



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

Case Reference : CHI/29UN/HNA/2024/0015

Property : 19 Westcliff Road, Margate, Kent CT9 5DN

Applicant : Bextor Services Limited

Representative : Rafiul Islam

Respondent : Thanet District Council

Representative : Mark Pledger

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

Tribunal Member : Regional Surveyor J Coupe FRICS

**Date & Venue of
Preliminary Hearing** : 8 January 2025 at Havant Justice Centre,
Elmleigh Road, Havant, PO9 2AL

Date of Decision : 28 January 2025

DECISION

Summary of Decision

The Tribunal is not satisfied that the Applicant has provided good reasons for the failure to appeal a Financial Penalty Notice before the end of 28 days. Accordingly, the Tribunal dismisses the Applicant's application.

Background

1. On 22 July 2024 the Tribunal received an appeal from the Applicant against a financial penalty made under section 249A of the Housing Act 2004. The Tribunal sent a copy of the appeal to the Respondent Local Housing Authority.
2. Paragraph 10 of Schedule 13A of the Housing Act 2004 does not specify a time limit for the appeal of a Financial Penalty to the Tribunal. However, Rule 27 of the Tribunal Procedure Rules 2013 states that:

Where the notice of application relates to a right to appeal from any decision (including any notice, order or licence), the applicant must provide the notice of application 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.

3. The Final Notice ("the Notice") to issue a Financial Penalty is dated 30 May 2024 and the application was received on 22 July 2024. The application, therefore, appears to have been received out of time.
4. On 3 December 2024 the Tribunal issued Directions setting the matter down for a preliminary hearing on the 8 January 2025 for the purpose of determining whether the application was made out of time and, if so, whether to grant an extension of time beyond 28 days. The Applicant was afforded an opportunity to submit written representations by 16 December 2024 explaining why the application was not made within 28 days and why it considered that the Tribunal should accept the late application. The Respondent was provided with a right of reply to the Applicant's submissions by 3 January 2025. Both parties submitted representations.

The Preliminary Hearing

5. The preliminary hearing was held on the 8 January 2025 at Havant Justice Centre. The Applicant was represented by Mr Islam, Director of Bextor Services Limited. The Respondent was represented by Mr Pledger, Senior Housing Licensing Officer at Thanet District Council. Both parties attended the hearing remotely using the Tribunals' CVP platform.
6. It is common ground between the parties, confirmed by the Applicant at the outset of the hearing, that the application to appeal the Financial Penalty Notice was submitted outside of 28 days from receipt of the Notice. Accordingly, the issue before the Tribunal is whether the

Applicant has good reasons for the failure to appeal before the end of 28 days and, if so, whether to grant an extension of time beyond 28 days.

The Applicant's case

7. In written submissions the Applicant advanced six grounds upon which he relied, each being expanded upon during oral submissions.
 - i. Initial advice and guidance from the Tribunal: The Applicant says he sought guidance from the Tribunal upon receipt of the Notice and provided grounds for appeal. He says the Tribunal advised him to engage in discussion with the Respondent. Such discussions ultimately proved inconclusive and the Applicant was advised to proceed with an appeal. The Applicant acted in good faith.
 - ii. Confusion: The Applicant found the process of appealing complex, with significant time spent identifying the correct course of action and obtaining appropriate advice. The Applicant has no prior experience in such matters nor legal background.
 - iii. Lack of notification of the First Notice: The initial Notice, sent in April, was never received. As a result, the Applicant was prevented from addressing the matter directly with the Respondent within the correct timeframe. The absence of this communication further delayed the Applicant's ability to act.
 - iv. Good faith: The Applicant has acted in good faith throughout and proactively sought advice. Once correct procedure was understood, the Applicant submitted an appeal promptly. The delay was not intentional but arose due to genuine confusion and difficulty in navigating an unfamiliar process. The penalty would cause the Applicant financial hardship.
 - v. Prejudice to the Respondent: The Applicant avers that no prejudice will be suffered by the Respondent in allowing the appeal out of time as the appeal remains at an early stage. Principles of justice require both parties to have the case determined on its merits.
 - vi. Substantive grounds for appeal: The appeal raises substantive issues regarding the fairness and validity of the Notice. Such matters require proper examination to ensure a just outcome.

The Respondent's case

8. The Respondent reminded the Chairman that the matter relates solely to whether the Applicant has good reason for not appealing the Notice within 28 days. Matters raised by the Applicant before the service of the Final Notice are irrelevant for this part of the appeal process. That said, the Respondent states that the Notice of Intent was addressed to the

Applicant's registered company address and was sent by first class Royal Mail, for which proof of postage was obtained.

