

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0050/03/23

In the Matter of an Application under Section 27 of the Housing (Wales) Act 2014, appeal against refusal of licence.

APPLICANT: Kyle Johnson

RESPONDENT: Rent Smart Wales.

TRIBUNAL; Kelly Byrne (Legal Chair)
Kerry Watkins (Surveyor Member)
Bill Brereton (Lay Member)

HEARING DATE; 24th August 2023 at Oak House, Cleppa Park, Newport

Appearances- Mr Johnson in person for the Applicant

Mr Richard Grigg, Solicitor, Jonathan Reed, Environmental Health Officer, Rent Smart Wales and Huw Saunders, Group Leader, Rent Smart Wales, for the Respondent.

DECISION

The tribunal unanimously finds that Kyle Johnson, is not a fit and proper person to be licensed. The Applicant's appeal against the decision of Rent Smart Wales dated 7th February 2023, to refuse him a licence under Part 1 of the Housing (Wales) Act 2014 to carry out lettings and property management activities is refused.

REASONS FOR THE TRIBUNAL'S DECISION.

Background

1. The Applicant is the landlord of one property at 13 Aber Street, Cardiff, CF11 7AG, which he has owned since 2019. The property is a 'new build' and has been rented out since September 2020. The property currently has two tenants and is managed by an agent.
2. The Applicant applied for his landlord licence on 25th August 2021, as part of the application he disclosed the following:
"I have a conviction for violent disorder for which I served a half of a 14 month sentence from October 31 2006. I have a conviction for possession with intent to supply class A drugs from Dec 2008 for which I served half of a 12 year sentence from June 31st 2009. I would like to add that I was a young man at the time of both offences, 23 years old during the second offence. Since my release on July 1st 2015 I have matured and turned my life around, I have a family and have committed no further offences."

3. Rent Smart Wales (RSW) referred the application for a 'fit and proper' person investigation. As part of this process the Respondent requested that the Applicant provide them with a Disclosure and Barring Service certificate (DBS), as the Applicant had not provided the DBS, the application was rejected by RSW on 15th October 2021.
4. On 25th October 2021, the Applicant re-submitted a licence application which was accompanied by a DBS. On the Application form the Applicant made the following statements in respect of his previous convictions:

*"Violent disorder April 2006, sentenced to 14months custody (served half Oct 06 - July 07)
possession with intent to supply Dec 2008, 12 years custody (served half June 09 - July 2015)"
"As I explained on my first application my offences were committed whilst I was a young adult
(21 & 23 years old). I please ask that it is taken into consideration that since my release from
custody (1/7/2015) I have matured, live my life around my young family and have committed
no further offences."*

5. The certificate of conviction and Disclosure and Barring Service Certificate contained within the Respondent's bundle (Page 43), show that the Applicant was convicted of the following offences:

Date of conviction	Offence	Disposal
31/10/2006	s.2 Public Order Act 1986	12 Months Imprisonment
13/12/2006	s.4(1)(A) Public Order Act 1986	2 Months Imprisonment (to run consecutive)
10/09/2009	s.5(3) Misuse of Drugs Act 1971	12 Years Imprisonment

6. RSW wrote to the Applicant requesting that he complete a questionnaire regarding the above listed convictions in order to assist RSW with their determination of the licence application. On 17th January 2022 the Applicant returned the completed questionnaire.
7. On 18th February 2022 the Respondent sent a letter to the Applicant offering him the opportunity to submit video representations and also requesting that he provide copies of the certificates in respect of his qualifications. On 11th March 2022 the Applicant provided the requested certificates and confirmed that he would like to submit a video representation.
8. On 30th June 2022 a letter was sent from the Respondent to the Applicant providing a further opportunity for the Applicant to submit a video representation. On 13th July 2022 the Applicant confirmed that he was happy to make a video link representation to support his application.
9. On 27th October 2022 the Applicant provided the Respondent with a new address for them to send correspondence to, as he had identified that a letter had been send by the Respondent to an address he no longer resided at.
10. On 22nd December 2022 a letter was sent to the Applicant at his new address providing him with a link to make his video representation, giving a deadline of 5th January 2023. On 20th January 2023, the Applicant contacted the Respondent and advised that he had received the

letter late as it had been delivered to his neighbour. The Respondent made the decision not to offer a further opportunity for video representations as the deadline had expired.

