

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2018] UKUT 344 (LC)
Case No: RA/34/2018**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – PROCEDURE – requirement to file grounds of appeal with notice of appeal – extension of time for compliance – repeated non-compliance – rule 8(3), Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 - appeal struck out

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE
VALUATION TRIBUNAL FOR ENGLAND**

BETWEEN:

GIRAFFE CONCEPTS LTD

and

Appellant

**DAVID JACKSON
(VALUATION OFFICER)**

Respondent

**Re: Restaurant and Premises
M2/3 Western Concourse,
Kings Cross BR Station,
Euston Road,
London N1 9AL**

Martin Rodger QC, Deputy Chamber President

**Royal Courts of Justice
11 October 2018**

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The following cases are referred to in this decision:

Simpsons Malt Ltd v Jones [2017] UKUT 460 (LC)

Hammerson UK Properties plc v Gowlett (VO) [2017] UKUT 469 (LC)

Introduction

1. The Tribunal has before it this morning an application first made by email on 18 September 2018 for a further extension of time for the appellant to serve its grounds of appeal in this appeal from a decision of the Valuation Tribunal for England (“VTE”) made on 5 April 2018. By its decision on the appeal of Giraffe Concepts Ltd the VTE reduced the rateable value of premises occupied by it on the western concourse of Kings Cross Station from £223,000 to £161,000. Despite that significant reduction the appellant was dissatisfied, its case before the VTE having been that the rateable value should reduce to a little over £100,000.

The Tribunal’s procedure

2. The time limit for initiating an appeal to the Tribunal from the VTE is provided by regulation 42(3) of the Valuation Tribunal for England (Council Tax and Rating Appeals) Procedure Regulations 2009, by which an appeal may be dismissed if not made within 4 weeks of the date in which notice is given of the decision or order against which the appeal is made.

3. By rule 24(3) of the Tribunal’s own Rules a notice of appeal must include the information listed in rule 21(3) which identifies the information required to be contained in an application for permission to appeal. This information includes at (d) the grounds of appeal on which an appellant relies. In practice, since appeals from the VTE are usually determined by the Tribunal as re-hearings, the grounds of appeal in rating appeals are often referred to as a statement of case. The effect of rule 24(3) read with rule 21(3) is that a statement of case must be filed with the notice of appeal.

4. Under rule 5(3)(a) the Tribunal has a general power to extend or shorten the time for complying with any rule or practice direction and may order an extension even if an application is not made until after the time limit has expired.

5. By rule 8(3) the Tribunal is given power to strike out a party’s case. The grounds on which a case may be struck out include: failure to comply with a direction which stated that non-compliance with the direction could lead to the striking out of proceedings or part of them, and failure to cooperate with the Tribunal to such an extent that it cannot deal with the proceedings fairly and justly. Except where the proceedings have been struck out for lack of jurisdiction or under rule 8(3)(a) (non-compliance with a direction specifying strike out as the sanction), an appellant whose case has been struck out may apply for the proceedings to be reinstated by making an application in writing within 14 days of being sent notification of the strike out.

6. In *Simpsons Malt Ltd v Jones* [2017] UKUT 460 (LC) at paragraphs 13-19 the Tribunal explained the operation of the VTE’s rule 10. Those observations are equally applicable to the Tribunal’s rule 8. It is not necessary to repeat them as they should be familiar to anyone conducting proceedings in this Tribunal.

7. It is finally necessary to refer to rule 2(1) of the Tribunal's Rules, which describes the overriding objective of the rules, namely to enable the Tribunal to deal with cases fairly and justly. The Tribunal is required to give effect to this objective when exercising any power under the Rules, and parties are required by rule 2(4) to cooperate with the Tribunal to further the overriding objective. As rule 2(2)(a) explains, dealing with a case fairly and justly includes dealing with it in a way which is proportionate to its importance and complexity, the anticipated costs and the resources of the parties. It also involves avoiding unnecessary delay and requires consideration of the effect which non-compliance with directions in one case may have on the Tribunal's ability to manage and determine other cases. No case is entitled to a disproportionate share of the Tribunal's limited resources.

6. Guidance on the conduct of proceedings is provided by the Tribunals 2010 Practice Directions. The purpose of a statement of case is explained in PD 6.1(2). It is to enable the issues to be determined by the Tribunal to be identified. PD 6.2(2) draws attention to the requirement for grounds of appeal (i.e. a statement of case) to be provided with a notice of appeal. PD 6.2(3) indicates that where a notice of appeal does not contain grounds of appeal, an application must be made at the time the notice is filed for an extension of time. PD 6.2(4) indicates that where a statement of case is not provided with a notice of appeal, the Tribunal will direct that it be provided rather than refuse to admit the notice of appeal.

8. Despite the practice described in PD 6.2(4), a party which does not provide a statement of case containing its grounds of appeal with its notice of appeal is in breach of the Tribunals' Rules and must provide an explanation why an extension of time is required. As the Tribunal explained in *Hammerson UK Properties Limited v Gowlett (VO)* [2017] UKUT 469 (LC), where a notice of appeal is filed without grounds of appeal but with an explanation for their omission, the Tribunal will usually grant an extension of time. If it is not satisfied that the explanation is a good one, the time will be short. If good reasons are given the Tribunal is likely to be more generous.

The facts

8. On 9 May 2018 the appellant's agents, Gerald Eve, filed a notice of appeal with the Tribunal. It was dated and had been prepared on 26 April 2018. The notice of appeal arrived without a statement of case or any grounds of appeal being identified.

