



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

Case reference : **LON/00BH/HNA/2019/0087
LON/00BH/HMT/2019/0004**

Property : **195 Queens Road, London E17 8PJ**

Applicant : **Natasha Akram**

Representative : **Philippa Seal (Counsel)**

Respondent : **London Borough of Waltham Forest**

Representative : **Tara O’Leary (Counsel)**

Type of application : **Appeal against financial penalties
Appeal against a refusal to issue a
temporary exemption notice**

Tribunal : **Judge Robert Latham
Trevor Sennett MA FCIEH**

**Venue and Date of
Hearing** : **27 November 2019**

Date of decision : **3 December 2019**

DECISION

Determination

LON/00BH/HNA/2019/0087

The Tribunal strikes out the appeal pursuant to Rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”). The Tribunal has no jurisdiction to hear the appeal as it was issued out of time. The Tribunal refuses the application for an extension of time.

LON/00BH/HMT/2019/0004

The Tribunal strikes out the appeal pursuant to Rule 9(2) of the Tribunal Rules. The Tribunal has no jurisdiction to hear the appeal as the London Borough of Waltham Forest have not made a decision to refuse a temporary exemption notice.

The Applications

LON/00BH/HMT/2019/0004 (“HMT/0004”)

1. On 17 July 2019, Ms Natasha Akram, with the assistance of her solicitor, issued this application which purports to be an appeal against a refusal by the London Borough of Waltham Forest (“Waltham Forest”) to issue a temporary exemption notice (“TEN”) pursuant to section 62 of the Housing Act 2004 (“the Act”). The Applicant contends that Waltham Forest should have issued a notice pursuant to a “notification” made at a meeting held on 28 June 2018.
2. On 15 August 2019, the Tribunal issued Directions in respect of this application. The Procedural Judge queried whether the Respondent had issued any notice refusing a TEN. On 2 August, the Tribunal had raised its concern with the parties. The Procedural Judge directed that there should be a preliminary hearing to determine whether it had jurisdiction to determine any appeal. In any event, the appeal seemed to be out of time.

LON/00BH/HNA/2019/0087 (“HNA/0087”)

3. On 22 July 2019, Ms Akram, again with the assistance of her solicitor, issued this application which is an appeal against four financial penalties “FPs” imposed by Waltham Forest on 14 August 2018. Any such appeal should have been issued no later than 12 September 2018. The Applicant did not apply for an extension of time.
4. On 12 September 2019, the Tribunal issued Directions in respect of this application. The Procedural Judge noted that the appeal was substantially out of time and queried whether the Tribunal had jurisdiction to determine the appeal. On 1 August, the Tribunal had this issue with the Appellant. On 8 August, the Applicant queried whether there was a 28-day time limit for any appeal. Without prejudice to this contention, the Applicant applied for an extension of time. No witness statement was filed in support of this application. The Procedural Judge directed that there should be a preliminary hearing to determine whether it had jurisdiction to determine any appeal.
5. The Tribunal had been minded to determine these two preliminary issues on the papers. The Applicant requested oral hearing. A hearing for HNA/0087 had been fixed for 28 October. Both parties filed bundles of documents in support of their cases. On 15 October, the Tribunal directed that these matters would be heard together and re-fixed the hearing for 27 November.

6. On 22 November, the Applicant filed a single copy of her Bundle of Documents. This totalled 340 pages. This included a witness statement from Ms Akram, dated 6 September 2019, in support of her contention that a “notification” had been made that she required a TEN at the meeting on 28 June 2018. References to this bundle are prefixed by “A__”).
7. On 26 November, the Respondent filed two copies their Bundle of Documents. This totalled 266 pages. References to this bundle are prefixed by “R__”).

