



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

Case Reference : CHI/23UB/HPU/2021/0001

Property : 33, Townsend Street, Cheltenham,
GL51 9HM

Applicant : Lidia Szopinska

Representative :

Respondent : Cheltenham Borough Council

Representative : Mrs Vicki Hanstock, Solicitor

Type of Application : Appeal from Prohibition Order

Tribunal Member(s) : Judge Tildesley OBE

Date of Hearing : 20 April 2021
Telephone Conference by BT Meet Me

Date of Decision : 11 May 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 28 day period starting with 22 December 2020 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 a Prohibition Order issued by Cheltenham Borough Council (the Council) on 22 December 2020 in respect of 33 Townsend Street, Cheltenham GL51 9HA.
3. The Order prohibits the use of part of the building, the basement bed living room for the use and occupation for residential living and sleeping accommodation purposes by any number of persons. The Order added that *“Access to Gas (serving Boiler & Cooker), Electrical (serving Heat, Light & Power) & Water (serving all Plumbing & Waste) meters, services & installations within must be maintained”*.
4. The Order identified a Category 1 hazard of Fire with a HHSRS score of 1835 Band C. The Order identified a series of remedial actions including provision for an adequate and unobstructed means of escape in the case of fire, adequate fire resisting construction to ensure fire separation between living room and kitchen, and between living room and stairwell and suitable mains powered automatic fire detection and alarm system.
5. The Tribunal understands that the property on the ground and first floor is occupied by a family. Further that in January 2021 there were ongoing court proceedings in connection with a prosecution of the Applicant under the Protection from Eviction Act 1977.
6. The Prohibition Order included Notes to Notice under sections 20 and 21 Housing Act 2004. The Notes made two references to the Right of Appeal.

“If you do not agree with this notice you may appeal against it to the Residential Property Tribunal but you must do this within 28 days from the date specified in the prohibition order or the date when the Local Authority’s refusal to revoke or vary the order. Or such longer time as the Residential Property Tribunal may allow”.

Residential Property Tribunal

If you decide to appeal you will need to apply to Residential Property Tribunal for your area, you can find the contact address and telephone number below. The Residential Property Tribunal staff will advise you how to word your request.

Chichester - Southern Rent Assessment Panel
Address: 1st Floor, 1 Market Avenue, CHICHESTER, PO19 1JU, Tel: 0845
100 2617 or 01243 779394 Fax: 01243 779389
Email: southern.rap@odpm.gsi.gov.uk

Changes to the Tribunal Service are ongoing and up-to-date information
can be found at: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>
<https://www.gov.uk/government/collections/residential-property-first-tier-tribunal-forms>.

7. The Applicant appealed against the Prohibition Order which was received by the Tribunal on 27 February 2021. The “Help to Fees” section was completed on 10 March 2021.
8. The Appeal notice was received 67 days after the date of the Prohibition Order. A valid appeal was made on 10 March 2021, 78 days after the date of the Prohibition Order. The Appeal was made outside the 28 day time limit, and, therefore, late.
9. On 29 March 2021 Judge Agnew directed that a hearing would be held to determine whether the Tribunal would give permission to extend the time limit for making an Appeal.
10. The hearing was held on 20 April 2021 by BT Meet Me. The Applicant attended in person. Mrs Vicki Hanstock, a solicitor with One Legal, represented the Council. The Tribunal reserved its decision. Following the hearing the parties sent copies of various emails which had been referred to at the hearing.

The Issue

11. Under paragraph 7 part 3 schedule 2 Housing Act 2004 a relevant person may appeal to the Tribunal against a Prohibition Order. Paragraph 10(1) states an appeal under paragraph 7 must be made within 28 days beginning with the date specified in the Prohibition Order as the date on which the order was made. Paragraph 10(3) states that the Tribunal may allow an appeal to be made to it after the end of the period mentioned in paragraph 10(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).
12. The issue for the Tribunal to determine is whether the Applicant had a good reason for submitting a late Appeal against the Prohibition Order.

The Facts

13. The Applicant stated initially that she was very ill with Covid over Christmas and New Year, and could not remember precisely the date when she received a copy of the Prohibition Order. The Applicant

remembered receiving an invoice by post in January 2021 which prompted her to make a complaint to the Council. About a month later after re-sending her complaint, the Applicant stated that she was told by the Council to contact the Tribunal. On being told that, the Applicant sent a 26 page statement to the Tribunal dated 19 February 2021 by email complaining about the actions of the Council. The Applicant explained that the Tribunal Office informed her that the application had not been made on the correct form. The Applicant then sent in a completed application form on 27 February 2021 which could not be processed until 10 March 2021 when the the “Help with Fees” form was filled out. The Applicant said that she eventually found the notification of the Prohibition Order under Junk mail which had been diverted there because the sender was “Enforcement” and not “Cheltenham Borough Council”.

