



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **MAN/00CE/HML/2020/0004**

**Property** : **1-5 Elm Green Lane, Conisbrough,  
Doncaster DN12 3JA**

**Appellant** : **Wrap Around Supporting People**

**Respondent** : **Doncaster Council**

**Type of application** : **Housing Act 2004 – Schedule 5  
Paragraph 31(1)**

**Tribunal Members** : **Mr J A Platt FRICS (Chairman)  
Mr P Mountain**

**Date of decision** : **14 January 2022**

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**DECISION**

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## **The Application**

1. The application ('the Application') was made on 26 November 2020 by Wrap Around Supporting Services ("WASP"). It is an appeal against a 'property specific condition' imposed by Doncaster Council ("the Council") within the HMO Licence for 1-5 Elm Green Lane, Conisbrough ("the Property") issued on 4 November 2020.

2. The specific condition is at 16(A) of the licence:

*Within 3 months from the date of final grant – 24hr continuous staff presence must be provided on-site. Those Staff employed to fulfil this requirement must be trained and competent in dealing with anti-social and confrontational behaviour with clearly defined procedures to follow including when it becomes appropriate to escalate matters to the Police.*

3. The licence is for a period of 5 years, expiring on 3 November 2025.

## **Background**

4. The Property is a 3-storey house of traditional construction originally comprising 3 separate buildings, now converted into one building with 15 bedrooms. It is held by WASP on a long-lease and is licenced as a house in multiple-occupation ("HMO") for 15 occupants. The Property has been operating as an HMO for a period of around 20 years through various operators.

5. The Applicant, WASP, is a charity registered in 2016, whose charitable objectives are detailed within the witness statement of Mr J Allcock (an Honorary Trustee) as:

*The rehabilitation of ex-offenders for the benefit of the public and the residents, by providing accommodation, staff to mentor, advise and inspire to build better lives and relationships to their optimum potential or personal satisfaction, and to refer to appropriate third-party agencies.*

6. Many residents have been homeless and / or have drug and alcohol problems. Circumstances referred to by both parties, within witness statements and during the hearing, as people with (or who have had) a 'chaotic lifestyle'. The Tribunal adopts this descriptive term for ease of reference.

## **The Law**

7. Extracts from the law (Housing Act 2004 ("the Act")) are included at Appendix 1.

8. The directly relevant sections are, in summary:

S.67 (1) enables a local housing authority to include within a licence such conditions as it considers appropriate for regulating:

a. the management, use and occupation of the house concerned

S.67(2) provides that those conditions may, in particular, include (so far as appropriate in the circumstances):

- b. conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house.

Sch 5, S.31(1) & (2) enables the licence holder to appeal against the decision by the local housing authority to grant the licence. An appeal may, in particular, relate to any of the terms of the licence.

- 9. The jurisdiction of the Tribunal is detailed at Sch 5, S.34, which provides that an appeal:

- a. is to be by way of a re-hearing, but

- b. may be determined having regard to matters of which the authority were unaware

- (3) The tribunal may confirm, reverse or vary the decision of the local housing authority

- (4) the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct

### **The Hearing**

- 10. A remote video hearing was held on 9, 10 and 17 November 2021. Due to technical difficulties a number of witnesses participated and provided evidence via telephone.

- 11. WASP was represented by Mr A Maddan of Counsel. The Council was represented by Ms H Potts, its Principal Legal Officer.

- 12. Mr P Rotherham had assisted WASP in preparing its case and acting as an advocate on their behalf. At the hearing, Mr Rotherham gave expert evidence, and the Tribunal is satisfied that there was clear demarcation between his role as advocate and his expert evidence for the benefit of the Tribunal.

### **The Council's Case**

- 13. Put simply and simplistically (and in the words of the Tribunal), the Council's case is that:

- a. Neighbouring residents have suffered from ASB issues emanating both from within the grounds and within the vicinity of the Property for many years

- b. Those issues persist

- c. WASP's proposals and actions already undertaken (some additional staffing and enhanced / monitored CCTV system) will not prevent ASB at the Property or within the vicinity of the Property
- d. The Council considers that 24hr staffing, 7 days per week ("24/7"), will have a conciliatory effect on the behaviour of residents (and indirectly on their visitors / potential visitors) to reduce ASB issues affecting neighbouring residents
- e. The Council considers that it is appropriate for it to require 24/7 staffing as: 'the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house'.
- f.

