

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0015/10/17

Reference: RPT/0016/11/17

In the matter of numbers 152 and 154 Mackintosh Place, Roath, Cardiff, CF24 4RS

And in the matter of an application under paragraph 31 of Part 3 to Schedule 5 of the Housing Act 2004 regarding the conditions of an HMO Licence

TRIBUNAL: Timothy Walsh (Chairman)
John Singleton (Surveyor)
Angela Ash

APPLICANT: Mr. Assan Khan

RESPONDENT: Cardiff County Council

REASONS FOR THE DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL

1. In a document dated 30 September 2018 the Applicant has applied for permission to appeal the substantive determinations in these two cases. We have considered his grounds of appeal in their entirety but, stated broadly, they are as follows.
2. First, the Applicant asserts that the Tribunal should have allowed him to explore and pursue Building Regulation regularisation. This is, however, precisely the same point as was made by the Applicant in his written submissions at the trial. It was addressed in the substantive decision of this Tribunal at paragraph 50 and, for the reasons given there, we consider that this ground of appeal has no prospect of success. Viz:

"[50] ...the Applicant asserts that the Respondent could waive any breaches of the building regulations and he complains that they have not done so and that they have not explored possible options for doing so with him. In his written submission, the Applicant summarises his position thus: "In summary, the tribunal should allow the appellant to explore and pursue building regulation regularisation rather than avenues of HMO registration". This Tribunal has no power, however, to direct any local authority to waive, or consider waiving, building regulation breaches. Rather, the short point is that we have determined that the Premises do not comply with the appropriate building regulation standards and, whether or not the breaches could have been waived, as they have not been the Premises are HMOs and the Applicant's argument on this point does not advance matters."

3. The second ground of appeal is that the Respondent has infringed the Applicant's Article 14 rights under the Human Rights Act 1998 because it is discriminating against him.

4. The allegation that the local authority is institutionally racist, with the result that it has discriminated against the Applicant, was considered with care in the substantive decision. The Tribunal addressed this issue at paragraphs 123 to 129 and there is no proper basis for concluding that the Tribunal's findings or decision was wrong. For the reasons given there already, this ground of appeal has no merit either.
5. We should add, that there is a suggestion in a document appended to the application for permission to appeal that the Respondent's building control department may have helped a third party acquire retrospective building regulation approval for other premises; since nothing is known of those premises or the terms upon which any retrospective approval was given, that document is of no real assistance and would not have altered the analysis or conclusions in the substantive decision in any event.
6. The final ground of appeal relates to the Tribunal's findings regarding the occupation of the ground floor flat in Number 154 and the limitation on occupation to only two people. The Appellant refers to The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 which came into force in England on 1 October 2018. The present cases were concerned with a licence granted before that date in relation to premises in Wales. Even if those regulations did apply to the present case, however, they would not assist the Appellant for the reasons summarised in paragraphs 100 to 111. The Tribunal has determined that, having carried out an inspection and having considered all of the characteristics of Number 154 in its entirety and the Ground Floor Flat in particular, the accommodation offered was too limited to serve a three-person household for any prolonged period of time. The overall occupancy density for Number 154 is high and whilst each of the four flats have their own amenities, they all have small kitchens and small shower rooms with single toilets. Each of those factors makes the safe occupation of this flat by more than two people difficult; when this is/was coupled with the fact that the child in occupation will not have a separate room the Tribunal could only reasonably conclude that the proposed limit on occupancy to two persons was appropriate.
7. Insofar as this ground of appeal asserts that a period of grace to remedy the overcrowding should have been permitted, that overlooks paragraphs 117 and 118 of the decision. This ground of appeal is, accordingly, also bound to fail.
8. For all of the foregoing reasons and those more fully stated in this Tribunal's substantive decision, the Applicant's proposed appeal has no real prospect of success and the Tribunal refuses permission to appeal accordingly.
9. The Applicant may renew his application for permission to the Upper Tribunal (Lands Chamber). Any such application must be made in writing and received by the Upper Tribunal (Lands Chamber) by no later than 14 days after the date on which this Tribunal's notice of refusal is sent. Details as to the power of the Upper Tribunal (Lands Chamber) to permit a notice of appeal or application for permission to appeal to be made outside the relevant time limit are given in the Upper Tribunal (Lands Chamber) "Explanatory Leaflet: A Guide for Users" obtainable from the Upper Tribunal (Lands Chamber).
10. The Upper Tribunal (Lands Chamber) may be contacted at: Upper Tribunal (Lands Chamber) 5th Floor Rolls Building 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL (DX: 160042 Strand 4). Their telephone number is 0207 612 9710 and their fax number is 0207 612 9723. The email address and website are, respectively:

lands@tribunals.gsi.gov.uk

www.landstribunal.gov.uk

DATED this 16th day of October 2018

A handwritten signature in black ink, appearing to be 'John White', written in a cursive style.

CHAIRMAN