

UPPER TRIBUNAL (LANDS CHAMBER)



**UT Neutral citation number: [2014] UKUT 0530 (LC)
UTLC Case Number: RA/67/2013**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***RATING – procedure – refusal to admit access for inspection – rule 8(3),
Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 - appeal
struck out***

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

BETWEEN

LAMBETH WALK DAY NURSERY LIMITED

Appellant

and

**MISS SAMANTHA BRAVO
(VALUATION OFFICER)**

Respondent

**Re: Longton House,
Lambeth Walk,
London SE11 6LU**

Before: Martin Rodger QC, Deputy President

**Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
17 October 2014**

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No cases are referred to in this decision.

DECISION

1. On 17 October 2014 after a hearing attended only by the respondent, I made an order striking out the appeal to the Tribunal in the matter. This decision now records the reasons for that order, the substance of which I delivered on that day in open court.
2. Lambeth Walk Day Nursery Limited, the appellant, is the proprietor of a children's nursery at Longton House, Lambeth Walk, London SE11. Longton House is a 1950's block of residential flats on the corner of Lambeth Walk and Juxon Street. The nursery occupies the ground floor of the block.
3. On 21 January 2011 the appellant submitted a proposal to the respondent valuation officer seeking a reduction in the rating assessment of the nursery in the 2010 rating list from £32,500 RV to £14,750 RV. The proposal was not accepted by the VO and was referred to the Valuation Tribunal for England (VTE) as an appeal against that refusal.
4. By its decision of 25 October 2013 the VTE dismissed the appeal and confirmed the rateable value in the list after a hearing at which the appellant was represented by Mr Miron Istrate, one of its directors. At paragraph 6 of its decision the VTE recorded that a request by the VO to inspect the interior of the nursery had been declined by the appellant.
5. On 21 November 2013 the appellant submitted a notice of an appeal to the Tribunal against the decision of the VTE.
6. On 31 January 2014 the VO applied to the Tribunal for an order requiring the appellant to permit her access to inspect the appeal premises. She referred to previous unsuccessful attempts to arrange inspection and stated that she had attended on 24 January 2014 when she was informed by Mr Istrate that any request for internal access would need to be made through the Tribunal.
7. On 10 February 2014 the Tribunal's staff wrote to the appellant at the direction of the Registrar informing him that inspection must be permitted. On 17 February Mr Istrate responded explaining that the rating assessment under appeal had been determined by the VO without any inspection of the premises having taken place. He suggested that this fact was part of the basis of his appeal and that by allowing the VO to visit the premises the Tribunal would be unfairly taking the VO's side in enabling her to "fix an error" before the hearing of the appeal. The Registrar was asked to reconsider his requirement that inspection be permitted.
8. Following the Tribunal's letter of 10 February the respondent had made further efforts to inspect but had been informed by Mr Istrate that he was abroad for 2 months and that access was not possible.
9. In light of that information the respondent answered the appellant's letter of 17 February on 8 March requiring that she be given access to inspect by the end of April 2014.

10. On 26 March the VO's solicitor wrote to the appellant requesting access for her to inspect on 16 April and asking for confirmation that that was a convenient date.

11. On 1 April the appellant wrote again to the Registrar asking that he revoke the requirement of access. He complained that the VO's efforts to inspect the premises were intimidating and disproportionate, and described her attempts to inspect on 24 January as a "safeguarding incident" as the VO had attended the nursery without an appointment. It appears that, in accordance with the VOA's standard practice, the respondent had given written notice of her wish to inspect on that date in a letter sent on 16 January to which the appellant had not replied.

12. A further attempt to arrange inspection was made by the VO on 16 April suggesting 28 April as an appropriate date. On 24 April the appellant wrote again to the Tribunal requesting that the direction for an inspection be revoked. This request was refused by the Registrar on 30 April.

13. Further correspondence ensued to the same effect until on 4 June 2014 a formal order was made by the Registrar requiring the appellant to permit inspection by 3 July and stating that if the order was not complied with the respondent may apply for the appeal to be struck out, pursuant to the Tribunal's power in rule 8(3) of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.

