



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

Case Reference : **CHI/45UG/HIN/2020/0001**

Property : **Providence House Bartley Way Hook
Hampshire RG27 9FF**

Appellant : **Bartley Way Ltd**

Representative : **Sonn Macmillan Walker**

Respondent : **Hart District Council**

Representative : **Ian Barton**

Type of Application : **Schedule 1 para 10 (1) Housing Act 2004
(Appeal against improvement notice)**

Tribunal Members : **Judge F J Silverman Dip Fr LLM**

Date of paper consideration : **11 March 2020**

Date of Decision : **11 March 2020**

DECISION and ORDER

- 1 For the reasons given below, the Tribunal confirms the Improvement Notice served on the Appellant by the Respondent.
- 2 The Tribunal orders the Appellant to pay the sum of £1,440 on account of costs to the Respondent on or before 30 April 2020.

REASONS

- 1 The Respondent served an Improvement Notice dated 18 December 2019 on the Appellant against which the Appellant lodged an appeal on 06 January 2020.
- 2 Directions were issued by the Tribunal on 08 January 2020.
- 3 The Tribunal did not inspect the property and was not asked to do so by the parties.
- 4 The broad facts surrounding the service of the notice are not in dispute, namely that the property, a block of flats, has been found to contain category 1 hazards in relation to fire stopping works (page 75). Following an inspection of the property on 30 July 2019 the Respondent wrote to the Appellant setting out the agreed actions resulting from their meeting. The Appellant failed to carry out the agreed works, consequently an improvement notice ('the first notice') was served. The date specified for compliance with the first notice was wrongly stated. The Appellant brought and succeeded in an appeal against the first notice which resulted in the revocation of the first notice and service of a second notice, ('the second notice') the latter being the subject of this appeal where once again, the principle ground pleaded by the Appellant is that the date given for compliance in the second notice is deficient. The Respondent's evidence (statement of Ian Barton 19 February 2020) reports that the required works are still outstanding.
- 5 Neither party having requested an oral hearing the paper consideration of this matter was carried out on 11 March 2020. A bundle of documents was placed before the Tribunal for its consideration. References in this document to page numbers refer to pages in the hearing bundle.
- 6 By s 13 Housing Act 2004 ('the Act') an improvement notice served under section 11 or 12 of the Act must specify (inter alia) 'the date when the remedial action is to be started (see sub-section (3))', which, by sub-section (3) may not 'require any remedial action to be started earlier than the 28th day after that on which the notice is served'.
- 7 The second notice was dated 18 December 2019 (page 21) and was posted on that date to the Appellant (page 15) as confirmed in the witness statements and certificates of posting of Louise Lyons and Suzie Beckford (pages 37-78).

- 8 The date on which the second notice requires the works to begin is stated as 16 January 2020 (page 20). On the assumption that service took place on the day after posting (ie 19th December) Day 1 after the day of service is 20 December 2019 and 16th January 2020 is therefore 28th day after service. The Act does not allow works to begin before the 28th day after the day of service but does not prevent the Respondent from specifying that the works should commence on the 28th day. This timetable, as set out by the Respondent does therefore comply with the statutory requirements. This calculation is supported by the day calculator exhibited to Ian Barton's witness statement.
- 9 The Appellant however raises two issues. The first is that they say the works cannot commence until the day after the 28th day after the day of service. This is clearly a misinterpretation of the wording of the Act and does not constitute a valid argument in this case. Secondly, they say that the notice 'would not have been served' until 20 December 2019 (page 8) which would set the 28th day as 17 January 2020 (not 16th as specified in the second notice) thus rendering the second notice a nullity.
- 10 Disregarding paragraph 1.4 of the Respondent's statement (page 32) which incorrectly refers to 17th January 2020 as being the commencement date for the works and concentrating on 16th January 2020 which is the actual date for commencement as specified in the second notice (page 20) s 7 Interpretation Act 1978 states: 'where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post'.
- 11 By virtue of section 232 Local Government Act 1972 which makes provision for any document to be served by post, this section applies to the second notice which, having been posted by first class post on 18th December (page 60) would be deemed to have arrived on the day following posting (ie 19th December) making 20 December 'Day 1' as set out in paragraph 8 above.
- 12 It is noted that the Appellant pleads that the second notice 'would have been served' (page 8) on 20th December. At no point do they deny receipt of the second notice on 19th December neither have they stated on which date they did actually receive it nor produced any evidence of its late receipt. In any event, the actual receipt of the notice may not affect its deemed service under section 7 (see *Moody v Godstone Rural DC* [1966] 1WLR 1085).
- 13 The Tribunal therefore accepts the Respondent's evidence as to the dates of posting and service of the second notice and finds that the date for commencement specified in the second notice is compliant with the legislation and thus the notice is valid as set out in paragraph 8 above.
- 14 The Appellant's assertion that the second notice has not been properly served on it is fallacious. The notice was served on the

- Appellant company at the address of its registered office in compliance with section 233 (4) Local Government Act 1972.
- 15 Similarly, the Appellant's third purported ground of appeal that the notice is unnecessary because the property is already subject to an enforcement notice is misconceived. The fire prevention works required by the Respondent (and not in themselves disputed by the Appellant) constitute a category 1 hazard in respect of which the Respondent council is under a mandatory duty to take enforcement action (section 5 Housing Act 2004).
- 16 Since none of the grounds for the Appellant's appeal have substance, that appeal must fail and the Tribunal confirms the improvement notice.
- 17 The Respondent asked the Tribunal to make an order for costs to be paid by the Appellant. The Tribunal considers that the Appellant should be responsible for the payment of the Respondent's reasonable costs not simply because their grounds of appeal have failed but also because their grounds were misconceived and unsupported by any substantive evidence. The works required by the Respondent concern vital fire prevention measures the absence of which potentially puts residents' lives at risk. In the light of the Grenfell Tower tragedy it is inexcusable for the Appellant to seek to avoid liability by pleading an unsubstantiated technical defence.
- 18 The Respondent's schedule of costs amounts to £1,440 for work done by Ann Greaves a Grade B employee with an hourly charge rate of £192. The hourly rate is accepted as suitable for an employee of this grade working in local government and the number of hours charged is consistent with the amount of work expected to be carried out in a case of this type. The amount is therefore considered to be reasonable in amount and allowed in full. The Tribunal orders the Appellant to pay the sum of £1,440 to the Respondent on or before 30 April 2020.
- 19 The Appellant's request for an order for costs payable by the Respondent is refused.
- 20 The Law:
- Housing Act 2004 Sched 1 *Appeal against improvement notice*
- 10 (1) The person on whom an improvement notice is served may appeal to a residential property tribunal against the notice.
- (2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).
- 14(1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.
- (2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.
- (3) A residential property tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).
- 15(1) This paragraph applies to an appeal to a residential property

tribunal under paragraph 10.

(2) (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 by order confirm, quash or vary the improvement notice.

Judge F J Silverman

11 March 2020

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.