9. The Applicant was notified of the appeal process and does not contend that such information was missing from the Final Notice. The Notice clearly states that any appeal is to be submitted within 28 days.
10. The Respondent accepts that the Applicant contacted the Respondent on Friday 7 June 2024, this being after the Final Notice was served. On Tuesday 11 June 2024 the Respondent replied "*... As the Final Notice explains, you have the right to appeal to the First Tier Tribunal if you disagree with the decision or the amount of the Financial Penalty. The contact details are given in the notice*". The Respondent says that even at this date, the Applicant still had over two weeks to appeal within the specified time, but failed to do so.
11. The Respondent accepts that the Applicant may lack experience in such matters but suggests that, if in any doubt on how to proceed, the Applicant should have sought legal advice.
12. The Respondent refutes the Applicant's assertion that the Respondent would suffer no prejudice should the Tribunal allow the appeal. Any appeal would be defended which, in itself, would incur significant costs which, in the main, are non-recoverable.
13. The Respondent argues that the Applicant has failed to advance good reason as to why the appeal was submitted late and, whilst requiring some application, the appeal process is well explained and not complex.

Reasons for Decision and findings of fact

14. I find that the financial penalty Notice, including the requisite guidance notes providing details on how to appeal and advice that any appeal was to be submitted within 28 days, was served on the Applicant on 30 May 2024.
15. I find that the Applicant does not challenge receipt of the penalty Notice nor its validity.
16. I find that the application to appeal the Notice was received by the Tribunal on 22 July 2024, a date not disputed by the Applicant and, accordingly, was submitted out of time.
17. Turning next to each of the Applicant's reasons for the late application, starting with the Applicant's claim that prior to submitting his appeal he sought, and was provided with, advice from the Tribunal concerning how to proceed.
18. Tribunal records show that, on 3 July 2024, the Applicant emailed the Tribunal stating that he wished to appeal the penalty, clarify some matters and requesting that the penalty be withdrawn. The email was not

copied to the Respondent. Later that same day, the Tribunal replied to the Applicant stating that *“The Tribunal is unable to withdraw a Financial Penalty imposed upon you as requested in your below email. You would need to contact the authority that issued you with the financial penalty directly to discuss this. If the authority is unwilling to withdraw the financial penalty, you are at liberty to appeal the authority’s decision by application to the First Tier Tribunal (Property Chamber). The link to all of the First Tier Tribunal’s application forms can be found below.”* (Link provided). The reply concluded *“If you are unsure of the best course of action to take you should seek legal advice”*.

19. On 11 July 2024 the Applicant again emailed the Tribunal seeking advice as to which form to complete. On 12 July 2024 a case officer replied that the Tribunal is a decision making body and not an advice service. A hyper link to further information and another to a list of application forms was provided.
20. I find that the information provided to the Applicant by the Tribunal case officers was correct and, crucially, that by the time of the Applicant’s first contact with the Tribunal, such being 3 July 2024, the 28-day appeal period had already elapsed. As such, the Applicant was already out of time to appeal the Notice prior to contacting the Tribunal. Accordingly, I find this reason is not made out.
21. The Applicant’s next reason for the delay was that he found the process confusing and complex. The Notice served by the Respondent included guidance on how, and by when, to appeal. On 11 June 2024 the Respondent, in response to contact from the Applicant, further advised the Applicant of his right to appeal the Notice to the Tribunal. At this point the Applicant still had approximately two weeks of the 28-day appeal window left in which to submit his appeal. However, an appeal was not lodged until some six weeks later. I therefore find this reason is not made out.
22. In regards to the assertion that the Applicant did not receive the Notice of Intent, I find this of no relevance in this part of the appeal process. This preliminary decision is in regard to whether the appeal of the final Notice was made in time and, if not, whether good reason exists for such.
23. The Applicant’s fourth reason concerns good faith and financial hardship. I accept that the Applicant found the issue of the Notice and penalty distressing and of considerable concern. However, no evidence was adduced that the Applicant had attempted to seek legal or professional advice and had been unable to do so. Furthermore, a considerable period of time elapsed between the Applicant contacting the Respondent and ultimately submitting an appeal. No reason for such was advanced. The Applicant’s financial status has no bearing on this part of the appeal process. Accordingly, I find this reason is not made out.
24. In regard to the point on prejudice, I accept the Respondent’s position that defending an appeal will incur both time and costs, the latter which

may be irrecoverable. In considering whether to extend time to appeal, I have had regard to the guiding principles in Rule 3 of the Tribunal Rules 2013, whereby the overriding objective is to deal with cases fairly and justly. Applying the objective equally to both parties, I find that the Respondent would be prejudiced both financially and in regard to resources by allowing the appeal. Accordingly, I find that this reason is not made out.

25. The Applicant's final reason for the late appeal centres on fairness and validity of the penalty Notice. In oral submissions the Applicant accepted that the final Notice was served by the Respondent and received by the Applicant. The Applicant did not challenge the validity of the Notice. The Tribunal is limited in this matter to considering reasons for a late application. Accordingly, I do not find this reason made out.

Decision

26. The onus in this matter is on the Applicant to establish the reasons for the delay in submitting an appeal and to prove that such reason is a good reason. Having regard to all of the circumstances of the matter, and whilst I accept that the Applicant found the process daunting, lacked experience in dealing with such matters and was concerned at the quantum of penalty, I am not satisfied that the Applicant has provided good reasons for the failure to appeal before the end of 28 days.
27. Accordingly, I dismiss the application.

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.