**WASP's Case**

- 14. Again, put simply and simplistically (and in the words of the Tribunal), WASP's case is that:
  - a. The Council has failed to demonstrate that ASB is currently a problem with regards to the Property
  - b. The Council's requirement for 24/7 staffing will not, in any case, prevent or reduce ASB by persons occupying or visiting the Property
  - c. The requirements are neither reasonable nor practicable. The condition will put WASP out of business as it cannot afford to employ 24/7 staffing.
  - d. WASP has already put enhanced CCTV security in place and has proposed / offered to implement additional staffing for 7hrs per day at weekends

**Evidence**

- 15. The Tribunal heard evidence from:

The Council

Mr A McMurdo	Environmental Health Officer
Ms C Woods	Benefits Manager
Councillor I Pearson	Local Ward Councillor
Ms A Kearns	Neighbour and operator of neighbouring nursing home
Ms K Clemitshaw	Neighbour
Ms E Wildey	Neighbour
PC M Quinn	Police Officer - Neighbourhood Team

WASP

Mr J Allcock	Honorary Trustee
Mr P Rotherham	Expert Witness

- 16. Each witness had provided written statements which were taken as read prior to the witnesses presenting themselves for cross-examination.

17. The Council's evidence included a written witness statement of Police Sergeant Mangham. Sergeant Mangham is no longer based at Conisbrough police station and did not, therefore, attend the hearing to give evidence. Both parties made representations as to how much weight (if any) the Tribunal should give to the written evidence due to the lack of cross examination of Sergeant Mangham.
18. It is not necessary to record the evidence of each witness in detail. We summarise below (not necessarily in the order presented), the key elements which comprise each party's case.

#### Evidence on behalf of the Council

19. The neighbours each gave evidence of how they had been affected by ASB emanating both from within the grounds of the Property and within the vicinity of the Property. In particular, Ms Clemitshaw gave evidence of the impact upon her young children and Ms Kearns of the impact upon her neighbouring nursing home business; being unable to fully let rooms which border the grounds of the Property, except to residents with poor hearing.
20. Each witness was questioned about historical versus more recent events and the specific impact of Covid-19 lock-down. In general, the neighbours stated that ASB nuisance had increased during lock-down, when staff were frequently absent from the Property, but all assert that the problems had been encountered for many years prior to lock-down and persist after lock-down.
21. The neighbouring residents gave evidence about community meetings held with WASP over the years, to discuss ASB etc. Those meetings had ceased, largely because WASP displayed a defensive and even dismissive attitude towards the issues being discussed. The residents now report incidents to the police and / or the Council by way of dedicated email addresses.
22. Councillor Pearson gave evidence of ASB events that he had witnessed and that had been reported to him by his constituents. He also gave evidence that he (and other ward councillors) had been elected fairly recently, on a mandate to 'do something about' the issues related to the Property.

#### Mr A McMurdo

23. Mr McMurdo gave evidence that he had commenced his current role in 2019. Upon receiving the licence application for the Property in January 2020, his line manager advised him that there had been regular ASB associated with the property, representations were frequently received from ward councillors, and it was made clear to him that the issue needed to be addressed. He explained that he had spoken to neighbouring residents and ward councillors who all reported regular and persistent ASB. Neighbouring residents had stated in evidence that their concerns had not led to any noticeable action nor improvement prior to Mr McMurdo's involvement.

24. Mr McMurdo's written evidence relates his decision making process to grant a licence subject to conditions. It details conversations with WASP around their alternative suggestions to enhance CCTV provision as an alternative to 24/7 staffing and, at paragraph 23, details how he reached his conclusion that a specific requirement for 24/7 staffing was appropriate.
25. During cross-examination, Mr McMurdo agreed that 24/7 staffing was not a common condition within licenced HMOs but he regards the subject Property as a special case. He gave evidence of two providers of supported accommodation which did employ 24/7 'waking watch' staff.
26. He stated that reports of ASB were typically related to incidents within the grounds of the Property which often spread outwards into the neighbouring streets. He explained how he envisaged staff taking periodic walks around the vicinity of the Property, how their presence could defuse situations and also collect evidence of ASB which would be missed by CCTV. He agreed that it was not envisaged that 24/7 staff would undertake 'street patrols' nor that they would replace the duties of the police. He did, however, reiterate that some patrolling of the grounds and beyond the gates would help to prevent nuisance escalating to ASB. He agreed that the specific condition of 24/7 staffing probably needed additional clarification as to specific role responsibility and training requirements.