11. As part of their 'fit and proper' person investigation, Jonathan Reed who is an Environmental Health Officer, carried out online research on behalf of the Respondent, in respect of the most recent conviction under the Misuse of Drugs Act 1971. He found an article from 'Wales Online' in respect of the criminal prosecution which stated the following:

"Four cardboard boxes were stacked on top of a single bed. Inside were 597 envelopes, containing a total of 149.35kg of heroin.

Police said the heroin was high grade with a purity of 60-65% and was packaged ready for distribution. The haul had an estimated street value of £9,956,000.

Officers identified Johnson, ..., as the safe house-keeper and courier."

"This was one of the most significant drugs seizures by the Met last year, and has seriously disrupted a major criminal network planning to flood London with heroin over the Christmas period"

12. On 7th February 2023 the Respondent wrote to the Applicant refusing his licence application, stating that he had not met the requirements to hold a licence as they did not deem him to be a 'fit and proper' person. They confirmed that as part of their decision making they had taken into account his previous convictions (as listed in the above table), in particular the following factors:

- The nature of the conviction and that the offences are of a type specifically included in the Housing (Wales) Act 2014 ("the Act") as being material to the consideration of the 'fit and proper' person test.
- The sentence imposed for the drug offence
- That the convictions remain unspent
- That they deemed that the mitigation provided was insufficient to draw any alternative conclusion.

13. On 3rd March 2023 the Applicant submitted an appeal against the decision to refuse his licence application to the Residential Property Tribunal ("the Tribunal")

The legal framework

14. Section 6 of the Act requires landlords to be licensed to carry out lettings activities which are further described at section 6(2) as follows;

(2) The things are—

(a) arranging or conducting viewings with prospective tenants;

(b) gathering evidence for the purpose of establishing the suitability of prospective tenants (for example, by confirming character references, undertaking credit checks or interviewing a prospective tenant);

(c) preparing, or arranging the preparation, of a tenancy agreement;

(d) preparing, or arranging the preparation, of an inventory for the dwelling or schedule of condition for the dwelling.

15. Section 7 of the Act contains the requirement for landlords to be licensed to carry out property management activities described in subsection (2) as follows;

(2) The things are—

- (a) collecting rent;*
- (b) being the principal point of contact for the tenant in relation to matters arising under the tenancy;*
- (c) making arrangements with a person to carry out repairs or maintenance;*
- (d) making arrangements with a tenant or occupier of the dwelling to secure access to the dwelling for any purpose;*
- (e) checking the contents or condition of the dwelling, or arranging for them to be checked;*
- (f) serving notice to terminate a tenancy.*

16. Under section 18 of the Act the licensing authority, Rent Smart Wales, may grant a licence to landlords to carry out letting and property management activities in accordance with sections 6 and 7 of the Act. Section 19 contains details of mandatory requirements for the licence application. Before Rent Smart Wales grant a licence to an Applicant, they must be satisfied that certain training requirements have been met or will be met and that the applicant is a fit and proper person to be licensed.

17. Section 20 of the Act sets out the fit and proper person requirement;
- (1) In deciding whether a person is a fit and proper person to be licensed as required by section 19(2)(a), a licensing authority must have regard to all matters it considers appropriate.*
 - (2) Among the matters to which the licensing authority must have regard is any evidence within subsections (3) to (5).*
 - (3) Evidence is within this subsection if it shows that the person has— (a) committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements), (b) practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010, or victimised another person contrary to that Act, in or in connection with the carrying on of any business, or (c) contravened any provision of the law relating to housing or landlord and tenant.*
 - (6) The Welsh Ministers must give guidance to licensing authorities about deciding whether a person is a fit and proper person to be licensed as required by section 19(2)(a).*

18. In October 2015 a document bearing the names of both Rent Smart Wales and the Welsh Government entitled 'Guidance on "the fit and proper person" test for licensing of landlords and agents' ("the guidance") was published. Paragraph 2 of the guidance states;

"This requirement is to ensure that those responsible for letting and managing a property in the private rented sector are of sufficient integrity and good character to be involved in the management of the property to which the licence relates. In addition, that they do not pose a risk to the welfare or safety of persons occupying the property".