The Hearing

8. The Applicant was represented by Ms Philippa Seal, Counsel, who was instructed by NR Legal, Solicitors. She was accompanied by Ms Akram, and by Sarah Akram, her sister. Ms Akram is a Mental Health Activities Coordinator with an MA in mental health.
9. The Respondent was represented by Ms Tara O’Leary, Counsel, instructed by Waltham Forest’s Legal Services. She was accompanied by three council officers: David Beach, Pauline Campbell and Christina Fayemi. Ms O’Leary informed us that two of the officers involved with this case no longer work for the authority.
10. Both Counsel provided Skeleton Arguments. Ms O’Leary also provided a Bundle of Authorities. She referred us to the recent decisions of the Upper Tribunal in *Pearson v Bradford MDC* [2019] UKUT 291 (LC) (Elizabeth Cooke, 23 September 2019) and *Haziri v Ealing LBC* [2019] UKUT 330 (LC) (Martin Rodger QC, Deputy President, 24 October 2019). Both authorities relate to the extension of time for appeals brought under the Act.
11. At the beginning of the hearing, we asked both Counsel to identify the essential documents on which they relied. We stressed that it was not our role to consider the merits of the substantive appeal against the FPs. We then adjourned for an hour to focus on the essential reading. Both Counsel agreed that we should focus on HNA/0087, the appeal against the FPs. Even if Ms Akram succeeded in her appeal against the purported TEN (HMT/0004), she would derive little practical benefit from this.
12. Ms Seal applied for the Tribunal to hear live evidence from Ms Akram. We responded that we were only willing to hear live evidence on this preliminary determination if satisfied that there were disputes of fact which were relevant to our determination and which we needed to resolve. In the event there were no such issues. It became apparent that Ms Seal sought to adduce new evidence that could and should have been in Ms Akram’s witness statement.
13. We are grateful for the assistance provided by both Counsel. Ms Seal took every point that she could on behalf of her client.

The Background

14. The subject property which the Respondent contend is a House in Multiple Occupation (“HMO”) is 195 Queens Road, E17 8PJ. This is owned by Ms Akram, together with her three siblings, Laura Akram, Sarah Akram and Shahjehan. It is a three-storey terraced house with five bedrooms. Ms Akram contends that this has been her home at all material times.
15. On 11 May and 9 December 2017, Ms Griffith, an environmental health officer, inspected the property. On her first visit, Ms Akram was in occupation. On 9 December, Ms Griffith satisfied herself that this was an HMO which required to be licenced and that a number of offences had been committed in respect of the management of the HMO. Ms Akram hotly disputes Ms Griffith’s evidence as to what happened and what was found on these inspections.
16. Ms Griffith initially understood that rent was being paid to Ms Akram’s father, Mohammed Akram. On 12 January 2018, Waltham Forest served a Notice of Intention on Mr Akram (at R52-59). On 26 January 2018, Mr Akram made representations against the Notice (R60-67). In April, Waltham Forest served a number of FPs on Mr Akram. On 9 April, with the assistance of NR Legal, he appealed against the FPs to this Tribunal (at R98-104). On 19 April, a Procedural Judge gave Directions (R108-113). She considered that the case was suitable for mediation, and urged the parties to consider this. On 28 June, a “mediation” meeting was held. It is at this meeting that Ms Akram contends that Waltham Forest came under a duty to determine an application for a TEN. On 5 July, Mr Akram and Waltham Forest signed an agreement whereby he would withdraw his appeal and Waltham Forest would withdraw the FPs against him (R185- 186). This was on the basis that it was rather Ms Akram who was “managing” the subject property.
17. On 3 April 2018, Waltham Forest served a Notice of Intention on Ms Akram (at R68-97). On 12 April, Ms Akram instructed NR Legal (R124). On 1 May 2018, NR Legal made extensive representations against the Notice on behalf of Ms Akram. (R119-146). On 14 August, Waltham Forest served four FPNs on Ms Akram (R186-210). These relate to the following offences:
 - (i) £10,000 for managing an unlicensed HMO (section 72 of the Act) (at R187-192);
 - (ii) £1,000 for failing to comply with Regulation 8 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (at R193-6);
 - (iii) £1,000 for failing to comply with Regulation 7 of the Regulations (at R199-204);
 - (iv) £12,000 for failing to comply with Regulation 4 of the Regulations (at R205-210/199-204).
18. The Applicant has urged the Tribunal to have regard to a “mediation” meeting held on 28 June 2018. The following attended: Mr Andrew Walker and Mr

Kyle Maycock (Solicitor) on behalf of Waltham Forest and Ms Akram and Mr Ian Valentine (Solicitor) on behalf of Mr Akram. The meeting was arranged as a result of the Directions given in Mr Akram's appeal. Ms Seal relies on this meeting for two reasons. First, she argues that the continuing negotiations with Waltham Forest were a good reason for Ms Akram's failure to submit her appeal by the deadline of 12 September 2018. Secondly, she suggests that Ms Akram made an oral application for a TEN at this meeting.

