

Y TRIBIWNLYS EIDDO PRESWL  
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0018/10/21

In the matter of 44 Augusta Street, Adamsdown, Cardiff, CF24 0EP

And in the matter of an application under Section 73(5) of the Housing Act 2004

And in the matter of an application for permission to appeal to the Upper Tribunal.

**Applicant:** Mr. Thomas John Harris  
Mr. Kristian Fan  
Mr. Adam Benyon

**Respondent:** Mr. Jeremy Staniforth

**Tribunal:** Mr. A. Grant (Legal chairperson)  
Mr. K Watkins (Surveyor member)  
Ms. J Playfair (Lay member)

## Decision

**The application for permission to appeal is refused**

## Reasons

1. By way of a letter dated the 3<sup>rd</sup> May 2022, the Respondent seeks permission to appeal the tribunal's decision dated the 13<sup>th</sup> April 2022 ("the Decision")
2. The letter was accompanied by grounds of appeal which set out the basis of the Respondent's request for permission to appeal. There are two grounds upon which permission to appeal is sought. They are both set out below.

## **Grounds of Appeal**

### **Ground 1**

3. That the tribunal had erred in law in that it had wrongly interpreted and applied section 74 of the Housing Act 2004. The tribunal had made a rent repayment order in respect of a full 12 - month period when an offence was only being committed for part of that period.

### **Ground 2**

4. That the tribunal exercised its discretion unreasonably in deciding to award a rent repayment order based upon 12 months rental receipts prior to the date of the application, in circumstances where the offence was not being committed for the full period of 12 months.

### **Requirement to secure permission to Appeal.**

5. Permission to appeal will be granted if it appears to the Tribunal that there are reasonable grounds for concluding that the RPT may have been wrong for one of the following reasons set out in the Lands Chamber Upper Tribunal Practice direction dated 2010 (paragraph 4.2).
  - That the Decision shows that the RPT wrongly interpreted or wrongly applied the relevant law.
  - That the Decision shows that the RPT wrongly applied, misinterpreted, or disregarded a relevant principle of valuation or other professional practice.
  - That the RPT took account of irrelevant considerations or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect.
  - The point or points at issue is or are of potentially wide implication
6. The Tribunal will now consider each ground which has been advanced by the Respondent separately.

### **Ground 1 - The tribunal was wrong to make a RRO for a period of 12 months prior to the date of the application when the offence was only committed during part of that period.**

7. The Respondent submits that, properly interpreted, the legislation provides that when considering making a RRO, the only sum that can be considered are payments made

in a 12- month period prior to the date of the application, where an offence was being committed during that period. The tribunal reject that submission.

8. The Housing Act 2004 (“the Act”) requires the tribunal to have regard to the matters at section 74 (6) (a) - (e) of the Act. Pursuant to section 74(6) (a) of the Act the tribunal must have regard to” the *total amount of relevant payments paid in connection with the occupation of the HMO **during any period** (our emphasis) during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72 (1)*”.
9. It is clear from that section that the tribunal are not limited to approaching the issue in the manner suggested by the Respondent. The tribunal are required to have regard to the totality of sums received during any period in which an offence was being committed and not just the 12- month period preceding the date of the application.
10. In this case, the tribunal had regard to the fact that the offence had been ongoing for a considerable period of time (see paragraph 24 of the Decision) and that fact was considered when reaching its decision on the scale of the award.
11. Therefore, the tribunal has a wide discretion when considering which factors to take into account, albeit that any RRO made cannot exceed the rent paid in respect of any time falling outside the period of 12 months ending with the date of the occupiers’ application.
12. The tribunal does not accept the Respondent’s submission that any RRO made can only be made by reference to the rent paid in the 12 - month period prior to the date of the application in which the offence was continuing. That is not what the legislation says. The effect of such an approach would be to limit the sums payable under the RRO in a way not intended by the legislation.
13. For the reasons given, the tribunal reject the submission that it failed to properly apply or give proper consideration to sections 74 (6) and (8) when reaching its Decision.
14. Permission to appeal on this ground is refused.

**Ground 2 – That the sum awarded by the tribunal was unreasonable in that it was made by reference to a period during which the offence was no longer committed.**

15. For the reasons given above, the tribunal reject the Respondent’s submission that any award should be limited to an amount in the 12 - month period ending with the date of the application during which time an offence was being committed. That is not what the Act says.
16. The nature of the offence, how long it has been continuing and whether it is still ongoing are all matters to be considered. The tribunal are not restricted to only

consider the position within the 12 - month period advanced by the Respondent. That would result in historical offences being ignored and not taken into account. That is not correct. In this case the offence was committed over a number of years and the tribunal was entitled to take that into account when reaching its decision on the appropriate level of award to be made.

17. The only limiting factor is that the RRO cannot exceed the number of rental payments made in the 12 - month period ending on the date of the application. The Orders did not exceed that sum. Accordingly, the tribunal's treatment of this issue was not unreasonable.

18. For the reasons given, the application for permission to appeal on this ground is refused.

19. Having regard to the matters set out above, the tribunal determines that the application has no real prospect of success, and the application is refused.

Dated the 13<sup>th</sup> June 2022.

.....

Andrew Grant  
Chairman.