19. Whilst the guidance at paragraph 5 states that the licensing authority must have regard to all matters it considers appropriate it adds

"Any evidence considered should be relevant to the person's fitness to hold a licence and let and manage rental properties in Wales."

20. Paragraph 6 of the guidance makes it clear that in respect of criminal offences, Rent Smart Wales “must have regard to” any convictions unless the person is not obliged to disclose those convictions in accordance with the Rehabilitation of Offenders Act 1974 and associated statutory instruments. Further, paragraph 12 of the guidance states that;

"In deciding whether a conviction is relevant to a person being a fit and proper person for the purposes of a licence, the Licensing Authority may wish to consider the following factors:

- *the relevance of the conviction in relation to the applicant's character and integrity to let or manage residential properties;*
- *the seriousness of the conviction, in terms of impact, or potential impact, upon the residents and the wider community, including if more than one conviction is involved, the cumulative impact;*
- *the length of time since any conviction; and*
- *any mitigating circumstances."*

21. An appeal against the decision of Rent Smart Wales may be made to the Tribunal under section 27 of the Act. The Tribunal may confirm the decision of the licensing authority or alternatively direct the authority to grant a licence on such terms as the Tribunal considers appropriate (section 27(5)(b) of the Act. The Tribunal can look at the matter afresh, by means of re-hearing the application, and can take into account evidence put before it by either party that may not necessarily have been in the contemplation of each party at the time of the original application and decision to refuse the licence. In other words, we can take into account matters raised and provided in this matter according to the Tribunal’s directions that may not have been available at the time RSW made the original refusal decision.

22. The burden of proof is upon the Applicant, to show that he is a fit and proper person, and the standard of proof is the civil standard, namely that it is for the Applicant to persuade the Tribunal, on the balance of probabilities, that he is a fit and proper person.

The evidence and the hearing.

23. The Applicant was given some time at the start of the hearing to further consider the papers, as he stated that he had not prepared representations due to being unfamiliar with the procedure of the Tribunal.

The Applicant

24. The Tribunal considered the following documentary evidence provided by the Applicant:

- HWA2 Application Form under the Housing (Wales) Act 2014
- Statement of Kyle Johnson (the Applicant) dated 21st June 2023
- A reference from Wayne Matthews on behalf of Ellis’s Fitness Centre
- Screenshots of a reference of Staci Finch on behalf of Lytham YMCA dated 21 June 2023
- Emergency First Aid Course certificate dated 9th December 2009
- Level 2 Award in Circuit Training dated 1st March 2012

25. In oral evidence the Applicant informed the Tribunal that his representations were contained within the bundle before the Tribunal. He advised that the public order offences were as a result of a drunken fight when he was younger and that he was in a different mind-set at that

time. He accepted that the drug conviction was serious, that he had been brought up around a drug culture and that he did not have many positive role models in his life at the time. He was remorseful, stating he was a young man at the time and has now matured.

26. He advised that in 2009 he was given a 12-year prison sentence, for which he served half, being released in 2015; he accepted that his prison licence period expired in July 2021. He explained that he had used his time wisely whilst being incarcerated by securing a number of qualifications so that he could obtain employment once he was released. During the last two years of his sentence, he was moved to an open prison and worked at the local YMCA as a fitness trainer.
27. Upon his release he worked at Ellis Fitness Centre, he no longer works at these premises. He is currently applying for his HGV licence. He advised that he is not the person he used to be, his life is now going in a positive direction, he is a father of two and would like to have a licence to manage his current property and to build a property portfolio.
28. He explained to the Tribunal that since his release from prison he has had no further involvement in illegal drugs, he went on to state that a family member is currently a drug addict and that he has no contact with this person as he has seen how illegal drugs impact on people.
29. He advised that he currently has a management company looking after his property, which is tenanted and that there have been no issues.
30. In his written submissions he states he does not pose a risk to any tenant or the wider public. That granting him a licence would enhance and strengthen his position as a law-abiding citizen and a good father/role model to his children.

