



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

Case Reference : CHI/29UD/HIN/2019/0018

Property : Radar Cottage, Sandbanks Hill, Darenth
DA2 8EH

Applicant : Hawkins Trust

Representative : Sharon Kirby

Respondent : Dartford Borough Council

Representative :

Type of Application : Appeal against Improvement Notice

Tribunal Member(s) : Judge Tildesley OBE

Date and venue of CMH :

Date of DECISION : 14 August 2019

DECISION

Background

1. The Applicant appeals against an improvement notice dated 9 May 2019, and against the expenses incurred by the Council in exercise of their powers under section 49 of the Housing Act.
2. As explained by the Council in its notice, the Tribunal would only consider the question of expenses if it allowed the Appeal against the improvement notice. The Tribunal returned the additional fee of £100 in respect of the Appeal against the expenses.
3. The Appeal to the Tribunal was received on 7 June 2019 and is made under paragraph 10 to Schedule 1 of the Act.
4. The Appeal to the Tribunal was received out of time and it should have been received by 29 May 2019.
5. On 16 July 2019 the Tribunal directed the Applicant to explain to the Tribunal why it was not possible to comply with the time limit for submitting the Appeal. The Tribunal noted that Ms Kirby was away from her desk from 18 April for 2 to 3 weeks but that did not explain why the Trust was not able to make the appeal on time.
6. Also it was not clear to the Tribunal the grounds upon which the Applicant was appealing the improvement notice. The issues that the Tribunal would consider are whether the property suffers from the deficiencies that give rise to significant hazards, whether the property suffers from the hazards identified, whether an improvement notice is the most appropriate form of enforcement action and if it is whether the remedial actions proposed are reasonable. The Tribunal asked the Applicant to refer to the documents supplied by the Council and provide a response to the matters that it disagrees with and why.
7. The Tribunal allowed the Applicant until 30 July 2019 to make representations. The Council was given a right of reply until 6 August 2019 if it chose to exercise it. The Tribunal stated that it would then decide whether the Appeal could proceed.

Reasons

8. The Applicant's reason for not submitting the Appeal on time is that the relevant Trustee was away from work because she had recently become a Grandma. The Applicant stated that the grounds for the Appeal were that the works were already in hand and the improvement notice was premature.

9. Under paragraph 14(1) of schedule 1 to the 2004 Act the Tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).
10. The Upper Tribunal in *Nottingham City Council v Tyas* [2013] UKUT 0492(LC) said at [27]:

“It was therefore essential for the RPT to decide whether there was a good reason for the failure to lodge an appeal within the 21 days allowed. That required the RPT 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”.
11. The Applicant’s reason given was that the Trustee dealing with the Council was away from her desk because she had become a Grandma, and that the other Trustee was not involved with the Council. The Applicant did not supply any further details. The Application said the relevant Trustee was away for a period of about two to three weeks from 18 April 2019 which if three weeks was added would be to the date of the 9 May 2019. The Tribunal notes that the improvement notice was issued on 9 May 2019.
12. The Tribunal finds that the reason put forward by the Applicant does not cover the period of 21 days from 9 May 2019. In those circumstances the Tribunal is satisfied that the Applicant has not put forward a good reason for its failure to meet the time limit of 21 days from the date of the notice for making an appeal.
13. **The Tribunal refuses the application to allow the appeal to be made after the period of 21 days. The Tribunal confirms the improvement notice date 9 May 2019.**
14. If the Tribunal had allowed the application for appeal out of time. The Tribunal would then have issued a Notice to Strike Out the Appeal on the ground that it had no reasonable prospect of success. The Applicant did not supply answers to the questions posed in paragraph 6 above.

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 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.