



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

Case Reference : **LON/00AL/HNA/2020/0118**

HMCTS code (paper, video, audio) : **V: CVP REMOTE**

Property : **29 Nightingale Vale London SE18
0118
(“the Property”)**

Appellant/applicant : **Mohammed Moynul Haque**

Representative : **Mr Sente Masemola of Counsel**

Respondents : **Royal Borough of Greenwich**

Representative : **Mr Ali Dewji of Counsel**

Type of Application : **Appeal under s.249A and schedule
13A of the Housing Act 2004**

Tribunal Members : **Judge Professor Robert Abbey and
Mr Stephen Mason FRICS**

Date of Hearing : **30 July 2021**

Date of Decision : **02 August 2021**

DECISION

- This has been a remote hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the Ministry of Justice CVP platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in two bundles of many pages, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it a pair of electronic/digital trial bundles of documents prepared by the applicant and the respondent, in accordance with previous directions.

Decision

1. The application is out of time and accordingly, the proceedings have been struck out pursuant to the Tribunal (Procedure) (First-tier Tribunal) (Property Chamber) Rules 2013.
2. In the light of the above, the appeal by the appellant against the imposition of a financial penalty by the Royal Borough of Greenwich under section 249A and schedule 13A of the Housing Act 2004 is therefore struck out.

Introduction

3. This is an appeal by Mohammed Moynul Haque against the imposition of a financial penalty made by the Royal Borough of Greenwich under section 249A and schedule 13A of the Housing Act 2004. The financial penalty levied is £10,000 and relates to the applicant operating a House in Multiple Occupation without the appropriate licence.

The Hearing

4. The appeal was set down for hearing on 30 July 2021 when Greenwich was represented by Mr Ali Dewji of Counsel and Mr Sente Masemola of Counsel appeared for the applicant.
5. At the start of the hearing Counsel for the respondent made an application under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169), (“the Rules”), to strike out the appeal as it was made out of time.
6. The applicant was invited to respond to this application and he did so as did his solicitor and their representations were taken into account by the Tribunal when coming to this decision.

Decision and Reasons

7. The Tribunal has decided to strike out these proceedings brought by the applicant.
8. The respondent maintained that the appeal was 10 months out of time. The respondent relies upon rule 27 of the Rules to support this. The start of Rule 27 says (and the Rule in full can be found in an appendix to this decision): -

Time limits

27.—(1) This rule applies where no time limit for starting proceedings is prescribed by or under another enactment.

(2) Where the notice of application relates to a right to appeal from any decision (including any notice, order or licence), the applicant must provide the notice of application to the Tribunal within 28 days after the date on which notice of the decision to which the appeal relates was sent to the applicant.....

9. It is the case that the statute that regulates financial penalties does not impose a time limit and therefore the Rules apply. This was confirmed in the Upper Tribunal case of *Pearson v City of Bradford Metropolitan District Council* [2019] UKUT 291 (LC). In that case Judge Elizabeth Cooke held as follows: -

(1) Appeals from financial penalties under s 249A are governed by Schedule 13A to the Housing Act 2004, but the statute does not impose a time limit for appealing. The time limit is therefore 28 days pursuant to r 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

(2) The FTT has an unfettered discretion to extend time under r 65 of those Rules.

(3) Accordingly, the FTT was correct to approach the question as one of discretion. In doing so it set out carefully the circumstances and took the view that the appellant's explanation for the delay – his having been very busy over Christmas – did not amount to a good reason.

(4) The Upper Tribunal will not interfere with the FTT's exercise of discretion on procedural matters unless it appears that the FTT has exceeded the bounds of a reasonable exercise of discretion.

10. In the light of the above the 28-day time limit applies to this application and as such the appeal is out of time as it was not lodged until 24 November 2020, the financial notice being issued on 18 December 2019, 10 months previously. The applicant would have needed to lodge the appeal by 15 January 2020 to be in time under the

Rules. Instead, the appeal was made in November some 44 weeks out of time. In the light of the Pearson decision the Tribunal must now consider whether it is appropriate for the Tribunal to exercise any discretion in regard to this time limit. To do so the Tribunal must decide if the applicant has a good reason to explain the lengthy delay.

11. In essence the applicant claims that he did not receive the Final Notice of the financial penalty posted to him by the respondent on 18 December 2019, and that he also did not see the email sent to him by the respondent on 17 December 2019, rejecting his previous written representations arising from the previous notice of intent issued by the Council and confirming that he would be receiving a Final Notice. He claims only to have learned of the financial penalty indirectly in May 2020. This, essentially, is his alleged 'good reason' for the delay.
12. On 8 November 2019, the respondent sent to the applicant a Notice of Intent to Issue a Financial Penalty for Housing Offences. The Notice of Intent was sent by Mr Islam of the respondent by Royal Mail first class post to Applicant's address at 10 Kemp's Drive, London E14 8HY. The Applicant also accepts receiving it. On 18 December 2019, the respondent sent Applicant a Final Notice. The Final Notice was again sent by Mr Islam of the respondent by Royal Mail first class post to the Applicant's address at 10 Kemp's Drive, London E14 8HY. As Counsel for the respondent noted, The Applicant has supplied no evidence of any known disruption to the delivery of his mail around the time in question, nor any explanation for why post delivered to his address should not have come to his attention.
13. The Tribunal also noted that he clearly received the notice of intent because he wrote in response to the notice. On 10 December 2019, the applicant made representations in response to the Notice of Intent by email, from his email address moynul78@hotmail.co.uk. Seven days later, on 17 December 2019, the respondent sent to the applicant a response to his representations. This was sent by Mr Islam of the respondent by email to the same email address. In regard to this email address and how it was used by the applicant, the applicant stated: -

