



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

Case Reference : **BIR/41UC/HNA/2024/0038 & 39**

Property : **209 and 209A Waterloo Street, Burton on Trent,
DE14 2NB**

Applicant : **Haleema Zaheer**

Respondent : **Staffordshire Borough Council**

Representative : **Rachael Liddle (Ref HSO-002114SL/001949)**

Type of Application : **Appeal against a financial penalty**
Section 249A and Schedule 13A to the Housing Act 2004

Tribunal : **Judge T N Jackson**

Date of Decision : **17 May 2024**

DECISION

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Decision

These proceedings are struck out under Rule 9(2) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the ‘2013’Rules’).

Reasons for decision

Background

1. On 20 September 2023, the Applicant emailed the Tribunal saying they wanted to appeal two financial penalties imposed by the Respondent under section 249A and Schedule 13A of the Housing Act 2004, (‘the Act’) in relation to two flats, namely 209 and 209A Waterloo Street.
2. There is no time limit in the Act (as amended) in respect of appeals against financial penalties and therefore Rule 27 of the 2013 Rules applies. Rule 27 states that the appeal application must be provided 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. Rule 6 of the 2013 Rules allows the Tribunal to extend the time for compliance, even if the application for an extension is not made until after the time limit has expired.
3. In relation to 209A Waterloo Street, the Financial Penalty Final Notice in the sum of £3676 is dated 24 August 2023. In relation to 209 Waterloo Street, the Financial Penalty Final Notice in the sum of £4,076 is dated 5 September 2023. The Notices were hand delivered to the Applicant’s address which is on the same street as the Properties.
4. The Notes to each Financial Penalty Final Notice have 5 paragraphs explaining how to appeal the Penalty Notice, the 28 day time limit and sets out the email and building address of the Midland Property Tribunal and the telephone number. The Notes also state that any person considering an appeal is advised to seek independent legal advice and provides a hyperlink to the Property Chamber First -Tier Tribunal website.
5. On 24 October 2023, the Tribunal responded to the Applicant’s email of 20 September 2023 and provided the appropriate application forms. These were not returned by the Applicant to the Tribunal until 2 December 2023. In the email submitting the application forms, the Applicant said that they had sent an email a week ago but think they may have had internet issues which is why it did not complete. The Applicant did not provide copies of the Financial Penalty Notices with the application forms as the forms required.
6. On 19 February 2024, the Tribunal obtained copies of the Financial Penalty Final Notices from the Respondent.
7. As it appeared that the applications had been submitted outside the 28 day limit, by Directions dated 4 April 2024, both parties were invited to make submissions as to whether there was a compelling reason to extend the time period for the Applicant to submit the appeals. The parties were also asked if they wished to have an oral hearing to make submissions.

Submissions

8. Neither party requested an oral hearing to make submissions.
9. The Applicant did not send a written submission.
10. The Respondent's written submission requested that the Applicant's appeal be struck out. They say that the deadline was not complied with and there is no justification for the appeal period to be extended. All Notices had been properly and correctly served due to the Applicant's failure to apply for a selective License and operating without a Licence.

Law

11. The Upper Tribunal confirmed in Pearson v City of Bradford MDC [2019] UKUT 291 (LC) that the Tribunal has an unfettered discretion to extend the time limit, so long as it does not exceed the bounds of a reasonable exercise of discretion. 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).
12. I also considered a decision made by Dove J in Al Ahmed v Tower Hamlets LBC [2020] EWCA Civ 51 on the meaning of "good reason" under section 204 of the Housing Act 1996 which deals with appeals to the Court against decisions by Local Authorities in relation to homelessness. I consider the principles on "good reason" established by Dove J to be relevant.
13. In Al Ahmed, Dove J set the scene for "good reason" for failure to bring a claim in time in this way: ‘

“11. A number of important points need to be taken into account when approaching the exercise of discretion under section 204(2A) (b) and considering whether in a case where permission to appeal is sought after the 21 day limit there is “good reason” for the failure to bring the claim in time. The first point is that the merits of the substance of the appeal are no part of the consideration of this question. This was made clear by Tugendhat J in Short v Birmingham City Council [2005] EWHC 2112; [2005] HLR6 at paragraph 26. Secondly, as concluded by Sir Thomas Morison in Barrett v The Mayor and Burgesses of the London Borough of Southwark [2008] EWHC 1568, the phrase good reason “is a phrase in common parlance, which in my judgment, does not need elaboration.” (See paragraph 4 of the judgment).

