



**DECISION OF**

Sheriff Kelly

**IN AN APPEAL  
IN THE CASE OF**

Mr Mohammed Ibrahim  
per Mr Hany Aborida

Appellant

- and -

Partick Works Limited

Respondent

FTS Case Reference: FTS/HPC/PF/23/1669

Glasgow, 23 May 2024.

**Decision**

The Upper Tribunal refuses the appeal and upholds the decision of the First Tier Tribunal for Scotland, Housing and Property Chamber dated 24 October 2023.

**Introduction**

[1] The appellant made application to the First Tier Tribunal for Scotland, Housing and Property Chamber (“FTS”) contending that the respondent had failed to comply with the Code of Conduct for Property Factors 2021. A case management discussion was assigned for 24 October



2023. In advance of this the respondent lodged written representations. Both parties were represented at the case management discussion. At the conclusion of the case management discussion the FTS dismissed the application. It issued its decision on 24 October 2023.

[2] The appellant sought permission to appeal from the FTS which granted him permission to appeal on 19 December 2023.

## **FTS Decision**

[3] The FTS provided reasons for its decision focusing upon the terms of sections 10(5) and 17 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”). The applicant could not be considered to be a homeowner. The application was dismissed as incompetent.

## **Grounds of Appeal**

[4] The note of appeal contends that the application ought not to have been dismissed as incompetent. The appellant makes reference to representations received from the respondent and communication with the FTS. The appellant makes clear that the property which is the subject of the application is a shop and asserts that “to exclude our property would be discrimination against shops...we should all be treated the same”.

## **Decision**

[5] Section 17 of the 2011 Act provides:

“(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).”



[6] Section 10(5) of the 2011 Act defines homeowner as:

“(a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or

(b) an owner of residential property adjoining or neighbouring land which is—

(i) managed or maintained by a property factor, and

(ii) available for use by the owner.”

[7] The determination of the point in issue by the FTS arises from the definition of “homeowner” provided for in section 10(5) of the 2011 Act. It is clear that the subject of the application is a shop. The appellant makes repeated reference to the premises being used as a shop. In the wealth of material submitted with the application there is nothing to suggest otherwise. In the appeal submitted on his behalf, the appellant does not identify any error of law that the FTS fell into in determining that the appellant is not a homeowner. It is abundantly clear that the premises are not used for residential purposes. The applicant not being a homeowner the FTS had no jurisdiction to entertain his application. It was correct to dismiss it.

## **Permission to Appeal**

[8] The FTS divined from the application for permission to appeal that the appellant was submitting that he should be considered to be a homeowner. With respect, that does not appear to be clear from the material submitted on his behalf. The appellant does not identify a point of law or any basis for saying why he should succeed in his appeal. The FTS in granting permission to appeal said that a point of law arose because there was a matter of statutory interpretation that the appellant was entitled to argue before the Upper Tribunal. Again with respect that is not the statutory test. As the FTS referenced, section 46(4) of the Tribunals Scotland Act 2014 has



application. Permission to appeal may only be given where the body granting permission is satisfied that there are arguable grounds for the appeal. Merely asserting a disagreement with the conclusion of the FTS and pointing to an issue is not sufficient. The appellant has not identified any basis upon which it can be said that the FTS erred in its construction of the term “homeowner”.

## **Conclusion**

[9] For these reasons, the Upper Tribunal refuses the appeal and upholds the decision of the FTS.

Member of the Upper Tribunal for Scotland

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within 30 days of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.