#### Police Constable M Quinn

27. PC Quinn explained that he is a member of the Neighbourhood Policing Team ("NPT") covering Conisbrough and Denaby. The role of the NPT includes engaging with members of the public. They carry out daily patrols of Elm Green Lane and call into the Property on a frequent basis, where staff welcome their attendance and allow access to the CCTV when necessary.
28. The NPT does not patrol overnight, shift patterns finishing at midnight.
29. PC Quinn gave details of 13 calls which had been generated in relation to the Property during 2021 (up until 15<sup>th</sup> October). Complaints from neighbours are emailed directly to his sergeant and passed onto PC Quinn. His conversations with neighbours had largely been related to noise and he has advised about LA monitoring devices.

#### Police Sergeant R Mangham

30. Having had regard to the submission of both parties, the Tribunal had regard to the witness statement of Sgt Mangham to the degree that it provided information from police call logs during 2019/20 and factual evidence of police activity.
31. The calls related to concern for welfare matters, general ASB and threatening behaviour and some allegations of criminal damage at the property. The police logs identify that over 50 calls for service were generated from the Property or its general location. Sgt Mangham states that neighbours regularly report nuisance ASB outside the Property and reports include incidents of non-residents shouting at the Property from outside, with specific allegations of demanding drug money.

His team had responded by conducting directed patrols in the neighbouring streets which required the investment of a significant amount of police time.

32. The Tribunal noted that Sgt Mangham's evidence was historic (relating to 2019/20) whilst that of PC Quinn was related to Jan – Oct 2021. Copies of the emails from neighbouring residents referred to by both PC Quin and Sgt Mangham were not produced in evidence by the Council.

### Evidence on behalf of WASP

#### Mr J Allcock

33. Mr Allcock advised that he is an Honorary Trustee of WASP and also works as a volunteer. He explained the charitable objectives of WASP are *“the rehabilitation of ex-offenders for the benefit of the public and the residents, by providing accommodation, staff to mentor, advise and inspire to build better lives and relationships to their optimum potential or personal satisfaction, and to refer to appropriate third-party agencies. These are carried out in a supportive, non-judgemental and anti-discriminatory environment and atmosphere to enable success and the removal of obstacles and barriers to transformation.”*
34. He provided evidence of how the mentoring and support functions are undertaken by 4 staff plus himself as a volunteer. He demonstrated a passion for the role WASP plays in helping residents to get their lives back on track and re-integrate into society. He cites it as a unique service offering, which achieves significantly higher success than any other (much better resourced) similar organisations. He advised that other organisations with similar objectives are keen to work with WASP to support their own services.
35. The Property is not a rehabilitation centre nor a hostel. WASP's services are based on trust. It is supported independent living with four staff employed 9.00 a.m. – 4.00 p.m. Monday – Friday to 'teach (residents) life and other skills to enable re-integration into society'. Staff are not based at the Property to provide security. The four staff, plus Mr Allcock as a volunteer, use four cars to transport residents to planned appointments with doctor, job centre, ASPIRE drug & Alcohol Services etc. as well as day trips, swimming baths etc. There is usually one member of staff on-site during working hours to 'answer the telephone'. He stated that he only wanted one member of staff on-site at any one time and preferred to see staff using their time taking residents to external appointments.
36. He considers the allegations of ASB to be exaggerated and that neighbouring residents have, in the past, publicly stated their intention to 'get the building closed'. He considered that most complaints had historically been made by one neighbour and when alleged incidents were investigated, they were disproved. WASP has robust policies on neighbourhood and community ASB, tenancy conditions and house rules. ASB is dealt with quickly and effectively in accordance with WASP's zero tolerance policy. He stated that WASP rarely receives any complaints from neighbours despite making contact details available.

