Neutral Citation Number: [2024] UKUT 140 (LC)

Case No: LC-2023-604

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
FTT REF: MAN/OOCJ/HNA/2022/0101

21 May 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

HOUSING – CIVIL PENALTY – Landlord failing to comply with licence condition requiring provision of information on demand – address for service of demand – demand not received – whether offence committed – s.233, Local Government Act 1972; s. 196, Law of Property Act 1995; s.7, Interpretation Act 1978; s.249A, Housing Act 2004 – appeal allowed

BETWEEN:

NEWCASTLE CITY COUNCIL

Appellant

-and-

MAHMOUD ABDALLAH

Respondent

29 Gillies Street,
Newcastle-Upon-Tyne

Martin Rodger KC, Deputy Chamber President

7 May 2024

Miss Sarah Salmon, instructed by Newcastle City Council, for the appellant
The respondent did not participate in the appeal

The following cases are referred to in this decision:

Birmingham City Council v Bravington [2023] EWCA Civ 308, [2023] HLR 31, [2023] KB 421, [2023] L & TR 14

Calladine-Smith v Saveorder Ltd [2011] EWHC 2501 (Ch), [2011] 3 EGLR 55

Enfield London Borough Council v Devonish (1997) 29 HLR 691

London Borough of Newham v Ahmed [2016] EWHC 679 (Admin)

Newham LBC v Miah [2016] EWHC 1043 (Admin), [2016] PTSR 1082

Oldham MBC v Tanna [2017] EWCA Civ 50, [2017] 1 WLR 1970

R v County of London Quarter Sessions Appeals Committee ex parte Rossi [1956] 1 QB 682

Rushmoor Borough Council v Reynolds (1991) 23 HLR 495

Southwark LBC v Akhtar [2017] UKUT 150 (LC), [2017] L & TR 36

Tull, R (on the application of) v Camberwell Green Magistrates' Court & Anor [2004] EWHC 2780 (Admin), [2004] RA 31

Introduction

1. The main issue in this appeal is whether the respondent, Mr Mahmoud Abdallah, breached the terms of a licence granted to him by the appellant local housing authority, Newcastle City Council, under section 88 of the Housing Act 2004, when he failed to provide information in response to a request sent to him by post but which he did not receive.

2. The licence permitted Mr Abdallah to manage premises at 29 Gillies Street in Newcastle and was granted subject to standard conditions requiring him to provide certain information "on demand". The Council requested the relevant information by a letter sent by ordinary post addressed to Mr Abdallah at an address he no longer occupied. The key question in the appeal is whether that demand, which never came to Mr Abdallah's attention, was nevertheless an effective demand for the purpose of the licence condition. If it was, Mr Abdallah's failure to comply with the condition would have been an offence contrary to section 95(2)(b), Housing Act 2004 Act ("the 2004 Act"), unless he could prove that he had a reasonable excuse for that failure.

3. The appeal is against a decision of the First-tier Tribunal (Property Chamber) (the FTT), first promulgated on 9 August 2023 but reviewed and reissued with revised reasons on 10 September 2023. The FTT allowed Mr Abdallah's appeal against a financial penalty of £654.66 imposed by the Council under section 249A, 2004 Act on account of the section 95 offence, which it was satisfied he had committed. The FTT found that the demand for information made by the Council had not been sent to Mr Abdallah's last known address and was accordingly not a demand which Mr Abdallah was required to comply with.

4. The Council, which was represented at the hearing of the appeal by Miss Sarah Salmon, is not primarily interested in the recovery of the modest penalty in this case but is more exercised by the wider consequences for its administrative practices of the FTT's apparent conclusion that requests for information made in furtherance of conditions attached to licences granted under the 2004 Act could not safely be sent through the ordinary post, rather than by registered post.

5. Mr Abdallah has made only short written comments about the difficulties he has experienced in the past in communicating with the Council but otherwise informed the Tribunal that he did not intend to participate in the appeal.

The facts

6. Mr Abdallah has owned a flat at 29 Gillies Street since 2007. Until 1 October 2016 the flat did not need to be licensed but, with effect from that date, the Council designated the area in which it is located as subject to a scheme of selective licensing within Part 3 of the 2004 Act. Mr Abdallah wished to continue to let the flat, so he applied promptly for a licence and was granted one on 17 January 2017. In his application for the licence Mr Abdallah gave his address as 6 Primrose Lane at Sleaford in Lincolnshire, where he was stationed as a member of the Armed Forces.