The Respondent

31. The Tribunal considered the following documentary evidence provided by the Respondent:
 - The Skeleton Argument produced by Jonathan Reed, Environmental Health officer for Rent Smart WalesThe following Appendices attached to the Skeleton Argument:
 - Appendix 1 - The Legal Basis to Refuse a Licence Application Under the Housing (Wales) Act 2014
 - Appendix 2 - Excerpts from Welsh Government Guidance document titled "Guidance on the "fit and proper person" test for licensing of landlords and agents"
 - Appendix 3 - The Legal Provisions Surrounding the License Appeals Process Under the Housing (Wales) Act 2014
 - Appendix 4 - Officer Decision Record
 - Appendix 5 - Online News Article
 - Appendix 6 - Data Barring Service Certificate dated 20/9/2021
 - Appendix 7 - E-mail with Returned Representations Questionnaire
 - Appendix 8 - Correspondence requesting Certificates and offering Video Representations
 - Appendix 9 - Selection of Certificates received
 - Appendix 10 - Final Correspondence offering Video Representations
 - Appendix 11 - Excerpts From Guidance on the Rehabilitation of Offenders Act 1974
 - Appendix 12 - Excerpts from: - "Independent report Review of drugs: summary"

- Appendix 13 - Excerpts from “Drug harms in the UK: a multi criteria decision analysis
- Appendix 14 - Excerpt from Point 9 of appeal application for Kyle Johnson
- Appendix 15 - Excerpts from Sentencing Guidelines on aggravating factors
- Appendix 16 - Kyle Johnson’s Property Registration

32. Jonathan Reed, Environmental Health officer for Rent Smart Wales, gave oral evidence to the Tribunal. He advised the Tribunal that in his opinion the Applicant was not a ‘fit and proper’ person within the meaning of the Act, due to his serious criminal convictions, in particular the offence under the Misuse of Drugs Act 1971. He highlighted that the applicant had received a lengthy sentence of 12 years imprisonment, which meant that under the Rehabilitation of Offenders Act 1974, he would always have to declare his conviction as it will never be spent. He drew the Tribunal’s attention to the fact that as the offence under the Misuse of Drugs Act 1971, were during the rehabilitation period for the public order offences, that these would also never be spent in accordance with the provisions under the Rehabilitation of Offenders Act 1974.
33. Mr Reed explained to the Tribunal that Tenants are not afforded the same disclosure as employers and would not necessarily know about a landlord's convictions. That the Applicant, if licensed could come into contact with vulnerable Tenants.
34. He went onto state that if the Tribunal were to find that the Applicant was a ‘fit and proper’ person, that he requested two licensing conditions be applied over and above the standard conditions, they were as follows:
1. That the Applicant notify his Tenant(s) and any future Tenant(s) of his criminal convictions, the purpose of this would be to allow them to make an informed decision.
 2. That the Applicant not be permitted to carry out letting activities, so the letting agent would select the Tenant(s) the reason for this would be to prevent him from letting to people he knew.
35. The Applicant asked Mr Reed whether he believed that someone could be rehabilitated, to which Mr Reed replied in the affirmative, that he did believe someone could be rehabilitated.
36. The Tribunal panel asked questions of Mr Reed regarding the timeline of the application process, and he confirmed that there was no set response time in respect of licence applications. He was assisted in his response by Mr Huw Saunders, Group Leader, Rent Smart Wales.

Closing submissions

The Applicant

37. The Applicant confirmed that he would accept the additional conditions as proposed by the Respondent and that he wanted to work with RSW. That he understood that RSW is there to protect the safety of the Tenants. He stated that he would do whatever RSW and/or the Tribunal suggest.

The Respondent

38. Mr Grigg made submissions on behalf of the Respondent; he reminded the Tribunal that the Applicant had been sentenced to 12 years imprisonment for a serious offence due to 10 million pounds worth of drugs being found in the Applicant’s property. He reminded the

- Tribunal of the Rehabilitation of Offenders Act 1974 and that the convictions will never be spent and must always be disclosed by the Applicant when legally required to do so.
39. He referred to the lengthy written evidence provided by Mr Reed, which he stated was comprehensive.
 40. Mr Grigg referred the Tribunal to the provisions contained in s.19 (2) (a) & s.20 of the Act regarding 'fit and proper' person and the requirements that must be taken into account before granting a licence under the Act. That the Tribunal must have regard to the drug offence as required under s.20 (3) of the Act; that Welsh Government Guidance reiterates this requirement.
 41. Mr Grigg stated that due to the serious nature of the offence under the Misuse of Drugs Act 1971, that the Respondent do not believe that he is a 'fit and proper' person.
 42. He reiterated that if the Tribunal were against him, that the Respondent requests the two additional conditions (as set out above) be added to the licence.