37. Nuisance issues that are flagged by CCTV out of hours, are logged and looked at by WASP staff the following morning. When necessary recorded incidents are reported to police via 101. Three staff live within 15 minutes of the Property and are available to respond or view CCTV live (on mobile phones) when alerted by monitoring staff. He stated that these capabilities are very rarely used as not necessary.

Mr P Rotherham

38. Mr Rotherham is an experienced Environmental Health Officer, previously responsible for HMO licencing at Sheffield City Council. Throughout his time at Sheffield City Council no specific licence conditions were imposed on any property. He agreed that the Property represented an exceptional case and that he had no licencing experience of similar properties with similar service offerings. He disagreed that 24/7 staffing was reasonable or practicable nor would it solve the problems outside the perimeter of the property.
39. It was inappropriate to impose a 24/7 specific condition without first having regard to the impact / success of other provisions. When asked how he would have approached the licence application he responded that WASP should be given a chance to implement their own additional staffing suggestions and that a shorter licence period of one or two years would be appropriate.

**Discussion**

40. The Tribunal considers it helpful to its deliberations and decision to highlight and differentiate the dual roles / functions of WASP and how these fit within the jurisdiction of the Tribunal.
41. On one hand WASP is a charity which provides:
- accommodation, staff to mentor, advise and inspire to build better lives and relationships to their optimum potential or personal satisfaction, and to refer to appropriate third-party agencies.*
42. Mr Allcock provided evidence of how the mentoring and support functions are undertaken by 4 staff plus himself as a volunteer. He is clearly very passionate about the role WASP plays in helping to turn around people's lives and is very proud of its achievements. He cites it as a unique service offering, which achieves significant success, and one which other organisations are keen to work with to support their own services.
43. The Tribunal has no reason to doubt any of Mr Allcock's praises for the successes of WASP as a charity assisting to turn around the lives of residents who have previously lived a 'chaotic lifestyle' and its success in preventing re-offending.
44. WASP has a second function however, as a landlord of a house in multiple occupation. It is a 'person having control of the house' and as such is licenced to operate the Property for occupation by up to 15 persons. For ease of reference, we refer to this as "the landlord function" and to the mentoring and support services as "the charity function".



45. The role and jurisdiction of this Tribunal is entirely concerned with the landlord function. The success of the charity in fulfilling the charity function by helping to turn around chaotic lifestyles and prevent re-offending, as laudable as that may be, is of limited relevance to the decision-making process of the Tribunal on the management of an HMO. Specifically, this Tribunal's role is to determine if it is reasonable and practicable to impose a condition on WASP, as a landlord of a HMO, requiring 24/7 staffing to prevent or reduce ASB within or within the vicinity of the Property.
46. The Tribunal approached its decisions by way of a number of incremental questions, as detailed below:

### Question 1

47. Are neighbouring residents suffering from ASB occurring within or within the vicinity of the Property?
48. The Tribunal had regard to the definition of ASB within the Housing Act 2004:

*S57(5) In this Act "anti-social behaviour" means conduct on the part of occupiers of, or visitors to, residential premises—*

*(a) which causes or is likely to cause a nuisance or annoyance to persons residing, visiting or otherwise engaged in lawful activities in the vicinity of such premises*

But ensured that its consideration was also tempered in accordance with the Licencing Guidance at S255:

*It should be remembered that the property is the home of the occupier and his ordinary use of it as such, whether such use is, or may be a nuisance in the eyes (or ears) of some other persons, will not constitute ASB.*

49. Having had regard to all the evidence, including from neighbours, Coun. Pearson and the police, the Tribunal is convinced that:
- a. the neighbouring residents have suffered nuisance and annoyance from repeated incidents of ASB at, or within the vicinity of the premises.
  - b. that the neighbouring residents continue to suffer nuisance and annoyance from ASB at, or within the vicinity of the premises. The incidence of ASB may have increased during Covid-19 lock-down but the Tribunal is convinced that neighbouring residents continue to suffer since the ending of lock-down and
  - c. the nuisance and annoyance suffered by the neighbouring residents is above and beyond that to be expected from the ordinary use of the Property by the occupiers as their home

50. The above determinations are made by the Tribunal on the balance of probabilities and are made purely to consider if it *'considers it appropriate to include a condition within the licence requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house'*. The determinations do not imply any breach of licence conditions by WASP, no such application was before the Tribunal nor was the evidence presented or examined to the criminal standard 'beyond reasonable doubt'.