7. The licence was granted subject to a number of conditions, including the mandatory conditions listed in Schedule 4, 2004 Act which are required to be contained in any licence granted under Parts 2 or 3 of the Act. These include conditions requiring the licence holder to supply an authority, on demand, with a declaration as to the safety of electrical appliances and furniture made available in the house, and a declaration as to the condition and position of smoke alarms and carbon monoxide alarms.

8. Amongst the other conditions imposed by the Council (but not mandated by the 2004 Act) the licence required Mr Abdallah to inform the Council of any new tenancy within 14 days of its commencement and to supply information regarding the tenants. It also required him to inform the Council's licensing team within 10 working days of any changes in his own circumstances, including any change of address.

9. On 18 June 2017 Mr Abdallah moved from 6 Primrose Lane to a new address in Sleaford, at 14 Cheviot Close. He did not notify the Council's licensing team (or anyone else at the Council) of that change, despite communicating with them at that time in relation to another matter by email (to which he received no response).

10. On 1 February 2018 Mr Abdallah completed an online notification informing the Council of the identity of new tenants of the flat; he included his new address at Cheviot Close in that notification. The purpose of this information was to enable the Council's council tax department to collect any tax due from the residents of the property, and the information was not shared by the council tax department with the selective licensing team.

11. The selective licence was granted for a period of 5 years, but it was not until 2021 that the Council asked Mr Abdallah (and all other licence holders on its selective licence database) to provide the information referred to in the various licence conditions. On 15 April a letter was sent to all licence holders requesting the provision of information by 13 May 2021. In Mr Abdallah's case that request was addressed to him at Primrose Lane, a property at which he had not lived for more than 3 years.

12. A postal redirection service which Mr Abdallah had arranged when he moved from his first address had expired by the time the request for information was sent out, and the FTT was satisfied that he had not received it at that time. He first became aware of the request in December 2022 as a result of the Council's imposition of a financial penalty for non-compliance with the request.

13. After receiving no response the Council wrote a second time to Mr Abdallah on 20 July 2021, again by ordinary post addressed to Primrose Lane, warning him that enforcement action might be taken if he failed to provide the required information. That letter was also not received by Mr Abdallah.

14. The Council decided that Mr Abdallah had committed an offence under section 95(2)(b), 2004 Act by failing to comply with the conditions of his licence requiring production of information on demand. On 5 November 2021 it sent a notice of intent to impose a financial penalty addressed to him at 6 Primrose Lane. Yet again, this communication was not received and Mr Abdallah made no representations in response to it.

15. Having heard nothing from Mr Abdallah, the Council proceeded to impose a financial penalty of £654.66. Before sending the required final notice, its staff checked the records of the council tax department and became aware that Mr Abdallah's current address was 14 Cheviot Close. The final notice imposing the financial penalty was sent to him at that address. It received an immediate response and on 16 December 2022 Mr Abdallah appealed to the FTT against the financial penalty; he also provided the information requested by the Council in April the previous year.

16. Before explaining what the FTT decided it will be convenient to refer to the statutory provisions concerning the service of documents which the FTT had to consider.

Relevant statutory provisions

17. Section 233 of the Local Government Act 1972 ("the 1972 Act") makes special provisions for the service of documents by local authorities. These are less demanding than provisions applicable to documents served by other parties, including section 196 of the Law of Property Act 1925 ("the 1925 Act") and section 7 of the Interpretation Act 1978.

18. Omitting parts which are not relevant to this appeal, section 233 of the 1972 Act provides as follows:

> 233 **Service of notices by local authorities**
>
> (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 and of section 26 of the Interpretation Act 1889 (service of documents by post) in its application to 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, except that—
>
> (a) [address of corporations];
> (b) [address of partnerships]
>
> …
>
> (9) The foregoing provisions of this section do not apply to a document which is to be given or served in any proceedings in court.
>
> (10) Except as aforesaid and subject to any provision of any enactment or instrument excluding the foregoing provisions of this section, the methods of giving or serving documents which are available under those provisions are in addition to the methods which are available under any other enactment or any instrument made under any enactment …."

