation of the HMO affects the LACORS conclusion as to the risk of fire in a subject property and therefore the grade of alarm system required to meet to dangers posed. However, it should be noted that the guide accepts there may be grey areas. Inevitably in the grey areas subjective judgments will have to be made.

18. At page 39 of the LACORS guidance a shared house is discussed. It states,

> "[35.1] There is no legal definition of a 'shared house' and so this term can sometimes cause confusion. Whilst shared houses fall within the legal definition of an HMO and will be licensable where licensing criteria are met, it is recognised that they can often present a lower fire risk than traditional bedsit-type HMOs due to their characteristics.
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> [35.2] For the purposes of this guidance, shared houses are described as HMOs where the whole property has been rented out by an identifiable group of sharers such as students, work colleagues of friends as joint tenants. Each occupant normally has their own bedroom but they share the kitchen, dining facilities, bathroom, WC, living room and all other parts of the house. All the tenants will have exclusive legal possession and control of all parts of the house, including all the bedrooms. There is normally a significant degree of social interaction between the occupants and they will, in the main, have rented out the house as one group. There is a single joint tenancy agreement. In summary, the group will possess many of the characteristics of a single family household, although the property is still technically an HMO as the occupants are not all related.
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> [35.3] The exact arrangements will vary from house to house and this may result in 'grey area' in determining whether a house is a true shared house which therefore presents a lower fire safety risk due to

the mode of occupation. Each case will need to be considered on its merits.

[35.4] Even if a property is occupied as a shared house, the fire risk may still increase if the property is of a non standard layout or if the occupants present a higher risk due to factors such as limited mobility or drug/alcohol dependency."

19. Case study D5 at page 41 of LACORS suggests that the risks in a shared house of three or four stories might be met by a Grade D LD3 system.

20. Page 43 of LACORS deals with "bedsit-type" HMOs and states,

"These are HMOs which have been converted into a number of separate non-self contained bedsit lettings or floor-by-floor lets. Typically there will be individual cooking facilities within each bedsit, but alternatively there may be shared cooking facilities or a mixture of the two. Toilets and bathing/washing facilities will mostly be shared. There is unlikely to be a communal living or dining room. Each bedsit or letting will be let to separate individuals who will live independently, with little or no communal living between tenants. Each letting will have its own individual tenancy agreement and there will usually be a lock on each individual letting door.

21. Case study D8 at page 44 of LACORS suggests that a bedsit-type HMO of three or four stories should have a Grade A LD2 system.

Planning problems

22. Following receipt of the HMO licence dated 7 June 2012 the Applicant has behaved in an entirely reasonable fashion in the manner in which she has sought to seek planning for the dorma extension. We do not detail the exact history of the Applicant's dealings with the planning department of the Respondent but it was reported to us that they had been faced with officialdom changing the goalposts as to what planning process was required on at least 2 occasions. This has led to a delay which is no fault of the Applicant. Further, the issue of the head height at the purlin at the entrance to the attic bedroom presents real structural and planning issues which the Applicant is doing all that she reasonably can to progress.

23. We are content however, that the Applicant, using her best endeavours, will either have completed the dorma extension by the 1 September 2013 or that it will simply not be possible to undertake due to a combination of planning and/or engineering issues, in which case the room should no longer be used.

1 Stop Letting Shop's management

24. We record our concern that, despite being subject to HMO licensing provisions since 2009, an application was only made in April 2012 and then on the back of a request for information as to the status of the property by the Respondent. Whilst the Applicant states that this was an honest mistake, we find it very hard to reconcile 1 Stop Letting Shop's supposed management and regular inspection of the property with this issue not having been flagged up earlier We have no evidence as to any discussions between the agent and the Applicant on this point.. The late application for a licence leaves us with a poor impression as to how the property has been managed, at least so far as compliance with the Housing Act 2004 is concerned.

The inspection.

25. The tribunal inspected the property on the 4 September at 9.30 am. The property is a three storey mid terrace property, constructed in the early 1900's and comprising a kitchen, living room and bedroom on the ground floor; two bedrooms and a bathroom at first floor level and an attic bedroom at second floor level. Access to the second floor attic room is via a staircase with low ceiling height ranging between 1.55 metres and 1.60 metres.

26. Whilst the property does benefit from some gas central heating (and contrary to the narrative in Mrs Phillips HHSRS assessment) there is no central heating in the ground floor bedroom, middle bedroom on the first floor. There is also no central heating in the attic bedroom. These rooms are reliant upon portable heating appliances.

