



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

Case Reference : **MAN/30UD/HNA/2019/0103 & 0104**

Property : **38 Cleaver Street, Burnley BB10 3BE
24 Redvers Street, Burnley BB10 1RT**

Applicant : **Oais Ashan**

Representative : **N/A**

Respondent : **Burnley Borough Council**

Representative : **N/A**

Type of Application : **Application for reinstatement of
appeals against financial penalties
imposed under the Housing Act 2004**

Tribunal Member : **Judge J Holbrook**

Date of Decision : **11 February 2020**

DECISION

DECISION

The appeals will not be reinstated.

REASONS

Background

1. On 17 September 2019, the Tribunal received an application to appeal against two financial penalty notices issued to the Applicant in relation to the Properties by Burnley Borough Council under section 249A of the Housing Act 2004. The application was incomplete – in particular because it was not accompanied by copies of the final notices imposing the penalties. The Applicant was asked to provide copies of the final notices but, as he did not do so, the proceedings were “deemed to be withdrawn” on 21 November 2019.
2. The Applicant subsequently provided copy notices (in fact, these were copies of the notices of intent served on him by the Respondent prior to serving the final notices, rather than copies of the final notices themselves). He said that he had never received copies of the final notices and asked for the proceedings to be reinstated.
3. On 3 December 2019, I issued a case management note inviting the parties to make representations as to whether the appeals should be reinstated. I noted that, even when they were first presented, the appeals appear to have been significantly out of time, and I explained that the Tribunal would only reinstate the appeals if there is a good reason to extend time for the appeals to be made.
4. The Respondent has provided written representations, for which I am grateful. However, nothing more has been heard from the Applicant: I have therefore noted his previous assertions that he did not receive the penalty notices but that he contacted the Tribunal within 28 days of finding out about them.

Facts

5. On 2 November 2018, the Respondent issued two final notices imposing financial penalties on the Applicant in respect of the Properties. The financial penalties were imposed on the basis that the Respondent was satisfied that the Applicant’s conduct amounted to an offence under section 95 of the Housing Act 2004 in respect of each Property. In other words, the penalties were imposed because the Applicant needed selective licences for the Properties under the 2004 Act but did not have them.

6. The final notices were sent by first class post, with covering letters, addressed to the Applicant at 2 Thirlmere Road, Preston and also at 53 Kingswear Drive, Milton Keynes.
7. On 5 November 2018, the Applicant emailed the Respondent saying that he wished his barrister (a Mr Oakley) to act on his behalf. The email was headed “38 Cleaver + 24 Redvers St. License Appeal”. The Respondent replied on 8 November, stating that it had not yet heard from the barrister, but that “information regarding how to appeal the Council’s decision is set out in the legal notice”.
8. On 16 November, a telephone conversation took place between Mr Oakley and a member of the Respondent’s staff. The procedure for appealing to the Tribunal was discussed. Mr Oakley was invited to make representations to the Respondent, but he was also advised to pay attention to the deadline for appealing, as set out in the final notices.
9. Nothing more was heard until 30 August 2019, when the Applicant himself contacted the Respondent to say that he “wasn’t satisfied with the fine or the amount” and that he intended to appeal to the Tribunal. He was advised that he was now out of time for making an appeal, but that he could apply to the Tribunal for an extension.
10. As I have mentioned already, the Applicant first attempted to lodge his appeals with the Tribunal on 17 September 2019, more than a fortnight after his conversation with the Respondent and some ten and a half months after the final notices were issued.

Discussion and conclusion

11. Although this is being treated as an application for “reinstatement”, the Applicant’s previous failure to provide the documents required to start the relevant proceedings before the Tribunal is such that, strictly speaking, those proceedings were never started in the first place. However, this technical distinction does not really affect the question which now must be addressed: were the appeals made out of time and, if so, should time for appealing be extended? I have addressed this question on the basis that the appeals were made on 17 September 2019.
12. The time limit for appealing against a financial penalty is to be found in rule 27(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013: the appeal must be made within 28 days after the date on which the final notice was sent to the appellant. In the present case, therefore, the last day for appealing was 30 November 2018. If the appeals were presented on 17 September 2019, then it is obvious that they were made out of time.
13. The Tribunal has discretion to extend the 28-day period for making an appeal. Generally, it will exercise that discretion in favour of an

appellant if it is satisfied that there was a good reason for the failure to appeal in time (and for any subsequent delay). The Applicant says that there is a good reason for the delay in this case: he did not receive copies of the final notices imposing the penalties, but contacted the Tribunal promptly after finding out about them.

14. I note that neither of the addresses to which the Respondent sent the final notices corresponds with the address in Milton Keynes which the Applicant has given as his current home address, and the Applicant's connection with those addresses has not been explained to me. Nevertheless, it does not seem that the notices were returned undelivered to the Respondent by Royal Mail, and the fact that the Applicant contacted the Respondent (to say that he had engaged a barrister) within a day or two of the date on which the notices would have been delivered in the ordinary course of posting is a strong indication of a likelihood that he did in fact receive them. Moreover, it is hard to understand how that barrister would then have been able to discuss the possibility of an appeal – and the time limit for appealing – with the Respondent on 16 November if the final notices had not been received beforehand. In any event, the Applicant was clearly aware of the financial penalties when he had a further discussion with the Respondent on 30 August 2019: yet even after this date there was a significant delay in contacting the Tribunal to begin the appeal process.
15. Taking all of these factors into account, I conclude that there is no good reason for the Applicant's failure to appeal to the Tribunal by the 30 November 2018 deadline, or for the very substantial subsequent delay in presenting the appeals. As a consequence, the Tribunal will not exercise its power to extend time for appealing in this case and it follows that I should refuse the application for the appeals to be reinstated.