19. Section 233 is in wide terms. In *Birmingham City Council v Bravington* [2023] EWCA Civ 308 the Court of Appeal determined that it is not limited in its application to notices, orders or documents which a local authority wishes to give or serve in connection with the discharge of one of its public law functions. At [19] to [25], Newey LJ gave six reasons why section 233 should be read as having general application to all notices, orders or other documents given by an authority where that is required or authorised by or under *any* enactment (subject to the specific exceptions in subsections (9) and (10) for documents in connection with court proceedings or which are excluded by the terms of a statute or instrument). The first and most important reason was that the wide application of section 233 was in accordance with the natural reading of its language, which did not suggest any limitation to circumstances in which a local authority was discharging public law functions.

20. Newey LJ also distinguished the earlier decision of the Court of Appeal in *Enfield London Borough Council v Devonish* (1997) 29 HLR 691 which had been relied on in support of a narrower application of section 233, and explained that the issue which that case had decided was not whether a local authority had to be acting in a public law capacity for section 233 to be applicable, but whether the section applied in relation to an ordinary notice to quit for which there was no particular statutory provision. It had been determined that (the tenant not being resident at the property) such a notice was not "required or authorised" under any enactment, but was required only by common law, so that section 233 did not apply.

21. Finally Newey LJ disagreed with the approach taken by this Tribunal (Judge Cooke) in *London Borough of Southwark v Akhtar* [2017] UKUT 150 (LC), which, at [74], had relied on *Devonish* for the proposition that section 233 is applicable only where an enactment requires or authorises service by a local authority in its capacity as a local authority. That part of the reasoning in *Akhtar* had not been necessary for the decision and did not bind the Court of Appeal. In view of the Court of Appeal's decision in *Bravington*, the Tribunal's comments in *Akhtar*, at [74], should no longer be relied on.

22. Moving on, section 196 (4) and (5), 1925 Act are not restricted in their application to notices or documents served by local authorities but apply generally to notices required or authorised by the 1925 Act or required by any instrument affecting property executed after its commencement, as follows:

> "(4) Any notice required or authorised by this Act to be served shall ... be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned by the postal operator (within the meaning of Part 3 of the Postal Services Act 2011) concerned undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.
>
> (5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of this Act unless a contrary intention appears."

23. Section 196(4) is of much wider application than section 233. In particular, it is not restricted to local authorities, and it is available in connection with documents required to be served by "any instrument affecting property", and not simply documents required or authorised "by or under any enactment" as in the case of section 233. Any such document will be treated as having been "sufficiently served" if the procedure is followed. But section 196(5) applies only to documents sent by post in a *registered* letter; in contrast, section 233(2) does not require the use of registered post and so is less administratively burdensome. It is for that reason that, in this appeal, the Council is keen to obtain confirmation that section 233 is available to it in connection with monitoring compliance with licence conditions.

24. Finally, section 7 of the 1978 Act (which is the modern re-enactment of section 26 of the Interpretation Act 1889, referred to in section 233(4)) provides that any document which a statute requires or authorises to be sent by post will be deemed to have been served if it is sent by ordinary post, unless the contrary is proved. It is in these terms:

> "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

25. For the purpose of proceedings in Court, (subject to proof to the contrary) it is assumed that that delivery will be effected "in the ordinary course of post", in the case of first class mail, on the second working day after posting, and in the case of second class mail, on the fourth working day after posting; working days exclude weekends and bank holidays (see Practice Direction (QBD: Postal Service) [1985] 1 W.L.R. 489). Although strictly this rule of thumb does not apply to tribunal proceedings, I can see no reason why it may not safely be adopted.

26. Section 7, 1978 Act applies to notices given by local authorities, because section 233(2), 1972 Act, specifically authorises service by post. It also applies to notices and other documents served under the 1925 Act or any instrument affecting property (at least in relation to documents required by statute), because section 196(4) and (5) authorise service of those by post.