"It is unfortunate that not long after I had sent this e-mail, I am not sure why but due to an error with the e-mail account that I had been using, it would not recognise my password and then locked me out and I was unable to check for or send any further emails from this account."
14. Notwithstanding the above, the applicant has not supplied any contemporaneous evidence of disruption to his access to emails around the time in December 2019 and onward therefrom. As Counsel for the respondent noted "For example, he has not supplied records of contact with his email service provider discussing the problem with his account or trying to unlock it. Nor has Mr Haque supplied any evidence of

emails sent once he regained access to his account, apologising to people who had emailed him and not received a reply explaining what had happened.” Significantly, the applicant has not explained why he did not respond to the email sent to him on 17 December 2019 as soon as he was able to access his email account.

15. The Tribunal also noted that this email address was used by the applicant when responding on the notice of intention and for other purposes when responding to statutory business. It was also used to produce tenancy agreements with tenants in the property on at least two occasions. The address was also used for the purpose of applying for an HMO licence for the property that was commenced prior to the present timescale under review. Indeed, this email address was used by the respondent to request further information from the applicant in connection with the HMO licence application. Notwithstanding all of this use it was not until October 2020 that the applicant advised the Council department dealing with the HMO application that he had ceased to use this email address.
16. In the light of the above it seems to the Tribunal that the applicant’s version of events in relation to the post and email regarding the financial penalty notice is unconvincing and unreliable. On listening to the submissions, the Tribunal is of the view that the applicant failed to inform the respondent of his lack of access to his own email account for a period of at least 5 months, and 10 months in the case of the respondent’s department responsible for HMO applications. Furthermore, the applicant failed to make any enquiries with regard to the financial penalty that the local authority had proposed to impose for a period of at least 5 months. Then, despite having received indirect notice of the imposition of the financial penalty on 28 May 2020, and a copy of the notice itself on 16 September 2020, he nevertheless failed to give notice of the appeal to the Tribunal until 24 November 2020 (which is itself more than double the 28 days permitted).
17. Therefore, the Tribunal was satisfied that the applicant has failed to comply with the timeframe set out in the Rules and has no good reason to be allowed to make the appeal out of time.
18. Therefore, the appeal by the appellant against the imposition of the financial penalty by the Royal Borough of Greenwich under section 249A and schedule 13A of the Housing Act 2004 is dismissed.
19. Rights of appeal are set out in the annex to this decision.

Name: Judge Professor Robert
Abbey

Date: 2 August 2021

Annex
Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

The Tribunal Procedure (First-tier Tribunal) (Property Chamber)

Rules 2013 (SI 2013/1169)

Time limits

27.—(1) This rule applies where no time limit for starting proceedings is prescribed by or under another enactment.

(2) Where the notice of application relates to a right to appeal from any decision (including any notice, order or licence), the applicant must provide the notice of application to the Tribunal within 28 days after the date on which notice of the decision to which the appeal relates was sent to the applicant.

(3) In a land registration case to which rule 28(3)(c) applies (references by the registrar), the person directed to be the applicant must provide the statement of case to the Tribunal within 28 days after the date on which written notice of receipt by the Tribunal of the reference by the registrar was sent to the applicant.

(4) In an agricultural land and drainage case—

(a) a notice of application under section 67(5) of the 1986 Act (compensation for long-term improvements: consent needed) must be made within 28 days after the date on which notice in writing of the Tribunal's decision approving the carrying out of the improvement was sent to the landlord;

(b) in proceedings under section 26(1) or 28(2) of the 1986 Act (restriction on operation of notices to quit) for the Tribunal's consent to the operation of a notice to quit, made by a landlord after service on the landlord by the tenant of a counter-notice, the notice of application must be made within two months after the date of service of the counter-notice;

(c) where, at the expiry of the period specified in section 39(1) of the 1986 Act (application for tenancy of holding), only one application under that section in respect of the holding has been made, any application by the landlord under section 44(1) of that Act (opportunity for landlord to seek Tribunal's consent to serve notice to quit) must be made before the expiry of two months after the end of that period;

(d) where, at the expiry of the period specified in section 39(1) of the 1986 Act (application for tenancy of holding), more than one application under section 39 of the 1986 Act has been made, any application by the landlord under section 44(1) of that Act must be made before the expiry of two months after the Tribunal notifies the landlord that the number of applications under section 39 of the 1986 Act is reduced to one.