

Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

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DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL (WALES) HOUSING ACT 2004

Premises:	10 Bridge Street, Llangollen
LVT ref:	RPT/0006/04/12
Decision:	22 December 2014
Applicant:	Mr John Daniel Simon
Respondent:	Denbighshire County Council
Members of Tribunal:	Mr R S Taylor – Lawyer Chairman Mr Roger Baynham FRICS Mr Bill Brereton

DECISION

1. The Applicant's request for permission to appeal is refused.
2. The application for permission to appeal may be made to the Upper Tribunal (Lands Chamber) within 14 days of being sent this decision.

Dated 22 December 2014

A handwritten signature in black ink, appearing to read 'Rhys Taylor', written in a cursive style.

Lawyer Chairman

REASONS

1. The reasoning and final determination of this tribunal are to be found in three documents, namely:-
 - a. Interim Decision and Reasons dated 6 August 2014 (“Document 1”).
This document sets out the main part of the tribunal’s decision making process.
 - b. Interim Decision and Reasons dated 15 September 2014 (“Document 2”).
 - c. Final Decision and Reasons dated 29 October 2014 (“Document 3”).
2. The permission for appeal request is set out in a document dated 17 November 2014, received into the tribunal office on the 19 November 2014.
3. The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012, 38(4)(c) require a written request for permission to, “state the grounds on which the appellant intends to rely in the appeal.” We have in mind the Upper Tribunal Practice Direction, paragraph 4.2, which states that applicants for permission before the Upper Tribunal (Lands Chamber) must specify whether their reasons for making the application fall within one or more of the following categories:
 - a) The decision shows that the RPT wrongly interpreted or wrongly applied the relevant law;
 - b) The decision shows that the RPT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice;
 - c) The RPT took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect; and/or
 - d) The point or points at issue is or are of potentially wide implication.

This is a helpful guide for us when deciding whether or not it is appropriate for this tribunal to grant permission to appeal.

4. The document dated 17 November 2014 asserts that the tribunal has:-

- a) Incorrectly interpreted the facts;
 - b) Misinterpreted the law; and
 - c) Been remiss in the process that it has followed such as to prejudice the Applicant and in doing so has denied the Applicant and others the right to a fair hearing and to justice.
5. The document attached, entitled “Grounds of Appeal” is 8 pages long. The document seeks to re-engage the tribunal in many of the debates which were rehearsed at the hearing. We decline to issue yet another decision responding to each and every point, many of which have already been dealt with in our decision, available for review in the three documents noted above. We have dealt here with the points which appear most relevant to the issue as to whether permission to appeal should be granted.
 6. We do not accept that we have misinterpreted or misapplied the law as stated at 2(a)(i) of the Grounds of Appeal, in so far as the Respondent and the Fire Authority have concurrent responsibility for the property. This was dealt with at Document 1, paragraph 41.
 7. We do not accept that we have misinterpreted or misapplied the law as stated at 2(a)(ii) of the Grounds of Appeal.
 - a. Save for reference to the fact that the property was a Grade II listed property, we were not asked to consider in detail any particular statutory provisions (unlike building regulations, which the tribunal was invited to consider in detail) which are said to conflict with the Housing Act 2004.
 - b. We did take the age and character of the property into account, as evidenced when making a favourable determination for the Applicant on the issue of double glazing at Document 1, paragraph 46.
 - c. We placed no reliance upon any statement from a conservation officer. It was not a procedural defect that the Applicant did not have the opportunity to question a conservation officer. Document 1, paragraph 25 explains the evidence which the tribunal took into account from the Respondent *as it was agreed by the parties*. It is clear that some older witness statements, which the Respondent

might have relied upon, had not been provided to this tribunal on the day (or at all). The *parties agreed* that the Respondent's witnesses could speak to the comprehensive document as signed by Miss Capelen. The tribunal were content to adopt this approach as we felt that we could understand the Respondent's case sufficiently by reference to that document and could not see any prejudice to either party, *given their wish to adopt this course*. We record in the reasons that if a request had been made for us to consider any missing documents "it was unlikely that the matter would be concluded on the 24 June 2014" i.e. the tribunal would have granted an adjournment. However, *by invitation of the parties*, we dealt with the matter as recorded and we do not accept that having done so, it is now open to the Applicant to complain about the tribunal failing to consider any evidence from this source.