27. But the effect of section 7 is sometimes misunderstood, particularly as it relates to the consequences of an intended recipient proving that the relevant document was not delivered. This was explained by the Court of Appeal in *R v County of London Quarter Sessions Appeals Committee ex parte Rossi* [1956] 1 QB 682, but the three separate judgments delivered in that case (by Denning LJ, Morris LJ and Parker LJ) are not consistent with each other. In *Calladine-Smith v Saveorder Ltd* [2011] EWHC 2501 (Ch), Morgan J reviewed the subsequent authorities which have commented on and followed *Rossi* and explained that these have tended to place greatest weight on the judgment of Parker LJ, who said this, at page 700:

> "The section, it will be seen, is in two parts. The first part provides that the dispatch of the notice or other document, in the manner laid down, shall be deemed to be service thereof. The second part provides that unless the contrary is proved that service is effected on the day when in the ordinary course of post the document would be delivered. This second part, therefore, concerning delivery as it does, comes into play and only comes into play in a case where under the legislation to which the section is being applied the document has to be received by a certain time. If in such a case "the contrary is proved", i.e. that the document was not received by that time or at all, then the position appears to be that though under the first part of the section the document is deemed to have been served, it has been proved that it was not served in time."

28. This narrow interpretation of section 7 was applied by the Court of Appeal in *Rushmoor Borough Council v Reynolds* (1991) 23 HLR 495, a case concerning service of a notice under the Local Government (Miscellaneous Provisions) Act 1976 requiring a landlord to provide information. The notice was served by hand delivery to the house in multiple occupation in which the landlord was known to reside, but it was never received by him. The local authority relied on section 233 and contended that service of the notice was effective, whether or not it had reached the landlord. The landlord argued that he was entitled to prove that he had not received the notice and relied on section 7. The Court of Appeal found in favour of the local authority. As to section 7 Watkins LJ said this, at page 498:

> "[Counsel for the local authority], in my view, correctly contends that the only matter which could be contested, as is clear from section 7, by the respondent in this case had the notice been sent by post was the time at which the document was actually delivered at his premises. Otherwise, he asserts that whether the method chosen by the appellant was sending the document through the post or, as was done, by causing a servant or agent to deliver it through the letter-box, the presumption is the same by dint of sections 233 and 7, namely that service has been effected and cannot be denied; in other words, it is an irrebuttable presumption and nothing can be said to the contrary."

29. In *Bravington* the Court of Appeal relied on *Rushmoor* in support of its interpretation of section 233, as Newey LJ explained, at [41]:

> "In all the circumstances, I agree with Mr Manning that it is irrelevant when Mr Bravington became aware of the Notice. Like section 23 of the 1927 Act, section 233 of the 1972 Act is, in my view, designed to allocate the risks of a failure of communication and "to avoid disputes on issues of fact … where the true facts are likely to be unknown to the person giving the notice, and difficult for the court to ascertain". To adapt Slade LJ's words, section 233 offers a local authority "choices of mode of service which will be deemed to be valid service, even if in the event the intended recipient does not in fact receive [the notice]".

30. The effect of a local authority serving a document by ordinary post (as permitted by section 233, 1972 Act) is therefore that it is deemed to have been validly served, whether

or not it was actually received. The effect of section 7, as explained in *Rossi*, is that if some issue of timing arises it is open to the intended recipient to prove that the document was not delivered when it ought to have been or was not delivered at all.

31. The latter point may be significant in the context of the financial penalty regime, the details of which are contained in Schedule 13A, 2004 Act, because various of its provisions require that procedural steps may not be taken before, or in some cases after, a particular point in time. For example, paragraph 1 of Schedule 13A requires that, before imposing a financial penalty a local authority must give the person concerned a notice of its intention to do so, which by paragraph 2(1) must be given before the end of the period of six months beginning with the day on which the authority became sufficiently aware of the conduct it intends to penalise. If the intended recipient proves that the notice was not delivered in the ordinary course of post, although the notice may be deemed to have been given, it may not be possible for the authority to show that it was given within the permitted window (especially if it is proved that the notice was not received at all).

The FTT's decision

32. The FTT found that Mr Abdallah was a truthful and credible witness. It accepted his evidence that he had moved from Primrose Lane in June 2017 and that in 2018 (and again a year later) he had informed the Council's council tax department of his current address when providing information about changes of tenants at Gillies Street. It found that he had attempted to contact the Council's licensing department about other matters in 2017 by telephone and email but had received no response. But he had never informed the licensing department of his change of address. The FTT was also satisfied that if Mr Abdallah had been aware of the request for information, he would at all times have been in a position to comply with it by providing the necessary safety certificates and declarations.

