



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

Case Reference : CHI/00HG/HIN/2021/0005

Property : 17 Wyndham Street West, Plymouth,
Devon PL1 5ER

Applicant : Ramesh Gajree

Representative : Mark Foster of Martin & Co

Respondent : Plymouth City Council

Representative : ---

Type of Application : Appeal in respect of an Improvement
Order

Tribunal Member(s) : Judge P J Barber

Date of Hearing : ---

Date of Decision : 16 June 2021

DECISION

Summary of the Decision

1. The Tribunal determines that the Applicant has not put forward a good reason for the failure to appeal before the 21 day period starting with **8 March 2021** and for any delay since then in applying for permission to appeal out of time. The Tribunal decides not to allow the Appeal.

Background

2. The Applicant seeks to appeal an Improvement Notice issued by Plymouth City Council (the Council) on 8 March 2021 in respect of 17 Wyndham Street West, Plymouth PL1 5ER.
3. The Improvement Notice included at Schedule 1, a detailed description of the hazards existing, and for which remedial work was required. Schedule 2 of the Improvement Notice provided further details of the works required, and further stated that the works were to be started by 7 April 2021 and completed within stated timescales of between 5 weeks and 3 months. Category 1 hazards were identified in the Notice including excess cold, falls between levels, and personal hygiene, sanitation and drainage issues. The Notice contained advice regarding the date by which any appeal should be made, being 21 days from the date the notice was served.
4. The work required by the Improvement Notice broadly required the replacement of windows and frames, loft space insulation, damp survey, the obtaining of a report on the heating system, installation of a bath or shower and related works, and overhaul of internal wall finishes and kitchen floor surface.
5. The Tribunal acknowledged receipt of the appeal by letter dated 26 May 2021, on which same date, directions were issued stating that the appeal was received out of time and inviting representations regarding whether the Tribunal should permit the appeal to be made out of time.
6. By an email dated 10 June 2021, Mark Foster of the Applicant`s agent, Martin & Co, submitted that the appeal was logged on 8 April 2021, being later than the last permitted date of 21 days. Mr Foster said that the time over the Easter break was a dominant factor in the delay and before such time as the Applicant`s contractor could gain access to the premises on 8 April 2021. Mr Foster said that the tenant has now been re-housed elsewhere and he said that the “delay over the works in the week before Easter was not against the appeal, but the facts surrounding the appeal being obtained”. Mr Foster added that the property needed to be vacant for the works to be carried out and that initial work upon complaint by the tenant, had been instructed back in October 2020. Mr Foster further stated that the quote for the works did not come in on Easter week. Mr Foster also referred to some confusion on behalf of the landlord / authority for Mr Foster to talk on the landlord`s behalf which delayed the appeal process.

7. A letter dated 6 June 2021 from Ast Assistance Limited referred to that company being appointed on behalf of the Applicant in regard to the Improvement Notice and broadly stated that their client was seeking possession against the tenant on the basis of non-payment of rent, referring to the Applicant`s personal commitments to his family and the high cost of the works which they said, they believed to be £38,000.00. The letter added that the agent was unable to send the appeal on time due to the Easter holidays and awaiting contractors to come back to him and requesting that sympathy be shown to their client.
8. By an email dated 27 May 2021, the Respondent Council`s Senior Improvement Officer submitted that the Council could see no reason why the appeal should be permitted as it was received out of time, that bank holidays are well documented and it should have been submitted prior to the holiday break, adding that they considered the 21 day appeal period to be sufficient for the Applicant to have conversations with contractors.
9. The Applicant appealed against the Improvement Notice on 8 April 2021 being 10 days after the date of expiry of the 21- day period.

The Issue

10. Under paragraph 14(1) part 3 schedule 1 Housing Act 2004 any appeal under paragraph 10(1) must be made within the period of 21 days beginning with the date on which the improvement notice was served. Paragraph 14(3) states that the Tribunal may allow an appeal to be made to it after the end of the period mentioned in paragraph 14(1) 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).
11. The issue for the Tribunal to determine is whether the Applicant had a good reason for submitting a late Appeal against the Improvement Notice.

The Facts

12. The Applicant does not dispute receipt of the Improvement Notice, although through his agent, he says that he was awaiting hearing from contractors before submitting an appeal.
13. The Improvement Notice set out in full detail the nature of the work required and also included a specification from which it should have been clear as to the work required. Mr Foster said that the Easter break had been a dominant factor in the delay. Reference was also made by the agents to the Property having to be vacant before the works could be carried out and also to rent arrears being owed by the tenant. The Council argued that bank holidays are well documented and that the appeal should have been made before the Easter break.

Consideration

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

“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”.

15. The Tribunal finds that the Applicant admits that he was aware that certain work was required and also that he had previously instructed on certain works. If the Applicant wished to appeal against the specific works envisaged by and detailed in the Improvement Notice, there was no clearly apparent or persuasive reason why he had first to obtain quotes, or to obtain vacant possession, before appealing the principle of the Improvement Notice. Reference to the Easter holiday weekend being a dominant factor are not persuasive as to there being a good reason for delay, given that the 21-day period allowed for appeals, appears to have expired several days before the onset of the holiday weekend. The Improvement Notice made clear reference to the appeal period of 21 days. If the Applicant wished to appeal, there was no persuasive reason why he had to wait first, before appealing, to receive quotes, the appeal being against the Improvement Notice itself, which detailed clearly the nature and extent of the works required.

16. 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.

17. “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 ...’

Decision

18. The Tribunal, therefore, determines for the reasons given above that the Applicant has not put forward a good reason for the failure to appeal before the 21-day period starting with 8 March 2021 and for any delay since then in applying for permission to appeal out of time. The Tribunal decides not to allow the Appeal.

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.