### Question 2

51. Should the Tribunal refuse to grant a licence?
52. Within its statement of case the Council asserts that: *"If the charity are unable to fund the additional resource, the Tribunal should consider reversing the Respondent's decision to grant the licence with conditions and instead refuse the licence."*
53. This assertion was not followed up in any detail at the hearing, no evidence was presented to assert that WASP is not a fit and proper person and the Tribunal did not consider the evidence of ASB in the context (or to the required level of proof) of alleged breach of licence. Having regard to all the information available to it, including information that was not available to the Council at the time of their decision, the Tribunal does not consider it appropriate to refuse to issue a licence to WASP.

### Question 3

54. Does the Tribunal consider it appropriate to include a specific condition within the licence requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house?
55. In considering if it is appropriate to include a specific condition, the Tribunal is mindful of the standard condition within the licence that:
- The licence holder must take all reasonable and practicable steps for preventing and dealing effectively with anti-social behaviour by persons occupying or visiting the house and the use of premises for illegal purposes.*
56. In summary, the standard condition requires the licence holder *to take all reasonable and practicable steps for preventing and dealing effectively [with ASB]...* whereas a specific condition may require the *taking of reasonable and practicable steps to prevent or reduce [ASB]*. There is considerable overlap between the two and on the basis that the standard condition requires the taking of all *reasonable and practicable steps for preventing and dealing effectively [with ASB]* it is necessary to consider what additional benefit would be achieved by including an additional specific condition.
57. There is a subtle difference between steps *preventing and dealing effectively* and steps *to prevent or reduce*. It is that subtle difference which, in the opinion of the Tribunal, reflects the difference between the parties in this case.

58. The standard conditions (and the Licencing Guidance) refer to tenancy terms, termination rights, house rules etc, all designed to ensure that occupiers are made aware of requirements to 'behave' and to ensure that landlords can (and should) take termination action in response to any breach. WASP's case is that it has such procedures in place, that it investigates all allegations of ASB brought to its attention (with the help of CCTV) and issues warnings and takes tenancy action when appropriate. That prevents repeat offending by individual occupiers and acts as a deterrent to other occupiers.
59. The Council's case is that 24/7 staff would be on-site to intervene in a regular and timely manner to prevent behaviour (arguing, shouting, swearing, drinking etc) escalating to ASB by 'nipping it in the bud'. The Council specifically refers to recurrent and prolonged episodes of 'low level ASB'. The Council also make the point that frequent incidents of low level ASB are not easily dealt with via traditional enforcement routes available to it or the police.
60. The Tribunal interprets the standard licence condition: *preventing and dealing effectively* in a similar way to WASP i.e. having rules and procedures in place to effectively 'respond' to ASB. The Tribunal interprets the specific licence powers which enable the Council to require reasonable and practical steps to *prevent or reduce* ASB as specifically requiring steps to reduce the impact, prevalence, frequency and escalation of nuisance, thus preventing and reducing ASB. We refer to these simplistically as 'respond' and 'prevent'. In simplistic terms, WASP's case can be summarised as having sufficient procedures in place to respond to ASB, whereas the Council's case is that it is reasonable to require additional measures to prevent ASB.
61. The Tribunal notes Mr Allcock's evidence that the Property is not a rehabilitation centre nor a hostel. Mr Allcock also stated, however, that the role of WASP is 'the rehabilitation of ex-offenders ...' and the role of WASP's staff is to 'teach (residents) life and other skills to enable re-integration into society'. The Property is clearly therefore, some form of 'half-way' house whilst residents are provided with assistance in 'rehabilitation' and 're-integration into society'.
62. Having regard to all the evidence and having determined that neighbours continue to suffer nuisance and annoyance from ASB at, or within the vicinity of the premises, the Tribunal does consider that the specific nature of the use of the Property does warrant additional resources to prevent or reduce ASB, over and above the requirements within a conventional HMO. For ease of reference, we refer to the additional management and additional resource requirement as the 'enhanced management function'. The Tribunal, therefore, considers it appropriate to include a specific condition requiring an enhanced management function as the taking of reasonable and practicable steps to prevent or reduce ASB.