33. The FTT then directed itself that, before it could be satisfied that Mr Abdallah had committed the offence of failing to comply with the licence conditions, it was for the Council to show that the required information had been properly demanded from him.

34. The Council's position was that by sending the original request for information to the address given by Mr Abdallah in his application for a licence, it had made the necessary demand. It also maintained that the notice of intention to impose a financial penalty had been validly served at the same address.

35. The FTT must have been unaware of the Court of Appeal's decision in *Bravington* (published a few months before the hearing) because it relied on this Tribunal's decision in *Akhtar* and directed itself that the relevant statutory provisions were section 196, 1925 Act and section 7, 1978 Act. It explained that section 196 did not apply directly because the Council's request for information had not been sent by recorded delivery or registered post. It nevertheless considered that section 7 of the 1978 Act was engaged, because the request had been sent by ordinary post. It directed itself that service would therefore be deemed to be effective when the letter containing the demand was delivered

in the ordinary course of the post unless the contrary was proved. At paragraph 73 it said that:

> "The case of *Calladine-Smith v Saveorder Ltd* [2011] EWHC 2501 (Ch) confirms that service will not be effective where an addressee can prove, on the balance of probabilities, that it has not been received in the ordinary course of the post."

36. The FTT then considered whether Mr Abdallah had proved on the balance of probabilities that he did not receive the original request for information and concluded that he had, as he had long since moved from the address to which the demand was sent. That finding enabled it to determine, at paragraph 76, that: "because the original request letter was not received, the demands which were a necessary pre-condition to any breach of the licence conditions, were not effectively communicated to Mr Abdallah and cannot be said to have been properly made". It followed that he had committed no offence and that the financial penalty should be cancelled.

37. That conclusion made it unnecessary for the FTT to consider additionally whether the same facts supplied Mr Abdallah with a "reasonable excuse" defence to the offence of failing to comply with licence conditions.

38. A little earlier in its decision the FTT had ruled out any reliance by the Council on section 233, 1972 Act. Its original treatment of that issue in the decision issued on 9 August 2023 said this:

> "Whilst it is possible that the Council might contend that the provisions contained in section 233 of the Local Government Act 1972 apply, the tribunal considers that the best view is that they do not apply to the original request letter (albeit they would apply to the notice of intent, because of the distinction between the former as the Council's own creation and the latter being a notice required under statute). In any event, it is a requirement of section 233 that a document must be posted to the *last* address known to the Council, which the tribunal considers, in this context, means the *last* address known to the Council as a whole, rather than limited to a specific department within it. The tribunal found that by the time the original request letter was sent, Mr Abdallah had reported changes of tenancy and occupation of property to the council tax department on multiple occasions when his changed address should have been properly noted even if that was not then properly translated to some or all of the Council's databases."

It can be seen that the FTT originally dismissed any reliance on section 233, 1972 Act on two separate grounds. The first was that the request for information was not required by a statute, but was a request the Council had chosen to make, while the second was that the request had not been sent to Mr Abdallah at his last known address, since the council tax department had been supplied with a more up-to-date address.

39. The Council then asked the FTT for permission to appeal and drew its attention to the decision of the Court of Appeal in *Bravington*. Having considered *Bravington* the FTT

concluded (correctly I believe) that the first of the two grounds on which it had discounted section 233 was wrong. It therefore reviewed its decision (as it was entitled to do having come to that conclusion) and deleted the first of its two reasons for dismissing reliance in section 233. Its final decision that the demand for information had not been made therefore rested solely on its conclusion that Mr Abdallah's last known address was Cheviot Close, as the council tax department was aware, and not Primrose Place, to which the demand had been sent.

The grounds of appeal

40. The Council was granted permission to appeal by this Tribunal on three separate grounds.

41. First, it is said that the FTT erred in finding that section 233, Local Government Act 1972 did not apply to the request of 15 April 2021 for the provision of information under the licence conditions. It is said that the FTT was wrong to focus on section 196 of the Law of Property Act 1925 and to place reliance on *Southwark v Akhtar*.

