Neutral Citation Number: [2024] UKUT 93 (LC)

Case No: LC-2023-388

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
FTT REF: MAN/00BN/HNA/2021/0063

Royal Courts of Justice
10 April 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

HOUSING – CIVIL PENALTY – failure to comply with an improvement notice – defence of reasonable excuse – notice correctly served but the landlord did not receive it – failure to update address for service at HM Land Registry

BETWEEN:

NAILA TABASSAM

Appellant

-and-

MANCHESTER CITY COUNCIL

Respondent

58 Ollier Avenue,
Manchester,
M12 5SW

Upper Tribunal Judge Elizabeth Cooke
3 April 2024

Mr Mikhail Charles for the appellant, instructed by Northwest Solicitors Ltd
Mr Paul Whatley for the respondent

The following cases are referred to in this decision:

IR Management Ltd v Salford City Council [2020] UKUT 81 (LC)
London Borough of Waltham Forest v Marshall [2020] UKUT 35 (LC)
Marigold and others v Wells [2022] UKUT 33 (LC)
Oldham Metropolitan Borough Council v Tanna [2017] EWCA Civ 50
Perrin v HMRC [2018] UKUT 156 (TCC)

1.

Introduction

1. This is an appeal by a landlord against a financial penalty imposed by the First-tier Tribunal in her appeal against the financial penalty imposed by the respondent local housing authority following her failure to comply with an improvement notice relating to her tenanted property.

2. The appellant Mrs Tabassam was represented in the appeal by Mr Mikhail Charles and the respondent by Mr Paul Whatley, and I am grateful to them both.

The legal background

Improvement notices

3. Part 1 of the Housing Act 2004 Act established a Housing Health and Safety Rating System, and requires local housing authorities to enforce housing standards in their area. Provision is made for category 1 and category 2 hazards to be defined in regulations, category 1 being those presenting a more serious risk; the regulations are the Housing Health and Safety Rating System (England) Regulations 2005.

4. Sections 5 and 7 of the 2004 Act give the local housing authority a duty to take enforcement action in relation to category 1 hazards, and a power to do so in relation to category 2 hazards on any residential premises; the available enforcement actions range from an improvement notice to a demolition order

5. Sections 11 and following make provision about improvement notices, which are to specify the hazard to which they relate, to state what remedial action is required, and to say by when the work must commence and by when it must be completed. Section 30(1) provides that a person upon whom an improvement notice was served commits an offence if he fails to comply with it, and section 30(5) says that in proceedings against such a person it is a defence that he had a reasonable excuse for failing to comply with the notice.

Financial penalties

6. Section 249A of the Housing Act 2004 enables a local housing authority to impose a financial penalty, often referred to as a civil penalty or financial penalty, upon a person if it is satisfied beyond reasonable doubt that he or she has committed any of the housing offences listed in that section, as an alternative to prosecution. Among the offences listed are the offence under section 30 of the 2004 Act of failure to comply with an improvement notice. Paragraph 10 of Schedule 13A to the 2004 Act makes provision for appeal to the First-tier Tribunal against the decision to impose a civil penalty and the amount of that penalty. The appeal is a re-hearing and the FTT is to make its own decision whether to impose a penalty and about the amount of the penalty.

7. In making that decision the FTT must give special regard to the local housing authority's enforcement policy and will normally follow it. But it is not bound by that policy, and may depart from it but must give reasons for doing so (*London Borough of Waltham Forest v Marshall* [2020] UKUT 35 (LC)).

The facts

8. I reproduce the facts as found by the FTT, supplemented by points from the skeleton arguments which I believe are not in dispute.

9. Mrs Tabassam has lived at 19 Kedlestone Avenue, Manchester M14 since 2014; before that she lived 75 Barlow Road. She owns 58 Ollier Avenue, and lets it to tenants; it is not a house in multiple occupation and it does not require to be licensed by the local housing authority.

10. In March 2019 the tenant of 58 Ollier Avenue complained to the respondent about disrepair. The respondent checked its council tax records which showed the owner to be Mrs Tabassam of 75 Barlow Road, and checked at HM Land Registry which showed the address for service for 58 Ollier Avenue to be 58 Ollier Avenue. The respondent then sent to those two addresses:

    a. a letter notifying Mrs Tabassam of the complaints, on 21 March 2019;

    b. a notice of entry for an inspection on 2 May 2019;

    c. an Improvement Notice dated 14 May 2019;

    d. a Notice of Entry for inspections planned for 3 September 2019 and 23 September 2019;

    e. Notice of intention to enter and do works on 23 September 2019 (although the respondent did not enter and do the works);

    f. an invitation to attend a PACE interview, on 9 October 2019;

    g. a Notice of Intent on 15 November 2019 giving notice of a proposed financial penalty of £22,500 for failure to comply with the Improvement Notice, and

    h. a Final Notice of the Financial Penalty on 10 January 2020.