#### Question 4

63. What specific conditions may be appropriate to help prevent ASB?
64. The Tribunal considered both the Council's requirement for 24/7 staffing and WASP's offer to increase staff provision at weekends and to enhance the CCTV system and monitoring (already implemented).

65. A number of mixed messages were received from both parties about the CCTV provision, its suitability and appropriateness for preventing, reducing and responding to ASB. Both parties appear to agree that the funding of the CCTV is specifically limited to a service enhancing security of the building and its occupants. It is not entirely clear to the Tribunal how those funds could be reallocated to reduce or prevent ASB. Nevertheless, the Council appeared to suggest that is possible, whilst WASP asserts that enhancements to the (security system) CCTV provide the most appropriate means of preventing and reducing ASB. It is not necessary for the Tribunal to fully rationalise these positions because, adopting the phraseology above, the Tribunal considers the CCTV may be an effective tool in 'responding' to ASB but is not convinced that the CCTV in isolation, as currently monitored, is an effective tool to 'prevent' ASB.
66. Mr Allcock was unclear in his evidence about the CCTV monitoring service which is currently in place. He asserts that the system is monitored 24/7 outside working hours, by the installation company 'Skynet'. He admitted that he was unaware of the detailed monitoring position and, in particular, the number of staff engaged in providing the service. He implied that the monitoring was undertaken by the owner of Skynet and one employee. The Tribunal noted that WASP staff are employed 9.00 – 4.00 Monday – Friday and a fully monitored system would, therefore, require monitoring for a minimum of 133 hours (out of 168 hours) per week, all year round. It is totally unclear to the Tribunal how such a service can be provided by the team described. No evidence was presented of any procedures being in place for staff to 'clock on and clock off' and 'hand over' to the monitoring service. In the absence of any detailed evidence on the monitoring service contracted or being supplied, the Tribunal is not convinced that a continuous 24/7 monitoring service (made up of on-site staff and CCTV remote monitoring) is currently in place.
67. It is not necessary to reproduce in detail the submissions, assertions and discussions that were made at the hearing about the effectiveness or otherwise of 24/7 staffing in 'preventing' ASB. The Tribunal having regard to all those 'discussions' in the round, is of the opinion that the presence of staff on-site is more likely than not, to have a conciliatory effect on the behaviour of residents (and indirectly on their visitors / potential visitors) to reduce the frequency and seriousness of nuisance escalating into ASB issues affecting neighbouring residents.

#### Question 5

68. Is the requirement to provide 24/7 staff reasonable and practicable? And specifically, is it reasonable and practicable at the present time and within the timescale imposed by the Council?
69. WASP asserts, in summary, that a requirement to introduce 24/7 staffing, at 3 months' notice, without prior warning or consultation, is neither reasonable nor practicable. It asserts that the Council has not carried out any assessment of the reasonableness nor practicability of the requirement. The requirement is unaffordable to WASP who will be put out of business by the requirement.

70. WASP further asserts that if the ASB situation was so bad, surely other enforcement action would have been implemented by the Council and / or the police. Additionally, that the Council and the police have wide ranging powers to deal with ASB in the community and it is appropriate for such actions to be considered, and if necessary actioned, prior to considering the imposition of specific licence conditions. It is inappropriate for a specific licence condition to be imposed without any such actions having been taken, especially when that condition would be fatal to WASP. Such a requirement is neither reasonable nor practicable.
71. The Council asserts (in summary and in the words of the Tribunal) that:
- Council and police enforcement tools are of limited effect against persistent low level ASB
  - The obligation to prevent ASB lies with WASP as the licenced landlord of an HMO
  - WASP does not recognise those obligations and chooses to focus its resources on its charity functions rather than its landlord function
  - Most instance of ASB occur at night
  - The CCTV system has proven ineffective in preventing ASB, and in particular, in doing so at night
  - There are no contractual obligations on WASP staff to respond to incidents brought to their attention out of hours
  - The requirement for 24/7 staffing would have a conciliatory impact upon the behaviour of residents and visitors, preventing and reducing ASB
  - WASP could re-prioritise the allocation of its resources to fund and provide 24/7 staffing and
  - It is a reasonable and practicable requirement when neighbouring residents are suffering regular incidents of ASB
72. The Tribunal finds merit in the cases of both parties.
73. As noted above, the Tribunal is of the opinion that 24/7 staffing would be beneficial in preventing and reducing ASB. In effect preventing ASB by reducing the severity, length and frequency of behavioural issues escalating to become ASB.
74. The Tribunal is not entirely convinced that WASP fully accepts its responsibilities, as a landlord of a licenced HMO, to prevent ASB within, or within the vicinity of, the Property. Mr Allcock specifically stated that WASP is not responsible for behaviour outside its premises.
75. The Tribunal notes, from the evidence of Mr Allcock, that there is a potential tension between WASP being able to succeed in its charitable objectives by