42. Secondly, the Council takes issue with the FTT's conclusion that Mr Abdallah's "last known address" for the purposes of section 233 was the address he had notified to the council tax department rather than the address he had given in his licence application and which he had never informed the Council's licensing team he had changed.

43. Thirdly, it is said that the FTT misinterpreted section 7 of the Interpretation Act 1978 and that for the purpose of applying section 233, 1972 Act it was irrelevant that the request had not in fact been received by Mr Abdallah.

Issue 1: Does section 233, Local Government Act 1972 apply to a local housing authority's request for information to be provided in compliance with licence conditions?

44. On behalf of the Council it was submitted by Miss Salmon that the FTT had been wrong to doubt the applicability of section 233 to requests for the provision of information to satisfy licence conditions. Section 233 applies to any document "required or authorised by or under any enactment". The whole licensing regime is authorised by the 2004 Act and the inclusion of conditions is provided for by section 90. Those conditions which require the provision, on demand, of information about the safety of electrical appliances and furniture and the condition and position of smoke and carbon monoxide alarms are required by section 90(4) and Schedule 4, 2004 Act to be included in every licence. At the very least the demands contemplated by those mandatory conditions must be regarded as communications authorised by an enactment.

45. I agree with the appellant's submissions on these points. The FTT, in its reviewed decision, also seems to have rowed back from the original basis of its treatment of section 233. I take it that, having had its attention drawn to *Bravington*, in which *Devonish* was explained, the FTT considered that a request for information required to satisfy a licence condition did not fall outside section 233 simply because the request was one which the Council had a discretion to make.

46. On examination, therefore, the first ground of appeal falls away as a result of changes made by the FTT to its own reasoning. The appeal is against the reviewed decision, which supercedes the original version. While I agree with Miss Salmon's submission that section 233 is applicable to requests for information required by licence conditions, that does not advance the Council's position significantly.

47. Miss Salmon was also critical of the FTT's reliance on section 196, 1925 Act, which she sought to persuade me was inapplicable. It is not necessary to consider those submissions, since they do not advance the appeal, but I can see no reason why section 196 could not have been relied on if the demand had been delivered by registered post. I do not accept Miss Salmon's submission that a demand for information required under a statutory licence cannot be regarded as a notice "required to be served under any instrument affecting property" within the meaning of section 196(5). Notwithstanding that it cannot be transferred, a licence under section 85, 2004 Act is obtained in respect of a Part 3 house and seems to me clearly to be an "instrument affecting property".

Issue 2: Was the demand served at Mr Abdallah's "last known address"?

48. Section 233(2), 1972 Act permits service by a local authority of any document required or authorised by or under any enactment by delivering it to the person to be served, or by leaving it or sending it to them by post, at their "proper address". Section 233(4) provides that the "proper address" of any person is their "last known address". The FTT decided this requirement was not satisfied by the demand sent to Mr Abdallah because in 2017 and 2018 the Council's council tax department had been informed of a different address from the one he had given the licensing department in his licence application in 2016.

49. Ms Salmon submitted that the FTT's conclusion was wrong, and that the only address which was relevant to the licensing department was the address given to it, which had never changed. It was not incumbent on that department to make enquiries of other departments of the Council, including the council tax department, to find out if they were aware of a different address and, if so, whether it was more recent than the one supplied to the licensing team.

50. In support of these submissions Miss Salmon referred me to a number of authorities concerning knowledge held by local councils.

51. *Oldham MBC v Tanna* [2017] EWCA Civ 50 concerned the service by a local authority of a notice under section 215 of the Town and Country Planning Act 1990 requiring steps to be taken to improve the condition of a derelict building. The authority served the owner at the address given for them in the proprietorship register for the land, which was an address at which the owner no longer lived. The planning department, by whom the enforcement notice was served, was unaware that their colleagues in another department had the owner's email address and were in communication with him on an unrelated matter. The trial judge held that the notice had not been properly served. He relied on *Collier v Williams* [2006] EWCA Civ 20, where "last known" was construed by the Court of Appeal, at [71], as including knowledge of information which could have been acquired by someone exercising reasonable diligence. The same approach

had been taken by Mitting J in *Tull, R (on the application of) v Camberwell Green Magistrates' Court & Anor* [2004] EWHC 2780 (Admin), at [18].