11. Mrs Tabassam did not respond to any of those communications, and the FTT accepted her evidence that she did not receive them. The tenant, despite having complained about the disrepair, did not pass them on to the landlord. And she no longer lived at 75 Barlow Road.

12. In March 2020 the tenant left 58 Ollier Avenue and Mrs Tabassam (still unaware of the Improvement Notice) re-furbished the house; her evidence to the FTT was that the tenant damaged the property and would not give her access to carry out repairs.

13. In July 2020 the respondent sent to Mrs Tabassam at 19 Kedlestone Avenue a final reminder for the overdue payment of the penalty of £22,500. I think it is not in dispute, although there was no formal finding to this effect in the FTT, that the respondent found the correct address in its council tax records because Mrs Tabassam pays council tax for 19 Kedlestone Avenue.

14. Mrs Tabassam's evidence was that she contacted the respondent immediately, and then received copies of the Improvement Notice and of the Final Notice of Financial Penalty in September 2019.

15. Mrs Tabassam appealed to the FTT the Financial Penalty, rather than the Improvement Notice itself. She was unrepresented in the FTT.

The FTT's decision

16. The FTT found that the offence under section 30 of the Housing Act 2004 had been committed, because that there was a failure to comply with the Improvement Notice dated 14 May 2019 which was validly served on Mrs Tabassam. The fact that she did not know about it, because of her own failure to update her address for service at HM Land Registry and her address for council tax purposes for 58 Ollier Avenue, cannot amount to a reasonable excuse pursuant to section 30(5).

17. The FTT imposed a penalty of £15,000, considerably lower than the figure the respondent had arrived at; the FTT followed the respondent's policy for the calculation of penalties but regarded Mrs Tabassam's culpability as medium rather than high.

The appeal

18. Mrs Tabassam has permission to appeal, granted by this Tribunal on the ground that she had the defence of reasonable excuse to the offence.

19. Permission was not expressly granted on the ground that the Improvement Notice, and the notices relating to the financial penalty, were not correctly served; but the grounds of appeal did raise that argument and Mr Whatley did not make any objection to Mr Charles addressing the Tribunal about it.

Were the notices correctly served?

20. Mr Charles' argument had no prospect of success. Section 233 of the Local Government Act 1972 says this:

> "(1) Subject to subsection (8) below, subsections (2) to (5) below shall have effect in relation to any notice, order or other document required or authorised by or under any enactment to be given to or served on any person by or on behalf of a local authority or by an officer of a local authority.
> (2) Any such document may be given to or served on the person in question either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
> …
> (4) For the purposes of this section … the proper address of any person to or on whom a document is to be given or served shall be his last known address…"

21. It is agreed that that section sets out the requirements for service of an Improvement Notice and of notices of intent relating to financial penalties. It is, as Mr Whatley put it, a utilitarian provision without which local government could not function. In *Oldham Metropolitan Borough Council v Tanna* [2017] EWCA Civ 50 Lewison LJ said this about section 233, in the context of a planning enforcement notice:

> "I would hold that as a general rule, unless there is a statutory requirement to the contrary, in a case in which i) a person (in this case the local planning authority rather than the council taken as a whole) wishes to serve notice relating to a particular property on the owner of that property, and ii) title to that property is registered at HM Land Registry, that person's obligation to make reasonable inquiries goes no further than to search the proprietorship register to ascertain the address of the registered proprietor. It is the responsibility of the registered proprietor to keep his address up to date."

22. It is not possible to get past that Court of Appeal authority. The respondent in the present case used the address for service recorded at HM Land Registry for 58 Ollier Avenue, and therefore the notices were correctly served.

The defence of reasonable excuse

23. The issue of service goes to the elements of the offence. Had the Improvement Notice not been correctly served then the offence under section 30 could not have been committed. But it was correctly served and therefore the elements of the offence have been proved, beyond reasonable doubt. The question then arises whether Mrs Tabassam can show, to the civil standard of proof, that she had the defence of reasonable excuse.

24. As I said. Mrs Tabassam was unrepresented in the FTT and it is likely that this point was not comprehensively argued. The FTT dealt with the point very briefly at its paragraph 42, where it said:

> "…we accept the submissions of Mr Whatley that Ms Tabassam's default in failing to keep her address details up to date with the Land Registry cannot amount to a 'reasonable excuse'. To find otherwise would be for the Applicant to rely upon her own failures to avoid culpability."

