



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

Case Reference : **BIR/00FY/HNA/2024/0002**

Property : **Flats 1,2 and 3, 28 Premier Road Nottingham
NG7 6NW**

Applicant : **East Midlands Homes Co-operative Limited**

Respondent : **Nottingham City Council**

Representative : **Charlotte Cockerton (Ref: CHC/Flare/097791)**

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

Tribunal : **Judge T N Jackson**

Venue : **Midland Property Tribunal, Centre City Tower, 5-7
Hill Street, Birmingham B5 4UU**

Date of paper determination : **6 June 2024**

Date of decision : **10 June 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. The Tribunal received an application by the Applicant under paragraph 10 of schedule 13A to the Housing Act 2004 (‘the 2004 Act’) to appeal against financial penalties imposed by the Respondent under section 249A and Schedule 13A, paragraph 6 of the 2004 Act.
2. Three separate Final Notices of Civil Penalty (‘the Final Notices’) each dated 25 October 2023 were issued in relation to Flats 1,2 and 3 Premier Road, Nottingham. Each Final Notice imposed a financial penalty of £6000 for an alleged offence under section 95 (1) of the 2004 Act.
3. The Applicant first notified the Tribunal of an appeal by email dated 27 December 2023, whilst the application form was dated 27 February 2024.
4. 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.
5. On receipt of the application, the Tribunal noted that the deadline appeared to have expired on 23 November 2023 and the application was therefore out of time. The Tribunal issued Directions dated 28 March 2024 advising that the Tribunal must consider, as a preliminary issue, whether there is a compelling reason to extend the time period to submit an appeal or to strike out the application under Rule 9 (2)(a) of the 2013 Rules for lack of jurisdiction to deal with an out of time appeal. The parties were invited to make submissions on the preliminary point within 14 days.
6. Both parties provided a written submission within the 14 days. However, the Applicant’s submission related to the appeal against the financial penalties themselves rather than address the preliminary issue regarding the appeal being out of time.
7. Further Directions dated 26 April 2024 were issued allowing the Applicant a further 7 days in which to respond to the preliminary issue and a response was provided on the same day.

Submissions

The Applicant

8. The Applicant says that upon receipt of the penalty notice, their immediate response was to contact the Council to dispute the bill. Their communication explicitly focused on addressing the issues raised and resolving the matter directly with the Council.
9. At no point during their correspondence with the Council were they informed of the necessity to lodge a formal appeal with the Tribunal within the specified timeframe. Their efforts were solely directed towards resolving the dispute at the initial stage.
10. Their engagement with the Council demonstrated their genuine intent to address the matter in good faith. However, their actions were guided by the understanding that disputing the bill directly with the Council constituted the appropriate course of action.
11. The absence of clear and explicit instructions regarding the appeal process contributed to their misunderstanding of the available options and the associated deadlines.
12. In light of these circumstances, the Applicant requests the Tribunal's understanding and consideration of their genuine efforts to resolve the matter in good faith, despite the lack of clarity surrounding the appeal process.

The Respondent

13. The Respondent's submission was provided within the time required by the original Directions and before the Applicant provided their submission on 26 April 2024. The Respondent submits as detailed below.
14. The Applicant has failed to provide any reasons for submitting their appeal application out of time.
15. The chronology below shows that following the service of the Final Notices on 25 October 2023, the Applicant was clearly advised of the deadline and the procedure for submitting an appeal.

Timeline of service of documents and contact with the Applicant:

- i. From January 2019 to March 2023 numerous correspondence was exchanged between the Respondent and the Applicant regarding the licensing status of the properties.
- ii. 05/09/23 – Notices of Intent were served on the Applicant by post to the Registered Office address and by email. The Notices clearly stated that any representations must be made to the authority within the period of 28 days. The covering letter that was sent with the notice/s also detailed how to make representations within 28 days. No representations were received.
- iii. 25/10/23 – Final Notices were served by email and by post to their Registered Office address. The Notices clearly stated that the Applicant may appeal to the First-tier Tribunal, within the period of 28 days from the day after the date of the final notice.