52. The Court of Appeal reversed the trial judge's decision and held that an address given for a landowner in the proprietorship register of the land in question was a proper address for service for the purpose of section 233, notwithstanding that another department of the Council was communicating with the owner by email. The planning department, which had served the enforcement notice, was unaware that their colleagues in another department had the owner's email address. The basis of the Court of Appeal's decision was that the address obtained from the proprietorship register was the landowner's last known address. At [28, Lewison LJ explained:

> " 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. If the person serving the notice has actually been given a more recent address than that shown in the proprietorship register as the address or place of abode of the intended recipient of the notice, then notice should be served at that address also."

53. The general rule in *Oldham v Tanna* is not of direct assistance in this case because the address at which the Council was trying to communicate with Mr Abdallah was not the address recorded as his in the proprietorship register for the Gillies Street flat. Nevertheless, Lewison LJ certainly appears to have accepted that the relevant knowledge of the person serving the notice was that of the local planning authority rather than the Council taken as a whole. But he also proceeded on the basis that it was necessary for that person to make reasonable inquiries to establish the intended recipient's address, and he did not suggest that *Collier v Williams* or *Tull* were in doubt.

54. In his judgment (with which Arden LJ agreed), Lewison LJ referred to two other authorities on which Miss Salmon also relied. The first of these was *London Borough of Newham v Ahmed* [2016] EWHC 679 (Admin) in which an enforcement notice relating to land was sent by a planning officer to the address of the registered proprietors shown at HM Land Registry. The registered proprietors did not live there, and the Council was corresponding with them at a different address on matters unconnected with the enforcement notice or the land. The Council subsequently prosecuted the owners for failing to comply with the enforcement notice, but the District Judge acquitted them on the grounds that they had not been properly served with the notice. The Council argued on appeal before the Divisional Court that the notice had been served at their last known address "as demonstrated by the fact that it was their registered address at the material time." The Divisional Court (Hamblen J, with whom Laws LJ agreed) allowed the appeal and found that the District Judge's contrary conclusion is wrong in law. In *Oldham v Tanna* Lewison LJ acknowledged that the decision contained little reasoning but said that "If anything the facts found by the District Judge (namely that Newham was

in fact corresponding with the Ahmeds at a correct current address) were stronger than the facts of our case." The Divisional Court's conclusion was reinforced by consideration of the Land Registration Rules, on which the Court of Appeal's decision was based.

55. A more substantial consideration of the relevance of knowledge held by different departments of a local authority is found in *Newham LBC v Miah* [2016] EWHC 1043 (Admin), [2016] PTSR 1082. Officers in Newham's planning department served an enforcement notice on Mr Miah, relating to a breach of planning control at a property that he owned. They served it at the address given for him in the proprietorship register for the property at HM Land Registry, but he did not live there. Newham's finance department was aware of Mr Miah's home address and used it to bill him for council tax. The magistrates found that Newham had not served the enforcement notice at Mr Miah's last known address because of the knowledge of the finance department. Cranston J reversed their decision, and in *Oldham v Tanna,* Lewison LJ agreed with him, identifying the following passage, at [21], as containing his key reasoning:

> "To my mind the statutory framework points clearly to the knowledge of the local planning department being relevant as regards service of an enforcement notice, not the Council as a whole. That knowledge comes from the proprietorship register at the Land Registry. That construction of the 1990 Act is supported by the policy context. The planning department cannot be expected to trawl through the records of the Council as a whole to see whether the registered owners of property have another address in the borough for council tax purposes, by reason of having a market stall or other licence, because they receive some sort of welfare benefit or because their children are in local authority schools. Moreover, even if the planning authority did find another address elsewhere in the Council it would not always be evident which would be the current address for the person on whom an enforcement notice is to be served."

56. Once again, *Newham v Miah* is not directly on point, because, unlike this case, it concerned a notice served at the address shown for the registered proprietor of the land in question at HM Land Registry. Nevertheless, Cranston J approached the issue both as a matter of statutory interpretation and with an eye to policy, finding that both supported his conclusion. In this case the policy considerations are the same, but the statute is different. Nevertheless, in the same way as under the Town and Country Planning Act 1990 the function of serving an enforcement notice is specifically given to "the local planning authority" rather than to the council as a whole, so too under Part 3 of the 2004 Act responsibility for selective licensing of residential accommodation is given to the "local housing authority", rather than to the council in any other capacity.

