



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

Case Reference : CHI/00HN/HIN/2022/0001

Property : Flat 10, 9-10 Wootton Gardens,
Bournemouth, BH1 1PW

Applicant : Calendula Assets Ltd

Representative : DWP Housing Partnership

Respondent : BCP Council

Representative : -

Type of Application : Appeal against an Improvement Notice,
Section 11 Housing Act 2004

Tribunal Member : D Banfield FRICS
Regional Surveyor

Date of Decision : 13 April 2022

DECISION

The Tribunal declines to accept the application.

BACKGROUND

1. This is a determination on whether to accept a late application of an appeal against an Improvement Notice served under the Housing Act 2004.
2. The Improvement Notice is dated 16 November 2021 and the application to the Tribunal was received on 26 January 2022.
3. The Appeal should have been made within 21 days from the date of the Improvement Notice (7 December 2021). The Appeal was 50 days late. The Tribunal has no power to hear a late appeal unless it is satisfied that the Applicant has a good reason for appealing late.
4. On 22 March 2022 the Tribunal made directions indicating that the question of whether the application would be accepted as on time would be determined on the papers and inviting representations from the parties by 5 April 2022.
5. On 28 March 2022 the Applicant submitted the additional statement referred to below.
6. The Respondent contacted the Tribunal indicating that due to an incorrect email address the Directions had only been received on 28 March and the Applicant's supporting documentation on 29 March giving insufficient time for it to respond. A period of 14 days from receipt of the Applicant's documentation was requested to enable it to respond.
7. The Applicant acknowledged the error in providing an incorrect email and confirmed he had no objection to the Respondent's request.
8. The Tribunal therefore made further Directions on 6 April 2022 requiring representations on the preliminary issue by 11 April 2022.

Representations

9. In the additional statement referred to above the Applicant says that;
 - He was in regular contact with the Respondent
 - On 17 December 2021 the Respondent gave a 30 day extension to the date of the improvement notice in order to resolve the case by 14 February 2022 leading him to believe the matter could be remedied
 - The required works have been carried out with the exception of the installation of a Grade A Category LD2 system which he believes is not required.
10. In a statement from the Respondent in opposition to the Tribunal accepting the late appeal it was said that;

- The Applicant was advised on multiple occasions of the requirement to submit an appeal to the Tribunal
 - When it granted an extension of time for the works the time limit for submitting an appeal had already expired
 - Although the Applicant says he has carried out all the works except the LD2 system at an inspection on 29 March 2022 points 1,3 and 5 have not been completed
 - The covering letter with the Improvement Notice gave clear information on the time limit of any appeal in the absence of which the 60 day time limit stated in the Notice became operative
 - At a meeting with the Private Sector Housing Manager it was agreed that the LD2 system requirement would be reviewed and in an email of 17 December 2021 it was confirmed that it remained a requirement and referred to the notes regarding an appeal already provided
 - Following an appeal to the Head of Safer Communities the Applicant was advised of his right to make application to the Tribunal which “must be done within 21 days of the service of the notice.”
 - In disagreeing with the Applicant’s reference to being given an additional 30 days in order to resolve the case what was actually agreed was “an additional 30 days in which to complete the works”
 - Following the last communication on 6 January 2022 a further 20 days was taken to submit the appeal
11. A witness statement from Gerry Conway was submitted regarding the inspection on 29 March 2022 and one from Karen Olver again mainly referring to the inspection but also exhibiting 2 email exchanges, including one from Laurence Cocorachio of the Applicant stating “Thank you for kindly extending our improvement notice period for 90 days from 16/11/22”

Determination

12. This determination is solely whether to accept the application to appeal, and whether the required works have or have not been completed satisfactorily has not been a consideration for the Tribunal in making its determination.
13. From the evidence submitted it is clear that the additional 30 days granted by the Respondent was in respect of the completion of the works and that there was no suggestion that this gave greater time for an appeal to be submitted.
14. Whilst the Applicant may have been confused by the ongoing exchanges that does not provide sufficient reason for the Tribunal to accept a significantly out of time application.

11. The Tribunal therefore declines to accept the application of an appeal against an Improvement Notice served under the Housing Act 2004 on the grounds that it is out of time without a good reason for its late submission.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.