14. On 16 June the VO asked the appellant for the opportunity to inspect on 24 or 26 June, but no inspection took place on either of those dates as the appellant failed to respond to a series of emails from the VO's solicitor. On 14 July the VO applied to strike out the appeal, an application which the Registrar acceded to by an order of 1 August 2014.

15. On 7 August the appellant applied to revoke the order. That request was treated by the Tribunal as an application for the Registrar's decision to be considered afresh by a Judge under rule 4(3) and it was referred to me. On 5 September I made an order in the following terms:

1. The Appellant's application for reinstatement of the appeal will be considered by the Deputy President at a case management hearing to take place at 10.30 am on Friday, 17 October 2014 at the Royal Courts of Justice, Strand, London WC2A 2LL.
2. Not later than 19 September 2014 the Appellant must give notice to the Respondent of four alternative dates, two of which are to be between Monday 29 September and Friday 3 October and two of which are to be between Monday 6 October and Friday 10 October, on which the Appellant will provide access for the purpose of inspection by the Respondent and one colleague (a) to the appeal hereditament at Longton House, Lambeth Walk, London SE11 and (b) to 15 Hampton Street (if required). Such access shall be from 11 am and shall be for as long as the Respondent reasonably requires, not exceeding 2 hours in the case of either building.
3. The Respondent shall inform the Appellant of the date on which she intends to inspect the appeal hereditament and 15 Hampton Street at least 2 clear working days before the date she selects from those offered by the Appellant.

4. If the Respondent has not been granted access to the appeal hereditament and 15 Hampton Street in accordance with the directions above by 10 October 2014 it is likely that the Appellant's application for reinstatement of the appeal will be refused.

16. The Tribunal's order of 5 September was intended to provide the appellant with a final chance to cooperate with the Tribunal's clear and repeated directions that access for inspection must be permitted to the respondent. Since the making of the order no further communication has been received from Mr Istrate or any other representative of the appellant. He did not attend the hearing of his application on 17 October and I was informed by counsel for the VO that no further communication had been received from him by the respondent's solicitors since the making of the order.

17. The Lands Chamber Rules require parties to cooperate with the Tribunal generally (Rule 2(4)(b)). They give the Tribunal power to strike out the whole or part of proceedings if:

- (a) a party to the proceedings has failed to comply with a direction which stated that failure by that party to comply with the direction could lead to the striking out of the proceedings or part of them; or
- (b) the appellant, applicant or claimant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly. (Rule 8(3)(a)-(b)).

18. I am satisfied that there are clear grounds for striking out the appeal in this case.

19. Appeals to the Tribunal in rating matters are conducted as a re-hearing of the entirety of the case considered by the VTE. It is therefore necessary that both parties be in a position to present factual and expert evidence about the appeal premises. As Mr Istrate himself has pointed out, and as is often the case given the number of premises in the rating list, the original rating assessment is likely to have been compiled on the basis of information supplied by the ratepayer, and without any inspection having been undertaken by the VO. For the VO to be able to prepare a valuation of the premises and to prepare to give evidence at the appeal it is essential that she be provided with an adequate opportunity to inspect the appeal premises.

20. By consistently refusing to comply with the Tribunal's directions requiring that access be provided for the VO to inspect, the appellant has put the Tribunal in a position where it cannot deal fairly and justly with the proceedings. The Registrar's order of 4 June warned the appellant that a failure to comply could lead to the striking out of the proceedings and the order of 5 September warned that if access had not been granted by 10 October, the likelihood was that reinstatement of the appeal would be refused. The appellant has had ample warning of the consequences of non-compliance.

21. Regrettably the appellant has not appeared to support its own application for reconsideration of the order striking out the appeal or for reinstatement of the appeal. There is no reason to doubt

that the appellant was aware of the order of the Tribunal of 5 September, which was sent both by e-mail and post to the same address as all previous communications. I am therefore left with no alternative but to dismiss the appellant's application.

[Following a discussion on the question of costs the appellant was directed to pay the VO's costs to be the subject of detailed assessment.]

Martin Rodger QC
Deputy President

4 December 2014