9. The appellant requested a 60 day extension of time for filing its statement of case, giving as the reason for that request:

“We requested an extension of 60 days from this appeal being registered to allow for instruction of the necessary counsel and statement of case.”

The Tribunal sought the views of the respondent valuation officer on the request for an extension of time and was informed that he had no objection. The Tribunal therefore told the parties on 19 June that time had been extended for the appellant's statement of case until 9 July 2018.

10. Mr Stoney, the partner in Gerald Eve responsible for the conduct of this matter, has candidly acknowledged this morning that, whatever might have been the intention when the request for an extension of time was made in the notice of appeal, no steps have ever been taken to instruct counsel to advise or settle a statement of case. Nor were any steps taken by Gerald Eve to prepare a statement of case within the 60 additional days allowed by the Tribunal. Instead, the a colleague of Mr Stoney sought to negotiate with the valuation officer to resolve the appeal by agreement.

11. By 3 July 2018 no agreement had been reached and a further request was made by the appellant's agent for an extension, this time until 2 October 2018. The valuation officer again acceded to that request and on 17 July 2018 the Tribunal made an order directing that the appellant must file and serve its statement of case by 2 October. The order was made without a hearing and I pause to note that it ought not to have been made. It was contrary to the practice described by the Tribunal in *Hammerson v Gowlett* at paragraph [35] that any application for a further extension of time within which to file grounds of appeal after the expiry of a first extension permitted by the Registrar is to be determined by a Judge at an oral hearing.

12. On 18 September 2018 the parties had still not reached an agreement to settle the appeal and a further request was made by Mr Stoney for an extension of time, this time until 27 November. The reason given on this occasion was that both the appellant and the valuation officer needed additional information before they could conclude their negotiations. When that application came to my attention I directed that it be listed for an oral hearing on 11 October.

13. The Tribunal's order that the application be listed for an oral hearing was made on 3 October. By that time the second extension of time for the appellant's statement of case had already expired, but no statement of case had yet been filed. The parties had continued their negotiations and on 8 October Mr Stoney informed the Tribunal that they had reached a provisional agreement to settle the appeal but that the valuation officer required approval before a consent order could be submitted. Mr Stoney therefore requested that the hearing scheduled for last Thursday should be postponed, and I acceded to that request. Thus it is that the application made on 18 September for an extension of time within which to file a statement of case for the appeal which should have arrived with the Tribunal by 9 May comes for hearing today.

The application

14. The Tribunal's order of 3 October directed that at the hearing of the application for another extension of time the appellant must "show cause why the appeal ought not to be struck out". In case that expression is unfamiliar to anyone practicing in this field I should make clear that it indicates that the Tribunal expects a proper explanation for what has happened, and that if it is not provided with one it is minded to strike the appeal out. The only prudent course to take when such an order is made is urgently to take two steps: first, to rectify the previous failure to comply with the Tribunal's order or direction by filing the document required, as soon as possible; and secondly, to prepare a full and frank explanation of why the problem occurred in the first place.

15. Mr Stoney has explained that even now no steps have been taken to prepare a statement of case in accordance with the Tribunal's requirements. Although the parties have continued to negotiate, no settlement has yet been achieved. Instead they have agreed directions for this matter to proceed to a final hearing in the middle of next year. Those directions propose that the appellant should have until 27 November to file its statement of case, i.e. a further 6 weeks to add to the 22 weeks which have already elapsed since the document should have been filed.

16. There is nothing complex in this appeal. The VTE attributed a rateable value of £161,000 to the unit at Euston Station. Mr Stoney informed me that the appellant would like a reduction of about £30,000 in that figure. There has been no suggestion that the appellant's case will be difficult to formulate. I anticipate that it will look very much like the case the appellant presented to the VTE. In those circumstances, and bearing in mind the Tribunal's observations in *Hammerson* on the requirements of a statement of case, there is absolutely no reason why a statement of case setting out the appellant's case could not have been filed with the notice of appeal on 9 May 2018. The only reason for the omission to take that essential step has been the preference of the appellant's agents to negotiate with the valuation officer rather than to comply with the Tribunal's directions. That is not an acceptable approach to compliance.

10. As the Tribunal indicated in *Hammerson v Gowlett*, once time has been extended to allow a statement of case to be filed after a notice of appeal, rather than with it, the Tribunal requires an appellant to provide a good explanation for any further extension of time. In this case there has been no explanation other than the appellant's preference to negotiate with the valuation officer rather than incur the expense of preparing a statement of case. Given the limited scope of the appeal that expense would have been modest, but the appellant was not prepared to incur it. One reason for the appellant's willingness to adopt that approach, which in light of *Hammerson v Gowlett* was a risky one, was the expectation that the appeal could be settled by agreement with the valuation officer. That is not a good reason for a delay in compliance with the Tribunal's directions.

11. The Tribunal is left in the position that it cannot yet make any progress in the determination of this appeal and has been required instead to devote time and judicial and administrative resources to considering a series of applications for extensions of time which ought never to have been necessary. The Tribunal is empowered by rule 8(3) to strike out an appeal if the appellant has failed to cooperate to such an extent that the Tribunal cannot deal with the proceedings fairly and justly. More than 5 months after the appeal was first filed no statement of case has yet been provided and none is offered for another six weeks. That represents a serious breach of the Tribunal's rules and its directions and in the absence of a good explanation, and none has been provided, the only course open to the Tribunal is, as it warned in *Hammerson v Gowlett*, to strike out the appeal.

Martin Rodger QC
Deputy Chamber President
19 October 2018