engendering an atmosphere of trust within a supported independent living environment and a requirement to impose 24/7 staffing providing a degree of supervision. WASP (Mr Allcock) is very proud of its achievements, which are based on trust and non-interference in day to day living.

76. There is a similar tension over the allocation of resources. WASP asserts that 24/7 staffing is totally unaffordable and would put it out of business. The Council asserts that existing resources can be reallocated to provide the necessary staffing.
77. The Tribunal in no way wishes to belittle the achievements of WASP, but the Tribunal must focus on the enhanced management requirements of the landlord function and its success as a charity cannot be at the expense of ASB being suffered by neighbouring residents. It is not for the Tribunal to dictate the spending priorities of WASP and the following comments are made with a view to being helpful. It may be that fully satisfying both the enhanced management function and the charity function is not financially viable. That may be one reason why (as Mr Allcock puts it) WASP provides a unique service offering. It may be appropriate for WASP to further explore its partnership or collaborative working options. WASP may wish to explore focusing entirely on its charity functions whilst outsourcing / partnering on the enhanced management (landlord) functions, perhaps over a wider number of properties.
78. For as long as WASP wishes to function as an organisation fulfilling both a landlord function and its charity function, the success of the charity function cannot be at the expense of the landlord function nor at the expense of an enhanced management function, which the Tribunal determines to be an appropriate requirement.
79. Any business decisions or restructuring of WASP's activities will take time. The Tribunal does not consider the lack of alternative / previous enforcement actions prevents the Council from imposing specific conditions within the HMO licence. A 3-month compliance period would, however, have perhaps been more reasonable had such actions been taken and WASP more adequately forewarned.
80. The Tribunal is not fully convinced that a 24/7 staffing requirement is the only or most appropriate requirement. The Council has not made out its case to that effect.
81. The Tribunal is also of the opinion that introducing a requirement for 24/7 staffing with minimal notice and without prior notification and consultation is neither reasonable nor practicable, at the present time. The Tribunal wishes to stress 'at the present time' and makes no determination about any similar requirement which may (or may not) be imposed in the future.
82. Likewise, WASP has made suggestions and offered to implement additional staffing at weekends and implement enhanced CCTV with a 24/7 remote monitoring service. The Tribunal considers it reasonable and practicable for WASP to be given an opportunity to fully take on board its ASB obligations, to implement its revised staffing and CCTV monitoring arrangements, to consider its future business strategy / structure and to, in effect, prove to the Council that its arrangements are satisfactory.

83. The Tribunal has expressed its doubts about the extent of the currently contracted CCTV monitoring service and its reservations about its ability, as currently monitored, to prevent and reduce ASB. WASP has submitted that an alternative special condition requirement should include a 24/7 monitoring service. It is necessary for any required level of service provision to be clarified. The Tribunal, therefore, considers it reasonable and practicable to require a special condition that a contract for the 24/7 provision of a CCTV remote (or on-site) monitoring service is fully implemented within 2 months of the licence date.
84. Likewise, WASP has offered to employ additional staff resources on-site for 7 hours per day, Saturday and Sunday. The Tribunal considers it reasonable and practicable to require a special condition that those enhanced staffing resources are implemented within 2 months of the licence date.

#### Question 6

85. What is the appropriate length of the licence?

86. S91 of the Act states that:

*A licence should normally be granted for five years unless the LHA is satisfied that in the circumstance of the particular property a shorter period is appropriate.*

87. WASP submitted that it was appropriate for the licence to be for a shorter period, of perhaps one or two years, effectively putting WASP on notice that incidents of ASB cannot continue and putting it on probation whilst its enhanced service provision beds down. Mr Rotherham gave expert evidence that such an approach was, in his opinion, the correct approach for the Council to have taken.