14. The Applicant supplied a copy of a Statement of Fitness to Work signed by Primrose Hill Surgery dated 18 January 2021. The statement said that the Applicant was not fit to work for three months and the reason given was “Generalised anxiety disorder and Covid”.
15. The Tribunal confirms that it received a 26 page statement from the Applicant on 20 February 2021. The statement was correctly addressed to the Tribunal at rpsouthern@Justice.gov.uk and had the right postal address for Havant Justice Centre.
16. The Council stated that it sent the Prohibition Order and accompanying documents to the Applicant by email on 22 December 2020 at 12.55, and on the same day posted the documents First Class to the Applicant’s home address in London.
17. The Tribunal pointed out to the Council that the Prohibition Order did not contain the correct address for the Tribunal. The Order recited the Chichester address which the Tribunal had vacated some three years ago. Mrs Henstock pointed out that the Notice advised parties to check the current address on the Government website because “changes to the Tribunal Service are ongoing”.
18. At the hearing the Tribunal was made aware of email exchanges between the Applicant and the Council. Mrs Henstock asked the Applicant about some of these emails and supplied copies of them after the hearing to the Tribunal and to the Applicant.
19. The Applicant’s emails are summarised below in the Table

Email Attachment Number	Date sent by Ms Szopinska	Description:
1.	22/12/2020 at 15:31	Acknowledging receipt of Prohibition Order and confirming intention to seek legal advice.

2.	22/12/2020 at 23:39	Further email in Prohibition Order thread referencing issues raised in the Prohibition Order, such as suitable means of escape from the basement, being the room at the Premises subject to the Prohibition Order.
3.	05/01/2021 at 18:35	Extensive email with numerous references to and engaging with the detail of the Prohibition Order and managing the letting of Premises subject to the Prohibition Order.
4.	14/01/2021 at 16:35	Email to officer who sent the Prohibition Order and invoice, confirming that a formal complaint had been made and confirming the intention to bring the matter before the Tribunal.
5.	14/01/2021 at 16:36	Further email in the above thread confirming waiting on answers from another CBC department.
6.	15/01/2021 at 10:38	Further email in Prohibition Order thread above requesting confirmation of when the basement (to which the Prohibition Order relates) was accessed by CBC.
7.	28/01/2021 at 11:58	Email in response to CBC demand for recovery of expenses relating to the Prohibition Order, confirming awareness of the statutory time limit of 28 days to appeal and expressing a view that CBC's application of the statutory time limit is incorrect. Email also confirming the intention again to raise this with the Tribunal.
8.	28/01/2021 at 12:38	Email to CBC with information relating to fire doors in reference to the Prohibition Order.

20. The Tribunal sets out below extracts from three of the above emails from the Applicant.

21. The Applicant's email of 22 December 2021 15:31 addressed to Enforcement@Cheltenham.gov.uk stated that

"When the basement was converted it was done to the required building regulations, additionally the light well was increased in size.

The council also inspected the basement through its construction. Additionally the council after I increased the light well stated they do not need the exit to be into the pavement as the pavement could be blocked

and the current configuration was sufficient for Emergency exit and the fire alarms were fine.

What is the prohibition order relating to?

The basement is fully tanked, you stated the glass is dark but that is no reason for having a householder bedroom located in the basement.

I will seek legal advice to your accusations”.

22. The Applicant’s email of 14 January 2021 at 11.58 addressed to Vicky at Enforcement@ Cheltenham.gov.uk Marked “Private and Confidential” stated that

“I have made a formal complaint about your actions. I will go to tribunal regarding your undertaking with me.

Please note this formally in respect of your unauthorised invoice.

I never agreed to your coming into my house without me present I also gave you full information to the lodgers denying me access.

Please make a formal complaint if you are a separate department”.

23. The Applicant’s email of 28 January 2021 at 16.35 addressed to Vicky at Enforcement@ Cheltenham.gov.uk stated that

“I intend on making a Tribunal complaint and you need to take off national holidays to the 28 days allowable to do this. I did ask your time frame with holidays.

You also need to take off the time for my health as I had Covid over New Year and I still have a medical Certificate. I am sick of being bullied by the council.

So make a note this time that I am complaint and writing to the Tribunal - your action is premature of any allocated timescales.