12. As was also observed in the Barrett case, and endorsed by Jay J in the case of Poorsalehy v London Borough of Wandsworth [2013] EWHC 3687, there is no general principle in cases of this kind which fixes a party with the procedural errors of his or her representative, nor is there a general principle which enables a litigant to shelter behind the mistakes of their legal advisers. As Jay J was astute to observe, in particular in paragraph 28 of his judgment, the approach to be taken to the responsibility of a litigant and his advisers must always depend upon the particular facts and the available evidence in any given case. In short, there are no bright lines in deciding whether or not there is a good reason for the delay in bringing an appeal of

this kind. All of the factual circumstances have to be carefully examined and scrutinised ...'.

14. In Nottingham Council v Michael Tyas [2013] UKUT 0492 (LC) the Upper Tribunal dealt with a late appeal against an Improvement Notice. The Upper Tribunal stated in relation to the process:

'It was therefore essential for the Tribunal to decide whether there was a good reason for the failure to lodge an appeal within the 21 days allowed. That required the Tribunal first to identify what the reason for the failure was, and then to consider whether that reason was a good reason. It was then necessary to ask the same questions in relation to the period of delay between the expiry of the permitted time for appealing and the date on which the appeal was actually brought.'

Conclusion

15. I bear in mind that the financial penalties combined are substantial and there is no time limit in the Act itself, leaving this to be regulated by the default time limit in the 2013 Rules. The appeals should have been submitted within 28 days after 24 August 2024 and 5 September 2024 respectively.
16. The Applicant made an attempt to submit their appeal in the form of an email on 20 September 2024 but the Applicant had not completed the necessary application forms. If the Applicant had included the forms, and they had been fully completed, then the applications would have been within time. However, the Applicant did not include any application forms.
17. I appreciate that the Applicant is unrepresented. However, in the Notes to the Financial Penalty Final Notices, the Respondent had provided the Applicant with clear information regarding the time limit for appeal and signposted them to the correct links to assist with any such appeal. A copy of the relevant application forms can be downloaded from the website to which the Applicant was signposted. The website also has the contact details of the Regional Tribunal offices, which the Council had already provided and which the Applicant could have contacted to query the process. There is limited evidence that the Applicant took notice of the information in the Notes, as evidenced by the application email of 20 September 2023 which was not in the correct format. The Applicant has not given any explanation as to why they did not submit completed application forms instead of providing the information in an email. In my view, the Applicant has not shown a good reason why they were not able to submit the correct forms by the relevant date.
18. The Tribunal sent the Applicant the application forms on 24 October 2023. Applicants are advised at the front of the application form to contact the relevant Regional Office if they have any questions regarding how to fill in the form, the fee payable or the procedures. There is no evidence in the papers before me that the Applicant made such contact.
19. The Applicant did not return the application forms to the Tribunal until 2 December 2023, some 6 weeks after they had been sent by the Tribunal office. The application forms merely repeated what they had stated in their email of 20 September 2023. Whilst the Applicant alleges that they had attempted to return the two

application forms the week before 2 December 2023 and refers to internet issues, the Applicant has not explained why they thought the application forms may not have been received by the Tribunal and when and how the Applicant became aware that this may have been a problem. Even if I accept the statement regarding internet issues, which I do not, the Applicant has not explained why it took them from 24 October 2023, when they received the forms, to the week before 2 December 2023 to submit them, particularly when they merely repeat what was said in the Applicant's email of 20 September 2023 and therefore no additional work was required.

20. Further, the application forms were not complete. Paragraph 10 of the application form headed 'Checklist' clearly states that the application cannot be processed until the form has been completely fully. It requires an applicant to tick the appropriate box to ensure they have provided a copy of the Final Financial Penalty Notices. The Applicant left the box blank and did not include the Final Financial Penalty Notices. The Applicant has not shown a good reason for the delay in submitting the application forms after they received them nor why the application forms were not fully completed.
21. The Applicant has failed to provide a written submission in accordance with the Directions to provide the compelling reason(s) as to why the time limit to submit the appeal application should be extended.
22. I am therefore not satisfied that the Applicant has put forward a good reason for the failure to appeal before the end of the 28 day period starting with 24 August 2023 and 5 September 2023 respectively and for any delay since then in applying for permission to appeal out of time.
23. In the circumstances, I do not exercise my discretion to extend the time limit. Accordingly, the Tribunal does not have jurisdiction in relation to the appeal application and, under Rule 9(2) of the 2013 Rules, I must strike it out.

Appeal

24. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal and the result the party making the application is seeking.

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Judge T N Jackson