19. Whilst the parties describe this as a "mediation meeting", no mediator was present. However, it was the intention of the parties that there should be a frank exchange of views which should remain private and confidential. Despite this, both parties have been willing to waive the legal professional privilege which attaches to such communications. Ms Akram has filed a witness statement, dated 6 September 2019, describing what she asserts occurred at this meeting (at A103-105). Waltham Forest rely on their File Note of the meeting (at R174-176).
20. The Tribunal is satisfied that no agreement was reached at this meeting. Indeed, neither party suggested that there was any such agreement. Waltham Forest accepted that Ms Akram was the appropriate "manager" upon whom any FPs should be imposed, rather than her father. As a result, Waltham Forest withdrew the FPs issued against Mr Akram. Whilst a number of other issues were discussed, no agreement was reached.
21. On 4 September 2018, Waltham Forest made the following proposal (R255-6):
 - (i) Ms Akram would not pursue an appeal in respect of the FPs which had been imposed on her on 14 August;
 - (ii) Ms Akram would either apply for an HMO licence or allow officers to inspect, unannounced, within 28 days to ascertain whether there was a licence requirement for an HMO.
 - (iii) Ms Akram would provide evidence/access to evidence compliance with the regulatory offences which remain applicable;
 - (iii) Ms Akram would pay FPs of £15,400 over a period of 12 months, the first payment being made within 28 days.
22. On 7 September 2018, Mr Valentine responded (at R215). He stated that he had taken instructions from Ms Akram. He noted that this was his last day at NR Legal. He referred to matters which would be raised in an appeal, relating to alleged misconduct by Ms Griffiths. He made the following counter-offer:
 - (i) Ms Akram would pay £10,000 with regard to an offence under section 72 of the Act, reduced to £8,000 if the first instalment was made within 28 days;
 - (ii) Any unannounced visit to be within 28 days, but not to be carried out by Ms Griffiths; and

(iii) Waltham Forest must properly investigate their complaints against Ms Griffith.

23. Waltham Forest did not accept this counter offer. No appeal was issued by the deadline of 12 September 2018.
24. There is no reference in any of this material to a request for a TEN. Ms O’Leary pointed out that the first reference to a TEN is made in an e-mail, dated 3 July 2019 (at R223). This was sent by Mr Khalid Anjum (the Solicitor at NR Legal who now had conduct of the case) to Ms Pauline Campbell (Waltham Forest Legal Services). On 5 July 2019 (R224), Ms Campbell responded that under Waltham Forest’s published procedures, an application must be made for a TEN, supported by evidence. It was noted that any such application would be reviewed at the discretion of the authority. Waltham Forest had no record of any application being made by or on behalf of Ms Akram.

HNA/0087: Permission for Extension of Time in which to Appeal

The Law

25. Appeals from FPs under section 149A are governed by Schedule 13A of the Act. The Act does not impose a time limit for appealing. The time limit is therefore limited to 28 days by Rule 27 of the Tribunal Rules. This Tribunal has an unfettered discretion to extend time under Rule 6(3)(a).
26. Ms O’Leary referred us to the following guidance which has recently been provided by the Deputy President in *Haziri v Havering LBC*:

“21. For a number of years, the courts have emphasised the importance of compliance with the rules and practice directions under which civil litigation is conducted. In *Denton v T H White Limited* [2004] EWCA Civ 906, the Court of Appeal laid down the approach to be followed by the courts in deciding whether to grant relief against sanctions for non-compliance. The majority of the court (Lord Dyson MR and Vos LJ) said at [24] that a judge should approach the question in three stages:

(i) identify and assess the seriousness of the failure to comply;

(ii) consider why the default occurred;

(iii) evaluate all the circumstances of the case to enable the court to deal justly with the application, including the need for litigation to be conducted efficiently and the need to enforce compliance with rules, practice directions and orders.

22. In *BPP Holdings v Commissioners for Her Majesty’s Revenue and Customs* [2017] UKSC 55, the Supreme Court explained that although the Civil Procedure Rules (which govern court procedure) do not apply to tribunals, such tribunals should follow a similar approach to procedural non-

compliance and relief against sanctions. At paragraph [24] of BPP, Lord Neuberger PSC described decisions of the courts on the application of the Civil Procedure Rules as providing “a salutary reminder as to the importance that is now attached in all courts and tribunals throughout the UK to observing rules in contentious proceedings generally.” Those decisions were directed to, and only strictly applicable to, the courts of England and Wales, “save to the extent that the approach in those cases is adopted by the UT, or, even more, by the Court of Appeal when giving guidance to the FTT.”

