

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)
LEASEHOLD VALUATION TRIBUNAL

Reference: RPT/0019/02/16

In the Matter of 114, Maindy Road, Cardiff, CF24 4HQ.

In the Matter of an Application under Paragraph 31 and 33 of Part 3, Schedule 5 of the Housing Act 2004.

APPLICANT Mr Jonathan McQuade.

RESPONDENT Cardiff County Council.

DECISION ON APPLICATION TO APPEAL OUT OF TIME.

1. The Applicant is the owner of 114, Maindy Road, Cardiff, CF24 4HQ, ("the property") a house in multiple occupation (HMO) for the purposes of the Housing Act 2004 ("the Act".) By a letter dated 23rd December 2015 to the Applicant, the Respondent granted a HMO licence, (also dated 23rd December 2015), in respect of the property. The licence recorded that the maximum number of occupants allowed is seven. The Applicant says that he has created an 8 bedroom house and wishes to appeal against the terms of the licence so that it may be licensed for 8 occupants.
2. Under paragraph 31(1) (b) of Part 3 of Schedule 5 of the Act, an applicant may appeal to the Residential Property Tribunal against a decision to grant the licence, and as paragraph 31(1)(b) makes clear, such an appeal may relate to any of the terms of the licence. Under paragraph 33(1), such an appeal must be made "*within the period of 28 days beginning with the date..... on which the decision was made.*" The 28 day period would therefore end on Wednesday 20th January 2016.
3. The Applicant, by letter to the tribunal dated 17th January 2016 (a Sunday) detailed some of the background to the matter and concluded by saying "I would like you to reconsider this application as a licensed eight bedroom HMO and not a seven bedroom." Although it mentioned receipt of a letter dated 23rd December 2015 stating that the house was to be classed as a 7 bedroom house, it did not contain a copy of the licence or definitive confirmation of the licence date. The letter was stamped as being received by the tribunal on Friday 22nd January 2016. Upon that date the tribunal wrote to the Applicant and sent him the appropriate application form RPT9, and said that he will need to complete it if he wished the tribunal to deal with the matter.

4. The applicant sent in a completed RPT9 form, dated 10th February 2016, and a copy of the licence and the Respondent's letter of 23rd December 2015. The RPT9 and enclosures were not received by the tribunal until 18th February 2016. By letter of 23rd February 2016 the tribunal wrote to the Applicant informing him that his application was out of time having noted that the council's licence and letter to him were dated 23rd December 2015, and sought an explanation for the submission of the application outside of the time limit.
5. Under paragraph 33(3) of Part 3 of Schedule 5 to the Act a tribunal may allow an appeal to be made to it after the end of the 28 day period *"....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)"*. The tribunal is also governed by the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 As Amended. Regulation 3 concerns the overriding objective of the tribunal. The tribunal when exercising any power under the Regulations or interpreting any Regulation must *"seek to give effect to the overriding objective of dealing fairly and justly with applications which it is to determine"*. Further guidance is given in Regulation 3(2) about dealing with an application fairly and justly and these include *"(2)(a) dealing with it in ways which are proportionate to the complexity of the issues and to the resources of the parties;*
(b) ensuring, so far as practicable, that the parties are on an equal footing procedurally and are able to participate fully in the proceedings".
6. Mr McQuade in his application to appeal out of time, explained that he had received the letter of 23rd December 2015 from Cardiff Council and that this informed him that he was to appeal to the Residential Property Tribunal which he did. His letter to the tribunal was dated 17th January 2016. He says the reason he had not sent a letter immediately after receiving the Council's letter is because after Christmas he spent and still spends a lot of his time on a West Wales housing development and was not at his full time residential address. However, he believed that his letter was still submitted within the 28 days. He then says he received a week or so later an application form from the RPT asking for this to be filled out and sent back with the payment of £150 within 28 days. He did this he believed. He states "I have not intentionally delayed any letters or responses to yourselves or Cardiff Council. I was also under the impression that I had replied within the timeframe stated above".
7. By email of 11th March 2016 Mr Steve Tudball, the Team Manager of Cardiff Housing Enforcement, objected to an appeal out of time. Mr Tudball wrote;

*"We object to an appeal out of time and that would generally be our view **in any case.** Clearly we have a high volume of HMO licences to process, with approximately 3000 awarded in Cardiff, and it's important that we are able to process these in a timely fashion, not least for the protection of any tenants.*

The matter is not as simple as Mr McQuade indicates. The property also lacks sufficient kitchen and living room space for 8, which would require an extension with planning permission to rectify. Should Mr McQuade carry out those works and increase the size of the small room, the Council could then consider an application for variation of the terms of the licence” [my emphasis/underlining].

8. In Mr Tudball’s second paragraph quoted above, he goes beyond the question of whether the appeal should be accepted out of time and deals with the substantive concerns. Accordingly, I disregard that paragraph. I note that Mr Tudball appears to be saying that the Council would generally object to any application out of time as emphasised above. If this is the case, then that is arguably an unreasonable view for the Council to take without examining the individual circumstances.

DECISION ON APPLICATION TO APPEAL OUT OF TIME

9. I note that the decision letter from the Council and the date of the licence was 23rd December 2015. Clearly this was immediately before the Christmas period when not only do postage volumes tend to be high, but it is likely (although I stress I do not have direct evidence of this fact) that the letter was not received by Mr McQuade until a few days after it was posted. Clearly there are a number of bank holidays over the Christmas and New Year period. I note however that it is the date of the licence itself from which the 28 day period runs and, as stated above, this would expire on 20th January 2016.
10. Mr McQuade’s letter to the tribunal was dated 17th January 2016 and from his subsequent application to appeal out of time, he clearly felt that he had submitted and sent the letter so that it would have arrived with the tribunal in time. As seen, his letter actually arrived on Friday 22nd January 2016, which was 2 days out of time.
11. For the purposes of this application I am prepared to treat Mr McQuade’s letter as his original appeal to the tribunal, rather than his formal application form. He is a lay person and the tribunal exists to be accessible to lay and professional persons alike. Mr McQuade clearly felt that he had done sufficient to comply with the time limits by writing to the tribunal in a letter dated 17th January 2016. He has also explained that he in any event spends a lot of time away from his home and did so immediately after Christmas which had resulted in him not sending his original letter until 17th January 2016.
12. In the circumstances and considering the overriding objective and the Regulations cited above, I am satisfied there was a good reason for the failure to appeal before the end of the 28 day period, namely 20th January 2016. I am satisfied that upon the evidence Mr McQuade sent a letter dated 17th January 2016 and had expected it to be received by the tribunal within the time period. I no longer have the original envelope that accompanied that letter and therefore am unable to consider the evidence of the actual date of posting, but in the absence of the same, it is clear that as a lay person, Mr McQuade believed that he was complying albeit late on in the period of 28 days, with the appeal period set out in the Rules.

13. Therefore, the appeal is allowed and directions will be issued for the matter to proceed to hearing in due course.

DATED this 18th day of March 2016

A handwritten signature in black ink, appearing to be 'R Payne', with a stylized flourish at the end.

Richard Payne
Vice-President.