



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

Case reference : **AB/LON/00AZ/HNA/2019/0077**

Property : **183a Deptford High Street, London, SE8
3NT**

Applicants : **Jonathan Malka**

Respondent : **London Borough of Lewisham**

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

Tribunal : **Judge Amran Vance**

Date of decision : **19 December 2019**

DECISION

Decision

1. This appeal is allowed on the ground that the Financial Penalty Notice dated 23 May 2019 said to be made under section 249A of the Housing Act 2004 (“the 2004 Act”) was invalid;
2. I order that the application fee paid by the applicant in the sum of £100, must be paid by the council to Mr Malka within 28 days after the date of this decision.
3. I extend time for the applicant to pursue this appeal under, r.6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”) and accept it as a valid appeal.

Reasons for decision

4. In a letter sent by the tribunal to the parties, at my request, dated 20 August 2019, I notified the parties that this appeal would be listed for a preliminary hearing on 23 September 2019 to determine two issues, namely:
 - (a) whether the applicant's appeal was received in time, and if not, whether the tribunal should extend time; and
 - (b) whether this appeal should be allowed on the ground that the Financial Penalty Notice dated 23 May 2019 was invalid and, if so, whether the application fee paid by the applicant should be refunded
5. Paragraph 7 of Schedule 13A of the 2004 Act provides that "The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given". The authority has used a standard form decision. On the fourth page of the Notice it is stated that "*You have until insert date-28 days from the date of service of Notice. If service by post add 3 days to pay this Civil Penalty.*" The fifth page of the notice purports to notify the recipient of appeal rights, and states "*You have 28 days to appeal-that is, by 28 days from service of notice. If serving by post use 31 days.*"
6. In the letter of 20 August 2019, I indicated that my preliminary view was that: (a) the notice is invalid as the final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given, and not from date of service; and (b) the notice is invalid as it gives an ambiguous notification as to the time limit for an appeal to this tribunal.
7. By letter to the tribunal dated 16 September 2019, the council confirmed that it accepts that no valid Final Notice had been served on the appellant, and that it did not contest the appeal.
8. In light of those concessions, I confirm my preliminary view, and make the decision recorded above. I retrospectively extend time for the applicant to lodge his appeal under rule 6(3)(a) of the 2013 Rules, to 9 July 2019, the date of receipt by the tribunal.
9. In all the circumstances, it is just for the council to pay to the appellant the fee he paid to issue this application.

Name: Amran Vance

Date: 19 December 2019

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.