57. I therefore agree with Miss Salmon's submission that knowledge held by the council tax department is not to be imputed to the housing department when considering what was Mr Abdallah's last known address. The licensing team satisfied the requirement of due diligence by looking no further than the licence application, which gave the applicant's address at the time he made the application, and at the licence, which required that he notify the licensing team (specifically) of any change of circumstances, including a change of address. The Council was entitled to assume, in the absence of any such

notification received by the licensing team, that Mr Abdallah still lived at 6 Primrose Lane.

58. I therefore allow the appeal on the second issue. The FTT was wrong to find that Mr Abdallah had not been served at his last known address and should have found that he was under a duty to supply the information requested.

Issue 3: Is section 7 of the Interpretation Act 1978 relevant?

59. In *Bravington* the Court of Appeal held that section 233 is intended to allow a local authority "to achieve service regardless of whether the addressee receives, or even learns of, a document". The FTT, on the other hand, was satisfied that because Mr Abdallah had not in fact received the documents sent to him at Primrose Lane, service could not be deemed to have taken place. Miss Salmon submitted that the FTT was wrong.

60. Miss Salmon's submission was that once it was shown that the document had been sent to Mr Abdallah at his last known address, section 233 meant that the risk of non-receipt lay on Mr Abdallah and that section 7 was irrelevant. I think that goes too far, but it is certainly the case that the first limb of section 7 (as explained by the Court of Appeal in *Rossi*) means that (for the purpose of deciding whether service was effective) Mr Abdallah cannot be treated as never having received the documents sent to him. Although the Court of Appeal in *Bravington* was not asked to consider the effect of section 7, I do not think Morgan J's decision in *Calladine-Smith v Saveorder* can be relied on to produce a different result.

Consequences

61. I am therefore satisfied that the FTT was wrong to find that Mr Abdallah was not properly served. But that is not the end of the matter.

62. The FTT did not consider Mr Abdallah's defence of reasonable excuse. In *Tabassam v Manchester City Council* [2024] UKUT 93 (LC), the Tribunal (Judge Cooke) found that it was open to a landlord against whom a financial penalty had been levied for failing to comply with an improvement notice, to make out a defence of reasonable excuse, based on the fact that the notice, properly served at her last known address, had not come to her attention because she no longer lived there. If the same defence was made out in this case, Mr Abdallah would have committed no offence and no financial penalty could be imposed on him.

63. The facts on which Mr Abdallah relies in support of his defence are not in doubt. He was, as the FTT found, unaware of the Council's requests for information (and, incidentally, would have been able to satisfy them if he had received the request). But Mr Abdallah's position is different from that of the landlord in *Tabassam* because he was under a duty to report his change of address to the licensing team and had not done so. In *Tabassam* the Tribunal was satisfied that the landlord would not have known that the Council might use an out of date address taken from HM Land Registry. Mr Abdallah would no doubt seek to counter that distinction by referring, as he has done in his brief comments on the appeal, to his efforts to communicate with the Council by

telephone and email, all of which went unanswered. A determination of the issue of reasonable excuse is likely to be finely balanced in this case and it is not one on which I would wish to embark without giving Mr Abdallah the opportunity to state his position in person.

64. The sum at stake in this case is modest and the principles which the Council sought to establish have been vindicated. When I asked her whether the Council would like the matter to be remitted to the FTT for it to consider the defence of reasonable excuse and, if relevant, the quantum of the penalty (on which it had also refrained from making any decision), Miss Salmon was in some doubt as to what her client's preference was likely to be. She acceded to my suggestion that the Council be given some time to consider its position.

65. I therefore allow the appeal and direct that, if the Council submits a request for the matter to be remitted to the FTT within 21 days of this decision being published, it will be remitted for consideration by the same panel. If the Council indicates that it does not seek remission the parties will be taken to have agreed either that Mr Abdallah had a reasonable excuse and had committed no offence, or that, in the circumstances no penalty was appropriate.

Martin Rodger KC,
Deputy Chamber President
21 May 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.