- iv. 30/11/23 – After the 28 day period for lodging an appeal had passed, the Respondent sent a letter to the Applicant by email and post to their Registered Office address, advising that as the notice had not been appealed and the penalty remained unpaid, the matter was being referred to the Council’s litigation team.
 - v. 04/12/23 – The Applicant sent an email to the Respondent stating that they believed that they were exempt from licensing.
 - vi. 13/12/23 – The Respondent emailed the Applicant with further details on how to appeal the Final Notices and advised that if they wanted to appeal, they should do this without delay as the 28 days in which to appeal had passed.
16. The above shows that the Applicant was advised on multiple occasions that an appeal had to be lodged within 28 days, but failed to adhere to this time limit.
 17. The Applicant has a history of non-compliance with time limits in that they failed to submit an appeal to the TENs that were refused, did not respond to a number of the statutory Notices that were served and failed to submit representations within 28 days of the Notices of Intent being served.
 18. The Applicant’s grounds of appeal relate to them being exempt from HMO licensing under Schedule 14 of the Housing Act 2004; however, the financial penalties that were issued were for offences under section 95 – Selective Licensing and therefore Schedule 14 is not applicable. Homes England have also confirmed that the Applicant’s application to become a Registered Social Landlord had been cancelled and therefore this exemption did not apply.
 19. The Applicant has failed to provide any reasons as to why they did not lodge their appeal within the 28-day time limit and it is unclear why the Appeals were lodged late since the Final Notices clearly specified the procedure, including the required time limit to lodge the Appeals.
 20. The Respondent submits that as there is no compelling reason to extend the time period to submit an appeal under rule 6(3)(a) and the application should be struck out under rule 9(2)(a) for lack of jurisdiction to deal with an out of time appeal.

Law

21. 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).
22. Before considering the Applicant’s reasons for the delay, the Tribunal refers to a decision made by Dove J in *Al Ahmed v Tower Hamlets LBC* [2020] EWCA Civ 51 on 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. The Tribunal considers the principles on “good reason” established by Dove J are relevant to the issue of good reason in this case.

23. 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 ...’.

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

‘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.’

Deliberation

25. I bear in mind that the financial penalty is 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.

26. As the caselaw provides, the merits of the appeal against the Final Notices themselves are not relevant to the question as to whether the Applicant had good reason for the failure to apply before the end of the default time limit.

27. I note that the notes attached to the Final Notices explicitly state both the time limit and process for an appeal and the Applicant cannot therefore say that they were unaware of them. I do not accept the Applicant’s submissions that there was an

absence of clear and explicit instructions or lack of clarity regarding the appeal process. The notes to the Final Notices made it very clear.

28. Further, after the appeal period had expired, on 30 November 2023, the Respondent contacted the Applicant to advise them of this fact and to seek payment of the penalties and yet this did not prompt the Applicant to submit an appeal which would then have been a few days outside of the default time period. Despite a further prompt from the Respondent on 13 December 2023 advising the Applicant that the time in which to appeal had passed, the Applicant still did not contact the Tribunal until 27 December 2023. They did not submit a completed Tribunal application form but rather sent an email.
29. Whilst I appreciate that the Applicant was attempting to resolve matters directly with the Council, this should have been carried out in parallel with lodging an appeal, not in place of. The Applicant was advised in the Final Notices of the official way to challenge them but chose not to do so. The Applicant is a co-operative housing association in the business of providing and managing social housing on not-for-profit co-operative principles. The management committee and any officers have a responsibility to act professionally. If, despite the explicit notes to the Final Notices, the Applicant had been in any doubt as to the correct way to challenge the Final Notices, they should have sought professional advice in a timely manner. There is no evidence that they did so.
30. The Applicant has also not explained the reason for the delay between its email to the Tribunal dated 27 December 2023 and the completion of the Tribunal application dated 27 February 2024.
31. I am therefore not satisfied that the Applicant has put forward a good reason for either the failure to appeal within the 28 day period after 25 October 2023 nor for any delay since then in applying for permission to appeal out of time.

Conclusion

32. 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

33. 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
10 June 2024