- d. We declined to take into account fresh evidence submitted to us from the Applicant, attaching documents from the planning department, months after the hearing had been concluded (but whilst the terms of the final decision were still being worked out pursuant to the directions.) Our reasons for so doing are set out at Document 3, paragraph 5.
8. We do not accept that we have misinterpreted or misapplied the law as stated at 2(a)(iii) of the Grounds of Appeal. We make plain at Document 1, paragraphs 30 to 34 why we dealt with the Improvement Notices in the manner in which we did.
 9. We do not accept that we have misinterpreted or misapplied the law as stated at 2(b) of the Grounds of Appeal.
 - a. The tribunal has appropriately balanced the interaction between the two sets of regulations. See Document 1, paragraphs 37, 53, 54, 55, 56, 58, 59, 63 and 64. Of particular note in this respect are paragraphs 59, 63 and 64.
 - b. 2(b)(iii)(5) is not correct.

- c. In respect of, 2(b)(iii)(10) our reasoning is set out at Document 1 at paragraph 51, Document 2 at paragraph 2 and Document 3 at paragraph 7.
- d. The balance of 2(b) is an attempt to go over old ground and re-argue points which have already been determined.

10. We do not accept that we have misinterpreted or misapplied the law as stated at 2(c) of the Grounds of Appeal.

- a. Neither party sought to adduce evidence from the tenants/occupants during the hearing itself. It is not a misapplication of the law to refuse to accept this evidence after the hearing had concluded (see Document 1 at paragraph 29 and Document 3 at paragraph 4).
- b. In respect of 2(c)(iii) the tribunal was entitled to provide for the post hearing directions which it did, to resolve matters which were live in the hearing; but in so doing it was not required (it would have been wrong for it to do so) to continue to accept any documents and evidence which might have been produced at the hearing but were not.

11. Paragraph 3 discloses no basis for a challenge to the decision we have made.

12. Paragraph 4. The tribunal has not been “remiss in its process”.

- a. At Document 1, paragraph 40 the tribunal notes the fact that Miss Shermen had looked to members of her team for assistance whilst she was giving evidence. The tribunal warned the witness that her evidence had to be her own and appropriately dealt this the manner in which the evidence was received. This was not remiss.
- b. The parties had a full day until just before 6pm to canvass the issues between the parties. This was longer than a normal court sitting day and the tribunal does not accept that there was anything remiss in this respect. Outstanding issues of note were provided for in directions.
- c. Having carefully listened all day (post inspection) to the parties’ respective points, either in oral evidence, by reference to

documentation shown to us and by the extensive oral submissions made throughout the day (especially from the Applicant), the tribunal was left in no doubt as to what the parties, and in particular, what the Applicant's position was. The issues between the parties had been exhaustively canvassed all day. Neither party sought to make either additional oral or later written closing submissions by reference to the evidence the tribunal had heard, save as provided for in the directions. These required the parties to submit by noon on 4 July 2014 any agreed form of words as to how rooms 2 and 4 might be compromised between the parties (or indicating that no agreement could be reached) and any agreed form of words as to how "falling from levels" might be dealt with (or indicating that no agreement could be reached). Had a request to make further submissions been made this could easily have been accommodated, as further written submissions on these limited points were being directed in any event. We note that the Applicant himself concedes at 4(a)(iii) "Whilst the general conduct of the Tribunal hearing was otherwise fair ..."

- d. The tribunal was entitled to do as it did at Document 1, paragraph 27 and to seek further assistance in respect of matters raised at the hearing, before making a final decision. By so doing, it was not obliged to canvass (it would be have been wrong to do so) further issues raised after the hearing which were not properly live issues at the hearing.

13. It is not accepted that paragraph 5 raises any points of substance which would justify granting permission to appeal.

Dated 23 December 2014



Lawyer Chairman