27. During the inspection we could see evidence of the HMO licence schedule of works being undertaken, with new fire doors having been installed.

The statutory framework.

28. The relevant statutory provisions are to be found in Part 2 of the Housing Act 2004 and in secondary legislation made thereunder. The relevant provisions are as follows:

29. Section 64 provides for the grant or grant upon conditions (s.64(3)(a)) or refusal of an HMO licence.

30. Section 65 provides for regulations to be passed which set prescribed standards. The applicable regulations in Wales are The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (Wales) Regulations 2006 ("the Regulations"). Paragraph 8 of the Regulations cross refer to the prescribed standards listed in schedule 3 of the Regulations. Of relevance here is paragraph 5 of schedule 3 which states requires "Appropriate fire precaution facilities and equipment must be provided of such type, number and location as is considered necessary."

31. Section 67 describes in detail the conditions which may be attached to the grant of an HMO licence, and states

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.

32. Schedule 4 of the Act sets out mandatory HMO terms, which include at paragraph 1(4)(a) a provision "to ensure that smoke alarms are installed in the house and to keep them in proper working order."

33. Schedule 5, Part 1 of the Housing Act 2004 provides for the procedure relating to the grant or refusal of licences and Part 3 provides for appeals to a Residential Property Tribunal. At paragraph 34(3) the tribunal may confirm, reverse or vary the decision of the local housing authority. At 34(4) the tribunal "...may direct the authority to grant a licence to the applicant for the licence to be on such terms as the tribunal may direct."

34. The powers described at paragraphs 34(3) and (4) appear verywide. How are we to exercise such powers? We have in mind the scheme of the Act, the Regulations, particularly Schedule 3 paragraph 5 and the need to ensure such fire precaution facilities as are considered necessary. However, that is a fairly wide provision in itself.

35. There was debate at the hearing as to the precise status of the LACORS guidance and the "Quick Reference Guide" which has been agreed for use by local authorities in Wales (after consultation with the fire authorities), which itself draws on the learning in LACORS. Whilst neither document has a statutory footing they are clearly the best available guide, absent of direct expert evidence being given to the tribunal which was not called in this case. So, in exercising our powers, in addition the statutory scheme, we have the definitions and approaches in these two documents in mind, whilst also reminding ourselves that they are for guidance only and we must tailor our decision to the particular facts of this case.

The parties' respective cases.

36. The case papers suggested there was a factual disagreement between the parties as the nature of fire risk at the property. The Applicant stated it was low risk and the Respondent high risk. In order to assist the resolution of this issue the tribunal office requested the Respondent's working papers for the HHSRS assessment. The Applicant took great exception to the production of these documents at the last moment. However, the issue was overtaken by the fact that, in light of the inspection on the morning of the 4 September 2012 which revealed the partially completed upgrading works including fire doors, the Respondent stated it was content with a normal risk category, something which the Applicant stated she was content with.

37. The Applicant's case was that the property should be treated as a shared house and not a bedsit-type HMO. From this footing it would be appropriate for us to vary the terms of the licence so that a Grade D alarm should be installed. In support of the argument of the property being a shared house the Applicant stated that the property was shared by a group of students who had decided to rent together as a group. It was stated that the fact that the students each had their own tenancy agreement had more to do with the practicalities of getting guarantors in multiple parts of the UK to sign a single joint tenancy agreement. It was also stated that the locks on internal doors were a result of insurance requirements in order for contents insurance to be available to the tenants. It was also drawn to our attention that the definition of a bedsit type HMO tended against shared living quarters, whereas here there was a sitting room which was likely to be the focal point of the house.

38. The Respondent's case was that, however arrived at, there were 4 individual tenancies with each tenant having the right to lock their room and leave it locked whilst they were away from the property. The extent of communal living would depend upon the extent to which the group remained on good terms through the academic year.

39. Our decision has not been easy as we can see that the property contains features of both a shared house and a bedsit type HMO. The definition can change depending upon how much weight, for instance, one places upon the fact of 4 individual tenancies when balanced against the argument that this was only done for convenience.

Decision.