23. BPP Holdings concerned an application by a taxpayer to debar HMRC from further participation in a tax appeal following their failure to comply with an order which included a warning that non-compliance might result in the making of a debaring order. At paragraphs [25] 7 and [33] Lord Neuberger PSC emphasised the restraint which an appellate tribunal should adopt when asked to interfere with a debaring order. The issue of whether to make a debaring order is very much one for the tribunal making that decision, and an appellate judge should only interfere where the decision is not merely different from that which the appellate judge would have made, but is a decision which the appellate judge considers cannot be justified. The same restraint is required where an appellate tribunal is asked to reverse a case management decision to grant or refuse an extension of time for the commencement of an appeal.”

The Submissions of the Parties

27. Ms Seal urges us to have regard to four factors:

(i) The ill health suffered by Ms Akram. She had a miscarriage in 2016 and has had medical complications arising from this. She has suffered from stress and anxiety. She also sustained injuries from a road traffic incident on 20 November 2018. She has had various periods off work.

(ii) Ms Akram was in negotiations with Waltham Forest and did not believe that an appeal was necessary.

(iii) There are issues of “proportionality and fairness”. She urged us to have regards to the merits of the appeal.

(iv) The FPs were manifestly disproportionate.

28. Ms O’Leary made a number of points in response:

(i) The length of the delay in this case. The appeal should have been brought within 28 days. It was 10 months out of time. A local authority should not be kept in suspense as to the legal validity of a decision that it has reached (see Lord Diplock at 280H of *O’Reilly v Mackman* [1983] 2 AC 237).

(ii) The Applicant was familiar with the appeals process, her father having issued an appeal on 9 April 2018 with the assistance of her current Solicitors, NR Legal.

(iii) The Applicant has had legal advice since 12 April 2018.

(iv) The Applicant had responded promptly to the Notice of Intention which had been served on 3 April 2018.

(v) Whilst the Respondent was sympathetic to the ill health suffered by Ms Akram, she was able to give instructions to her solicitor at all material times. Ms O’Leary highlighted her Solicitor’s letter dated 7 September 2018, which was sent five days before the deadline for the appeal. Indeed, the Solicitor made reference to a possible appeal. Ms Akram had also considered herself to be fit to represent her father at the “mediation” meeting on 28 June 2018.

(vi) Even when an applicant is in negotiations with an authority, this is no justification for any delay in issuing an appeal. It is not for an authority to grant or withhold additional time for bringing an appeal (see the comments of the Deputy President at [29] of *Haziri v Havering LBC*). In any event, the Applicant had rejected the offer which had been made by Waltham Forest on 4 September 2018.

(vii) The merits of the appeal are not a relevant factor (see the comments of the Deputy President at [27] of *Haziri v Havering LBC*).

(vii) The Tribunal should have regard to the prejudice to the Respondent cause by the delay. Two of their witnesses no longer work for the authority.

The Tribunal’s Determination

29. The Tribunal declines to extend time for bringing this appeal. We first consider the seriousness of the failure to comply. The appeal should have been brought within 28 days. It was 10 months out of time. This is a serious default. Prompt action is required by this Act which seeks to ensure that HMOs are properly managed and that the health and safety of any occupant is safeguarded.

30. Secondly, we have not been provided with any adequate explanation as to why the default occurred. We accept that Ms Akram has not been in good health. However, at all material times, solicitors were acting for her. There has been no suggestion that she was unable to give them adequate instructions. On 28 June 2018, she had represented her father at the “mediation” meeting. It would have been open to any of her other siblings, who are co-owners, to have done so. The letter, dated 7 September, refers expressly to the instruction which she had given to her Solicitor. Ms Akram was aware of the appeal process as her father had issued an appeal. If her explanation is that her solicitor was negotiating with Waltham Forest, this was not a good reason.

31. Thirdly, we have had regard to all the relevant circumstances of the case. We have not had regard to the merits of the appeal. In some cases, it may be appropriate to do so. It is impossible for us to do so on the basis of the extensive material before us. Neither would it be appropriate to do so. The

Grounds of Appeal extend to 17 pages. Serious allegations are made against the relevant environmental health officer. It seems that every stage of the decision-making process is challenged. It is suggested that the FPs are manifestly excessive in that they could not exceed £30,000 in total. This is wrong. The maximum for each offence is £30,000. The FPs imposed are not out of line with those imposed in this type of case.

32. We do have regard to the issue of prejudice:

(i) A local authority should not be kept in suspense as to the legal validity of a decision that it has reached in respect of an HMO. Waltham Forest does not know the current state of the property. Although we were told that Ms Akram has resided at the subject property at 195 Queens Road as her home at all material times, we note that her address on the various hospital reports is 29 Shrubland Road, E17 7QH.