25. In the appeal Mr Charles argued that Mrs Tabassam had the defence of reasonable excuse because she did not receive the Improvement Notice and other communications when the respondent could easily have checked its council tax records properly – as it eventually did and found her without difficulty. Mrs Tabassam had not hidden her whereabouts; the respondent had her address all along. Moreover, the FTT accepted her evidence (at its paragraph 47) that she was entirely unaware of the problems at her property and that "once she became aware she refurbished the property and rectified the problems identified". I take it that the FTT therefore accepted her evidence that she was unable to gain access before the tenant left because the tenant would not let her in, which was why the property got into a bad state.

26. Mr Whatley argued that provided service is effected correctly a landlord has deemed knowledge of the Improvement Notice, unless through the action of a third party the notice does not reach them. The fact that this notice did not come to Mrs Tabassam's attention was her own doing. Mr Whatley submitted that Mrs Tabassam's failure to update her address with the Land Registry could not provide a reasonable excuse. To allow that as a reasonable excuse would be to rob the legislation of its purpose, because all that a landlord would need to do to avoid liability for disrepair, or indeed other offences, would be to avoid updating his or her address at HM Land Registry.

27. I am not persuaded by that argument. Local housing authorities and tribunals should be able to distinguish between landlords deliberately evading service and those who have simply failed to update their address details., and on the basis of the evidence accepted by the FTT it is clear that Mrs Tabassam fell into the latter category. The FTT accepted that she did not deliberately avoid receiving the Improvement Notice. She had been registered all along for council tax at her home address and she was easy to find once the respondent tried to do so for the purposes of enforcement. To find her guilty of a criminal offence in those circumstances seems to me exceptionally harsh.

28. Mr Whatley could not point to any authorities where a landlord had been found to have committed the offence of failing to comply with an Improvement Notice where he or she never received the notice.

29. There are of course many cases where the offence of failure to obtain an HMO licence is found to have been committed despite the fact that the landlord did not know that a licence was needed. And Mr Whatley referred to *IR Management Ltd v Salford City Council* [2020] UKUT 81 (LC) where the fact that the landlord did not know that its property was an HMO was not accepted as a reasonable excuse.

30. 58 Ollier Avenue was not an HMO; it is accepted that such landlords are responsible for keeping themselves abreast of licensing requirements, but Mrs Tabassam was not in that position. And as to *IR Management* , the ease with which a property owner can find out how many people live at their property has to be contrasted with the difficulty for a small-scale landlord of working out that they have an address for service recorded on the Land Register (how many home-owners know that?), and the further difficulty of working out that they need to update it in case the local housing authority wants to serve a notice upon them.

31. In *Marigold and others v* Wells [2022] UKUT 33 (LC) the Tribunal (The Deputy Chamber President, Martin Rodger KC) referred at paragraph 47 to the decision in *Perrin v HMRC* [2018] UKUT 156 (TCC), where the Tax and Chancery Chamber of the Upper Tribunal said this:

> "82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long."

32. I accept that the respondent served the Improvement Notice correctly on Mrs Tabassam; it did all that was required of it. But the notice did not come to her notice and I am not persuaded that service of the Improvement Notice amounts to deemed knowledge of its contents. Mr Whatley resorted to Latin: *ex turpi causa non oritur actio*, which means that a party does not have a cause of action arising from his or her wrongdoing. But this is not about having a cause of action, it is about having a defence to a criminal offence carrying

a heavy penalty. And it is unrealistic to regard the failure to update one's address for service at HM Land Registry as "*turpis"* (quite a strong term in Latin), or in English as wrongdoing. The FTT described it as "negligent" (in the context of its consideration of the landlord's conduct in the context of the amount of the penalty); but I regard that as an overstatement. It was an error, but a very technical one that most people would have no idea they could commit.

33. In my judgment the FTT was wrong and irrational to find that Mrs Tabassam did not have the defence of reasonable excuse. I substitute the Tribunal's own finding that she did have that defence, with the result that no offence was committed and no financial penalty was payable.

34. Does that make life impossible for a local housing authority? I do not think so. Service itself remains straightforward. But in a case like this where a series of communications went unanswered it may be worth a little further checking (not, as Mr Whatley put it, trawling through all their records) in case there is a simple explanation for the failure to respond.

Quantum

35. Mr Charles also argued that the penalty imposed by the FTT was too high; permission to appeal on that basis was neither sought nor granted, and in any event the point is now academic.

Conclusion

36. The appeal succeeds. The FTT's decision is set aside, and I substitute the Tribunal's decision that no offence was committed by Mrs Tabassam and therefore no financial penalty was payable..

Upper Tribunal Judge Elizabeth Cooke

10 April 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors

of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.