



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

**Case Reference** : CHI/00LC/HIN/2022/0016

**Property** : 3 Charter Street, Chatham, Kent, ME4 5RJ

**Applicant** : Safir Bhatti

**Representative** :

**Respondent** : Medway Council

**Representative** : Venky Krishnan  
Medway Council & Gravesham shared  
Legal Services

**Type of Application** : Appeal against an improvement notice  
Section 11 Housing Act 2004

**Tribunal Member(s)** : Judge Tildesley OBE

**Date of Hearing** : 29 July 2022  
Common Video Platform

**Date of Decision** : Decision given Orally on 29 July 2022  
Written reasons published 11 August 2022

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**DECISION**

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## **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 end of the 21 day period starting with 30 April 2022 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 sought to appeal an improvement notice dated 29 April 2022 and issued by Medway Council (“the Council”) in respect of 3 Charter Street, Chatham, Kent, ME4 5RJ33 (“the Property”).
3. A hearing was held on 29 July 2022 by means of the Common Video Platform. The purpose of the hearing was to determine whether the Applicant had a good reason for submitting a late Appeal. Mr Bhatti appeared in person Mr Krishnan represented the Council. Mr Michael Coward, Private Sector Housing Technical Officer for the Council, was also in attendance.

## **The Facts**

4. The Tribunal received the Appeal against the improvement notice as an attachment to an email which was timed at 1810 hours on 27 May 2022.
5. Mr Coward stated that on 29 April 2022 he had served separate copies of the improvement notice by first class post on Mr Bhatti, and Mrs Bhatti to their address at Riverview Manor, Wouldham, Rochester, Kent ME1 3TL.
6. The improvement notice identified eight category two hazards: damp and mould growth, excess cold, food safety, personal hygiene sanitation and drainage, falling between levels, electrical hazards, fire, and flames and hot surfaces. Mr Coward described the category 2 hazards as serious.
7. Mr Krishnan told the Tribunal that the residents at the property had complained to the Council about the standard of the accommodation. The Council inspected the property on the 8 September 2021 and found it to be in a poor and dangerous condition. The Council identified particular concerns with the electrical supply which had no RCD protection and no electrical installation condition report, and with the widespread damp throughout the building. The Council stated that a family lived at the property with the parent supporting a severely disabled son with a life limiting illness. The son was occupying a downstairs bedroom which was very damp. The Council understood that the family had occupied the property for ten years without a formal tenancy agreement which had not been forthcoming from the Applicant. On 9 September 2021 the Council agreed with the Applicant a schedule of works which he said he would complete by 22 October

2021. The Applicant did not carry out the necessary works. Instead he made further promises that the works would be completed by dates in November 2021, and then in February 2022. In view of the Applicant's failure to do the works, the Council carried out another inspection on 22 April 2022 which resulted in the issue of the improvement notice.

8. The Applicant accepted that he and his family lived at the address given in the improvement notice, and that the mail was delivered daily by Royal Mail van. The Applicant said that he shared the house with his extended family and that members of his family would often pick up the mail and not pass it onto him. The Applicant said that he did not see the Council's letter with the improvement notice until the 9 May 2022 which was the date he put in the application appealing the decision. The Applicant was asked how he could remember receiving it on that date. The Applicant stated that he had written the date on the envelope. The Applicant was asked to show a copy of the envelope but he was unable to do so. The Applicant was questioned about the copy of the improvement notice sent to his wife. The Applicant said that he dealt with all the business letters. The Applicant said that he was suffering from long COVID at the time, and his memory was hazy. The Applicant thought he had 28 days in which to Appeal an improvement notice. The Applicant then proceeded to blame the tenants for the condition of the property saying that they had caused a lot of damage.
9. The issue for the Tribunal to determine is whether the Applicant had a good reason for submitting a late Appeal against the Improvement Notice.