88. The Tribunal agrees that, in the particular circumstances fully detailed above, a licence period shorter than five years is appropriate. The Tribunal determines that it is appropriate for a licence to be granted for a period of one year with the above mentioned special conditions included.

#### **DIRECTIONS**

89. The Tribunal hereby directs the council:

- a. To issue a HMO licence for the Property to the Applicant on similar terms to those included in the licence dated 4 November 2020 except:
- b. The licence to be for a term of one year.
- c. Specific condition 16A to be deleted and replaced with the following specific conditions:

- d. The Applicant is required to take reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house, including but not limited to:
  - i. Within 2 months from the date of final grant - The CCTV system to be continually monitored by appropriately licenced (Public Space Surveillance Licence) persons on-site or by appropriately licenced (Public Space Surveillance Licence) persons off-site, 24 hours per day, 7 days per week.
  - ii. Within 2 months from the date of final grant - Staff must be provided on-site for a minimum of 7 hours per day, 7 days per week.

**J A Platt**  
**Tribunal Judge**  
**14 January 2022**



## **Appendix**

### **Housing Act 2004**

#### **67Licence 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.

### **68 Licences: general requirements and duration**

(1) A licence may not relate to more than one HMO.

(2) A licence may be granted before the time when it is required by virtue of this Part but, if so, the licence cannot come into force until that time.

(3) A licence—

(a) comes into force at the time that is specified in or determined under the licence for this purpose, and

(b) unless previously terminated by subsection (7) or revoked under section 70 **[F1or 70A]**, continues in force for the period that is so specified or determined.

(4) That period must not end more than 5 years after—

(a) the date on which the licence was granted, or

(b) if the licence was granted as mentioned in subsection (2), the date when the licence comes into force.

(5) Subsection (3)(b) applies even if, at any time during that period, the HMO concerned subsequently ceases to be one to which this Part applies.

(6) A licence may not be transferred to another person.

(7) If the holder of the licence dies while the licence is in force, the licence ceases to be in force on his death.

(8) However, during the period of 3 months beginning with the date of the licence holder's death, the house is to be treated for the purposes of this Part and Part 3 as if on that date a temporary exemption notice had been served in respect of the house under section 62.

(9) If, at any time during that period ("the initial period"), the personal representatives of the licence holder request the local housing authority to do so, the authority may serve on them a notice which, during the period of 3 months after the date on which the initial period ends, has the same effect as a temporary exemption notice under section 62.

(10) Subsections (6) to (8) of section 62 apply (with any necessary modifications) in relation to a decision by the authority not to serve such a notice as they apply in relation to a decision not to serve a temporary exemption notice.

### **71 Procedural requirements and appeals against licence decisions**

Schedule 5 (which deals with procedural requirements relating to the grant, refusal, variation or revocation of licences and with appeals against licence decisions) has effect for the purposes of this Part.

## **Schedule 5**

### **Appeals against licence decisions**

#### *Right to appeal against refusal or grant of licence*

31(1)The applicant or any relevant person may appeal to **[F3**the appropriate tribunal] against a decision by the local housing authority on an application for a licence—

(a)to refuse to grant the licence, or

(b)to grant the licence.

(2)An appeal under sub-paragraph (1)(b) may, in particular, relate to any of the terms of the licence.

#### *Right to appeal against decision or refusal to vary or revoke licence*

32(1)The licence holder or any relevant person may appeal to **[F4**the appropriate tribunal] against a decision by the local housing authority—

(a)to vary or revoke a licence, or

(b)to refuse to vary or revoke a licence.

(2)But this does not apply to the licence holder in a case where the decision to vary or revoke the licence was made with his agreement.

#### *Powers of tribunal hearing appeal*

34(1)This paragraph applies to appeals to the appropriate tribunal under paragraph 31 or 32.

(2)An appeal—

(a)is to be by way of a re-hearing, but

(b)may be determined having regard to matters of which the authority were unaware.

(3)The tribunal may confirm, reverse or vary the decision of the local housing authority.

(4)On an appeal under paragraph 31 the tribunal may direct the authority to grant a licence to the applicant for the licence on such terms as the tribunal may direct.