(ii) It is apparent that there are substantial disputes of facts between the parties. The inspection which led to the FPs was conducted on 9 December 2017. Two witnesses no longer work for Waltham Forest. Memories fade over time. Justice delayed, is justice denied.

HMT/0004: Appeal against the Temporary Exemption Notice

The Law

33. Section 62 of the Act provides (emphasis added):

“(1) This section applies where a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed, notifies the local housing authority of his intention to take particular steps with a view to securing that the house is no longer required to be licensed.

(2) The authority may, if they think fit, serve on that person a notice under this section (“a temporary exemption notice”) in respect of the house.

(3) If a temporary exemption notice is served under this section, the house is (in accordance with sections 61(1) and 85(1)) not required to be licensed either under this Part or under Part 3 during the period for which the notice is in force.

(4) A temporary exemption notice under this section is in force–

(a) for the period of 3 months beginning with the date on which it is served, or

(b) (in the case of a notice served by virtue of subsection (5)) for the period of 3 months after the date when the first notice ceases to be in force.

(5) If the authority–

- (a) receive a further notification under subsection (1), and
- (b) consider that there are exceptional circumstances that justify the service of a second temporary exemption notice in respect of the house that would take effect from the end of the period of 3 months applying to the first notice,

the authority may serve a second such notice on the person having control of or managing the house (but no further notice may be served by virtue of this subsection).

(6) If the authority decide not to serve a temporary exemption notice in response to a notification under subsection (1), they must without delay serve on the person concerned a notice informing him of–

- (a) the decision,
- (b) the reasons for it and the date on which it was made,
- (c) the right to appeal against the decision under subsection (7), and
- (d) the period within which an appeal may be made under that subsection.

(7) The person concerned may appeal to the appropriate tribunal against the decision within the period of 28 days beginning with the date specified under subsection (6) as the date on which it was made.

(8) Such 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.

(9) The tribunal–

- (a) may confirm or reverse the decision of the authority, and
- (b) if it reverses the decision, must direct the authority to serve a temporary exemption notice that comes into force on such date as the tribunal directs.

The Submissions of the Parties

34. Ms Seal submits that Ms Akram made an oral application for a TEN at the “mediation” hearing on 28 June 2018. That application should have been properly determined and granted in view of the fact that Ms Akram had agreed to remove the lodger.

35. Ms O’Leary responds that Waltham Forest has made no decision not to serve a TEN. It has made no decision because there was no application. There is therefore no decision for the Tribunal to “confirm or reverse”. Had such an

application been made, which the authority had failed to determine, the Applicant's remedy would have been an application for judicial review.

36. In addressing the substance of the issue, Ms O'Leary argues that in the absence of a procedure specified in the Act, it is for an authority to prescribe how an application should be made. Waltham Forest requires an application to be submitted supported by evidence. No such application has been made.

The Tribunal's Determination

37. The Tribunal is satisfied that it has no jurisdiction to determine a decision not to serve a TEN because there has been no such decision. Had the Respondent made such a decision, there would have been a duty to give reasons and specify the rights of appeal.
38. The high point of the Applicant's case is this passage from her witness statement, dated 6 September 2019, relating to the "mediation" meeting on 28 June 2018 ([[3] at A104):

"I told them the property was not suitable for HMO licence and I shall be taking steps to remove the lodger currently residing in it. I was then given 3 months to evict lodger, namely Mr Christaki Patsili".

39. This statement is not consistent with Waltham Forest's contemporaneous File Note. Even were we entitled to have regard to her evidence, and we doubt if we are, Waltham Forest had no reason to believe that she was applying for a TEN. None of the correspondence thereafter makes any reference to such an application.
40. Had she made an application in June 2018, Waltham Forest could only have granted a TEN for three months, subject to one extension for a further three months. It would not be retrospective and would have no relevance to the FPs which she has sought to challenge. An appeal issued over twelve months after it is contended a TEN should have served, makes no practical sense.
41. In any event, a TEN would now serve no practical purpose. The Applicant contends that the subject property is now occupied by herself, her brother and her extended family. If so, no licence would be required and it would not be an HMO. The Respondent does not know whether the property is still an HMO or whether a licence is required as they have not had access to inspect the property to assess the current situation.

Refund of Fees

42. Ms Akram has paid tribunal fees of some £300. We do not make an order for the refund of the fees pursuant to Rule 13(2) of the Tribunal Rules. We have struck out both her appeals.

Judge Robert Latham
3 December 2019

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.