### **Consideration**

10. Part I of the Housing Act 2004 ("the Act") contains a scheme for assessing housing conditions and enforcing housing standards. Sections 1-4 create a framework for classifying housing hazards as either category 1 or category 2 hazards. Section 7 confers a power on a Council to take enforcement action if it considers that a category 2 hazard exists. Section 12 of the Act concerns improvement notices relating to category 2 hazards. By section 30 of the Act, once an improvement notice becomes operative, it is an offence for the person on whom the notice was served to fail to comply with it. The general rule laid down by section 15(2) is that an improvement notice becomes operative at the end of the period of 21 days beginning with the day on which it is served. In the event of an appeal section 15(5) of the Act applies and the notice does not become operative until the appeal process is completed and the notice is finally confirmed.
11. Paragraph 14(1) of Schedule 1 to the Act specifies a period of 21 days beginning with the date on which an improvement notice was served as the time within which any appeal must be made. Paragraph 14(3) creates a power to extend that time, as follows:

“ 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).”

12. In this case the improvement notice was sent by 1<sup>st</sup> class post on 29 April 2022. Section 246 of the Act authorises the service of any document by sending it by post to the address of the Applicant. Section 7 of the Interpretation Act 1978 provides that service is deemed to be effective by properly addressing, prepaying and posting the documents and, unless the contrary is provided to have been effected at the time at which the letter would be delivered in the ordinary course of the post.
13. The Royal Mail aims to deliver first class mail by the next working day including Saturdays. In this case the improvement notice would have been delivered in the ordinary course of the post on Saturday 30 April 2022, and this would have been the deemed date of service under the Interpretation Act 1978. The last date for making the Appeal against the improvement notice was the 20 May 2022.
14. The Tribunal notes that under CPR 6 the deemed date of service for first class post is the second day after it was posted provided that day is a business day or if not the next business day after that. In this case the 2 May 2022 was a Bank Holiday so under CPR 6 the deemed date of service is 4 May 2022. The Tribunal observes that CPR does not apply to these proceedings and the service of an improvement notice. If it did, the last date for making the appeal against the improvement notice was 24 May 2022.
15. The Tribunal prefers the 30 April 2022 as the deemed date of service. The Applicant’s appeal which was received on 27 May 2022 was, therefore, out of time. The Tribunal observes that if 4 May 2022 was the correct deemed date of service, the Appeal would still be late.
16. 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 Tribunal to decide whether there was a good reason for the failure to lodge an appeal within the 21 days allowed. That required the Tribunal 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”.
17. The Tribunal finds that the Applicant’s reason was that he did not see the two letters containing the improvement notices until 9 May 2022 because he said that the mail was collected by other members of his family and left around the house for him to pick up. The Tribunal notes that the Applicant did not dispute that the address given on the letters

was his home address, that the Royal Mail delivered regularly to his home address and that the letters containing the improvement notices were actually delivered to his home address.

18. The Tribunal had the benefit of observing the Applicant answering the questions put to him by Mr Krishnan. The Tribunal did not find the Applicant to be a convincing witness. The Applicant put forward no compelling explanation for remembering on 27 May 2022 when he completed the Appeal form the 9 May 2022 as the date he first saw the documents. The Applicant said that he wrote the date on the envelope containing the improvement notice but he could not show the Tribunal the envelope. The Tribunal observed that the Applicant was put on notice in the directions of 22 July 2022 that the Tribunal was querying when he received the Notice. The Tribunal would have thought that the Applicant would have had the endorsed envelope ready for the hearing on the 29 July 2022. The Tribunal considers that the Applicant's credibility was further damaged by his broken promises to carry out the works which forced the Council to take out the improvement notice. The Applicant resorted to having a hazy memory because of long COVID. The Applicant produced no evidence that he was suffering from long COVID. The Tribunal considers the most telling remark of the Applicant was that he thought that he had four weeks in which to appeal. This was the only comment that made some sense and supported the fact that he did receive the improvement notices on 30 April 2022, and that he intended to leave it to what he thought was the last day in which to Appeal, the 27 May 2022. The Tribunal believes that the Council's characterisation of the Applicant's actions as yet another delaying tactic was correct. Unfortunately for the Applicant he got the timescale in which to Appeal wrong and then tried to recover the position by stating that he received the improvement notice on 9 May 2022. The Tribunal did not find the Applicant to be a credible witness.

## **Decision**

19. The Tribunal determines that the Applicant has not put forward a good reason for the failure to appeal before the end of the 21 day period starting with 30 April 2022 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](mailto: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.