You also need to answer the following: *(there followed an email to Mike who appeared to be an officer of the Council))Tribunal italics”.*

24. The Applicant sent a six page response to the Tribunal regarding the emails stating that she believed COVID alone was a good reason. The Applicant supplied copies of Text messages: the first was dated 25 December giving a date for a Coronavirus test on 25 December 2020 at 1.30pm, the second was dated 10 January stating that UK plasma services were collecting plasma from people over the age of 17 who have had a positive test for COVID 19. The Applicant asserted that despite being ill and requiring rest she did her best to respond to the Council’s allegations.

25. The Applicant stated that it was in the interests of justice for her to be given the opportunity to contest the Prohibition Order. The Applicant believed that she had a good chance of success and that the Council would not suffer prejudice if the Applicant was given permission to pursue the Appeal.
26. The Applicant pointed out that she was a litigant in person who had had no prior contact with the Tribunal. The Applicant believed that she was dealing with the invoice for the Council's costs in connection with the Prohibition Order, and not with the Prohibition Order. The Applicant blamed the Council for not providing her with the correct information regarding the Tribunal's address and blamed the Council and the Tribunal for not giving her assistance in respect of the correct procedure.

Consideration

27. In *Nottingham Council v Michael Tyas* [2013] UKUT 0492 (LC) the Upper Tribunal dealt with a late appeal against an Improvement Notice which is governed by legislative provisions in the same wording as that for appeals against Prohibition Orders, except the time limits are different; 21 days instead of 28 days. 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”.

28. The Tribunal finds that initially the Applicant put forward that she had not received a copy of the Prohibition Order and when she became aware of the Order late January she submitted a detailed statement to the Tribunal on 19 February 2021, albeit not in the correct form.
29. The Applicant's original reason was undermined by the series of emails between the Council and the Applicant which were disclosed at the hearing. The Tribunal is satisfied that the Applicant was aware of the prohibition Order on 22 December 2020, and that the Applicant knew about her right of appeal to the Tribunal and that a time limit applied. The Tribunal is also satisfied from her email of 28 January 2021 that the Applicant was aware that she had gone passed the deadline of 28 days.
30. When faced with the emails the Applicant put forward a different set of reasons for her failure to comply with the time limit of 28 days. The Applicant's reasons fell into three categories. The first category was that she was a litigant in person who had not been assisted by the Council and the Tribunal about her right to appeal and that she had real

prospect of success with her appeal. The second category was that the Council gave the wrong address for the Tribunal. The third category was that she was suffering from COVID 19.

31. Before considering the Applicant's different set of reasons, 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.

32. "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 ...'

33. Turning now to the Applicant's first category of reasons. The Applicant asserted that she was a litigant in person who received no help from the Council and the Tribunal and that her appeal had a good prospect of success. The Tribunal finds that this is not a good reason:

- Although the Applicant is a litigant in person it is clear from the emails that she was aware of her right to appeal to the Tribunal and of the deadline for submitting appeals. The Applicant also indicated that she would be getting legal advice.

- The Council provided her with a link to the Government website informing her about the right to appeal.
 - The Tribunal assisted her with the Appeal but by then it was too late.
 - The Applicant is a business person qualified in building design and has a small portfolio of three properties. The Applicant is used to dealing with public authorities.
 - The fact that the Applicant may be successful with her appeal is not relevant to the issue of good reason.
34. The Tribunal is not convinced that the Applicant was misled by the reference to the Chichester address in the Council's notices about the right to appeal. The Applicant did not rely on this until the Tribunal pointed it out to the Council. The Tribunal was satisfied with the Council's explanation for why the address was not changed and the safeguard put in place informing the recipients of the Order to check the information given with the Government website. Finally the Applicant sent her statement on 19 February 2021 to the correct email address for the Tribunal and the statement itself had the correct postal address for the Tribunal.
35. The Tribunal acknowledges that suffering from COVID 19 has the potential to constitute a good reason. The Tribunal, however, was not convinced by the Applicant's evidence of the impact of COVID 19 upon her ability to deal with the appeal process. The medical evidence was limited. It consisted of a record of testing positive which was inferred by the request for blood plasma, and of a fitness to work statement saying that the Applicant was unable to work for three. The evidence provided by the Applicant's emails and her statement to the Tribunal demonstrated that the Applicant's ability to understand the issues involved and to respond in detail had not been materially impacted by COVID 19. The Tribunal also adds that the email of 28 January 2021 clearly indicated that the Applicant knew that she had passed the deadline in which to Appeal but there was no explanation why she waited until 19 February 2021 to send her statement to the Tribunal.

Decision

36. 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 28 day period starting with 22 December 2020 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.