Decision

43. The Tribunal accept that they must have regard to the Applicant's convictions since they are for offences specifically mentioned in s.20 (3) of the Act, namely offences of violence and drugs, as set out below.

Date of conviction	Offence	Disposal
31/10/2006	s.2 Public Order Act 1986	12 Months Imprisonment
13/12/2006	s.4(1)(A) Public Order Act 1986	2 Months Imprisonment (to run consecutive)
10/09/2009	s.5(3) Misuse of Drugs Act 1971	12 Years Imprisonment

44. The Tribunal note that due to the timing of the offending and the length of the sentence for the offence under the Misuse of Drugs Act 1971, that in accordance with the Rehabilitation of Offenders Act 1974, that these convictions are never spent and will always have to be disclosed when legally required to do so.
45. The Tribunal are aware that the Applicant was released from prison in July 2015, at the halfway point of his 12-year sentence. The Applicant remained on prison licence for the remainder of his sentence until July 2021. To the Applicant's credit, no further offences have been committed by him since his release from prison.
46. The Tribunal accept the submissions made by Mr Grigg on behalf of the Respondent regarding the legislation that must be applied when making a determination on whether someone is a 'fit and proper' person and that they have regard to the guidance.
47. Turning to Paragraph 12 of the Guidance, upon deciding whether a conviction is relevant to a person being a fit and proper person for the purposes of a licence, the licensing authority **may** wish to consider the following factors:
 - the relevance of the conviction in relation to the applicant's character and integrity to let or manage residential properties;

- the seriousness of the conviction, in terms of impact, or potential impact, upon the residents and the wider community, including if more than one conviction is involved, the cumulative impact;
- the length of time since any conviction; and
- any mitigating circumstances."

48. As stated in Paragraph 12 of this document, the Respondent as the licensing authority refused the licence on the following grounds:

- The nature of the conviction and that the offences are of a type specifically included in the Housing (Wales) Act 2014 ("the Act") as being material to the consideration of the 'fit and proper' person test.
- The sentence imposed for the drug offence
- That the convictions remain unspent
- That they deemed that the mitigation provided was insufficient to draw any alternative conclusion.

49. The Tribunal, as the appeal tribunal, must look at the case afresh and place themselves in the position of the licensing authority when considering whether the Applicant is a fit and proper person to be licensed under the Act.

50. Having considered all of the evidence (written and oral), the Tribunal find that the Applicant's convictions are relevant and they have been taken into consideration when determining the character and integrity of the Applicant to let or manage residential properties.

51. The Tribunal consider that the convictions are serious, in particular the conviction under the Misuse of Drugs Act 1971, which resulted in a substantial sentence of 12 years imprisonment. Having considered the evidence before the Tribunal, it is clear that the Applicant was heavily involved in the supply chain of heroin, which is reflected in the sentence imposed.

52. The Tribunal note that no further offences have been committed since the Applicant's release from prison but are concerned that the Applicant's prison licence period only expired in July 2021 and the initial application was made to the Respondent in August 2021. Due to the reasons stated above at paragraph 3 above, the application had to be resubmitted in October 2021.

53. The Tribunal have concerns with the applicant's unspent conviction for possession with intent to supply £10 million pounds of heroin onto the streets of London and surrounding areas. The Tribunal find that it is significant that the Applicant was involved in keeping a 'safe house' for the storage of the drugs. The Tribunal find that given the nature of the offending, that approving the Applicant to have a licence could have an impact, or potential impact, upon the residents and the wider community.

54. The Tribunal note the mitigation put forward by the Applicant (summarised in paragraphs 24-30), in particular that he is remorseful, that he has not been convicted of a further offence since his release from prison in July 2015, that he now has a family and is looking to the future, to build a new life and career prospects. Whilst the Tribunal accept the mitigation put forward, it does not accept that this is enough to persuade it from its decision.

55. Having considered all of the evidence (written and oral), the legislative framework and the guidance, the Tribunal find that on the balance of probabilities that the Applicant is not a fit and proper person to be licensed to carry out lettings and property management activities.
56. The Tribunal was not asked to make any costs orders by either of the parties and does not consider in any event that a costs order is appropriate.

Dated this 10th day of October 2023

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

Kelly Byrne

Tribunal Judge