40. In the final analysis we have found that it is not necessary for us to state absolutely one way or the other what category we find this property to be in. Even if we were persuaded by the Applicant's arguments as to property type there are two reasons why we come down in favour of the Grade A alarm as requirement by the Respondent.

    a. First, the locks on internal doors does mean that a tenant can lock up and leave for an unspecified period of time. There is not central heating in all rooms. Portable heaters will be used in some rooms. It would not be apparent with a Grade D system whether the alarm was functional in a locked room as they are not guaranteed to have a control panel as specified in the Grade A system. Whilst it may be that some highly specified Grade D systems have some kind of control system, they are not required to do so. No technical specification was produced by the Applicant in support of the Grade D system she was propounding. In any event we would not have been qualified, absent of expert evidence, to judge its merits when set against the LACORS approved Grade A system.

    b. Second, we also have in mind paragraph 35.4 of the LACORS guidance, which warns of an increased fire risk from a non standard layout and refers to alcohol dependency. The low height of the staircase to the attic bedroom is very 'non standard' and may present a real hazard to navigate in an emergency. Further, whilst there is no suggestion of any alcohol

dependency, we must be alive to the fact that students do often consume significant amounts of alcohol.

41. A supplementary reason, in addition to our primary reasons, is that, whilst there is a condition in the tenancy against smoking and candles, this is particularly difficult to police in this type of accommodation and a potential risk undoubtedly exists within this tenant group.

42. The Applicant stated that a reputable fire alarm fitter was of the view that a highly specified Grade D alarm would be more appropriate than a Grade A alarm system. However, no evidence has been adduced in support of this. It was suggested that two alarm fitters had refused to assist the Applicant with her case on the basis that they did not wish to be blacklisted by the Respondent as registered fitters. We make no finding about this point save to say that we are genuinely surprised that there is not an alarm fitter in South Wales or the West Country who would be prepared to come and give evidence as suggested by the Applicant.

43. The Applicant's husband, who represented the Applicant throughout the hearing (and appeared to us to be intimately involved in all aspects of the case and was, in effect, a joint Applicant in all but name), spent much of his career working in the commercial fire safety industry. Whilst he may have immense knowledge of the commercial sector he acknowledges he has no fund of residential experience to draw upon. The Applicant's husband expressed his opinion clearly and with force. However we prefer to rely upon the objective guidance available in LACORS.

The Respondent's approach.

44. We have quoted s.67(4) above which deals with the interrelationship between HMO licensing conditions and a local housing authority's powers under Part 1 of the Housing Act 2004, in particular to serve Improvement Notices and Prohibition Orders. s.67(4) makes it clear that 'in general' a housing authority should seek to use Part 1 powers to remove or reduce category 1 and 2 Hazards. There is specific mention at s.67(4)(b) as to using licensing conditions to require certain facilities to be made available, even if the same result might have been obtained via Part 1 powers.

45. We were surprised to hear that the Respondent's approach was to deal with all matters by way of Part 2 licensing as this was seen to result in an easier schedule of works to follow and was seen as being more cooperative to licence holders.

46. Whilst we accept that the provisions are not absolute and do state that the preferring of Part 1 over Part 2 is a general rule, allowing of exceptions to this approach, we are of the view that there should be good reason in a particular case to refrain from utilising the Part 1 provisions, for the removal or reduction of category 1 and 2 Hazards, as envisaged in this section. Whilst it may make for a more complicated schedule to follow, that appears to be the intention of the Act which should not be bypassed save for good reason in a particular case.

47. The approach taken by the Respondent has some relevance in this case. One of the informal options suggested by the Respondent (which had some attraction) was for the 4th tenant in the property to use the sitting room as a bedroom, pending the dorma being installed. The Applicant was totally set against this, stating that the advice was that she would be in breach of the tenancy which provided for a sitting room. As already stated, we do not find anything in the tenancy which states there shall be a sitting room, merely that if there is one it should be shared. However, s.67(6) does prevent the Respondent, and the tribunal on appeal, from imposing a condition which would alter the terms of any tenancy. Whilst there is no contractual right to a sitting room here, we are satisfied that the removal of the sitting room would require a change to a most significant term of the tenancy, namely the rent which has been agreed.

48. The Respondent was prepared to concede (upon certain other conditions being satisfied in respect of the fire alarm system) a completion date until September 2013. This is at the absolute outer limit of the time which should allowed to the Applicant. Given this significant concession, we were not called upon to adjudicate upon a January 2013 completion date. The Applicant was stating that works during the academic year would cause real problems for the students and the removal of the room (necessitating the use of the sitting room) would result in rent alternations. Given this state of affairs it appeared to us that, had we been invited to do so, we would have been unable to direct immediate works to be carried out to remove or reduce a category 1 or 2 Hazard, as a term of the licence, as this would have been contrary to s.67(6) of the Act. Had we been

invited to adjudicate upon the same factual argument, but under Part 1, this constraint to our power does not seem to be evident.

5 September 2012

Lawyer chairman