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RESIDENTIAL PROPERTY TRIBUNAL

Case Reference: RPT/0064/01/19, RPT/0065/01/19 and RPT/0066/01/19.

In the Matters of; 93, 73 and 3 Claude Road, Roath, Cardiff.

In the matter of an Application for permission for leave to appeal to the Upper Tribunal.

Applicant/Appellant: Mr Assan Khan

Respondent: Cardiff County Council

Tribunal: Legal Chair- Richard Payne
Expert surveyor member- John Singleton
Lay member- Bill Brereton

DECISION

The application for permission to appeal is refused.

Reasons.

1. By letter dated 10th December 2019, the tribunal sent its written decision of the same date to the parties striking out the Applicant's appeals against the conditions of HMO licences granted to the Applicant by the Respondent in relation to the properties at 93, 73 and 3 Claude Road, Roath, Cardiff. By an application signed by the Appellant and dated (clearly erroneously) 27th September 2019, (received by the tribunal by e mail on 27th December 2019 when the office was shut and by hard copy on 30th December 2019), the Applicant/Appellant seeks permission to appeal against the tribunal's decision.

2. Permission to appeal will be granted if it appears to the tribunal that there are reasonable grounds for concluding that the Residential Property Tribunal ("RPT") may have been wrong for one of the following reasons as set out in the Lands Chamber of the Upper Tribunal Practice Direction 2010 (paragraph 4.2);
    a. That the decision shows that the RPT wrongly interpreted or wrongly applied the relevant law.
    b. That the decision shows that the RPT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice.

c. That the RPT took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or there was a substantial procedural defect or
d. The point or points at issue is or are of potentially wide implication.

3. Unless the application for permission specifies otherwise, the application will be treated as an application for an appeal by way of review.

Grounds for appeal

4. The Appellant submits a document headed "Application for permission to appeal to Upper Tribunal against the decision and costs". Whilst the pages are not numbered, this runs to 20 pages with a further 21 pages of exhibits, comprising 41 pages altogether. We note that the document's title incorrectly refers to the First Tier Tribunal (Property Chamber), whereas this case took place in the devolved Residential Property Tribunal for Wales. Whilst the correct title of this tribunal has been pointed out to the Appellant upon many occasions and we do so again here, we attach no importance to this mistake and, since permission to appeal was sought within the time limits we have fully considered the Appellant's application.

5. On the first page of the application document is a heading "Applicant's Grounds of Appeal" and thereafter in the 20 pages of text are 42 numbered paragraphs and many unnumbered paragraphs. Not each numbered paragraph contains a ground of appeal and the grounds have not been clearly set out. Nevertheless, we have very carefully considered the entire document and dealt with every potential or actual ground of appeal within it as set out in the following paragraphs. We have used our own numbering for the pages and the grounds of appeal for the sake of clarity.

Ground One- "the tribunal has 'errored' (sic) in law and fact by failing to allow my submissions in relation to the above proceedings."

6. The tribunal did of course allow the Appellant to make submissions in writing and orally at the hearing, but the tribunal preferred the evidence on behalf of the Respondent. It is this which the Appellant seeks to appeal against since he refers to the tribunal's finding at paragraph 78 (vi) of the decision in which the tribunal expressed the view that it preferred Miss Stickler's evidence and found on the balance of probabilities that the Appellant had not posted statements to the Council as he claimed. At paragraph number 10 on page two of his application, the Appellant states that the tribunal has erred in law and fact by accepting the evidence of Miss Stickler.

7. In paragraphs 3-9 of his application, the Appellant refers to a dispute with Miss Stickler about the supply of documents that led to a case before Cardiff Magistrates Court on 31st October 2017. He exhibits six pages of documents at pages 21-26 relating to this and says that the magistrates were very critical of Miss Stickler. We reject this ground of appeal. Firstly, the Appellant could have, but did not, produce these documents at the original hearing in July 2019 and he seeks to now introduce new evidence and arguments that were available to him at the original hearing with no explanation as to why he did not produce

them earlier. Secondly, in any event the documents and evidence that he seeks to rely upon, relate to wholly different proceedings in 2017 and are not of direct evidential value in any event to the current matters.

8. Thirdly, we reject this ground of appeal because the tribunal, as was made clear in our decision dated 10th December 2019, had the opportunity to question both Miss Stickler and the Appellant closely and in detail at the original hearing and consequently to assess the reliability of the witnesses. The tribunal, when faced with conflicting accounts and evidence is entitled to decide which account it preferred. The tribunal did so and set out in detail several examples where the Appellant's evidence lacked credibility and gave full reasons for its findings. There is nothing in the Appellant's ground of appeal on this point that has any prospect of succeeding in the Upper Tribunal and the ground does not pass any of the tests set out in paragraph 2 above. The Appellant does not set out why he considers that the tribunal was wrong in its assessment of his credibility with regard to the reasons given by the tribunal, but instead he simply baldly asserts that the tribunal was wrong to accept Miss Stickler's evidence. Mere disagreement with this tribunal's decision is insufficient to establish a proper ground of appeal.

Ground Two- "the Applicant believes that the issue regarding building regulations is a material live issue in these proceedings and require proper determination using an expert building surveyor..... the tribunal has errored in law and fact by refusing to appoint a chartered surveyor to make the determination given that it is reasonably required as well as providing weight to the respondent's representative evidence." (Paragraph 11 of the Appellant's statement.)

9. This is not a proper ground of appeal and is refused in any event since it has no prospect of success. The decision under appeal related to whether the applications appealing the conditions in the HMO licences for the Claude Road properties should be struck out on account of the Appellant's behaviour. The decision did not make a ruling on whether a chartered surveyor should be appointed as a single joint expert, although this issue had previously been decided against the Appellant.

Ground Three- "The applicant states that the tribunal has errored in law and fact by providing weight to evidence provided by the respondent's in relation to whether the property meets the building regulation given that Miss Stickler is not a qualified building surveyor appointed.

10. As above, the hearing and decision were not concerned with and made no decision upon whether the properties meet the building regulations since they dealt with whether the applications should be struck out or not. Therefore, this is not a proper ground of appeal, it has no prospect of success and it is refused.

Ground Four; "The Respondent's persistent failure to disclose the information, is infringing the Appellants case under Article 6 and article 47 of the Human Rights Act 1998, a right to a fair trial."

11. As was made clear by the background information in the decision, the Appellant had made an application for disclosure in general terms as an earlier stage in these proceedings on 26 March 2019. This was dealt with and dismissed by a decision of this tribunal of 5 April 2019. The tribunal's decision of 10 December 2019 at paragraphs 14, 15 and 16 record that the Appellant's application for disclosure was dismissed and was not appealed (see paragraph 16).

12. The decision of 10th of December 2019 thereafter referred to the Appellant's repeated applications for disclosure in the context of whether or not he had complied with the tribunal's directions orders and whether or not he was behaving in a frivolous, vexatious and unreasonable manner. The decision did not make any fresh ruling on his application for disclosure, which had been previously dealt with and not appealed. Therefore, this is not a proper ground of appeal and the information from the Appellant's numbered paragraph 12 to his numbered paragraph 13 comprising pages 4 – 7 of his application, contain information and arguments that have previously been dealt with as interlocutory matters and which were not the subject of the decision of 10 December 2019. Insofar as the Appellant purports to appeal upon this ground it is therefore refused and has no prospect of success.

13. At pages 8, 9, 10 and 11 of his application, the Appellant makes a number of detailed points about the Respondent failing to allow the Appellant an opportunity to explore options regarding "building control regularisation", retrospective building regulation approval and the "directive 2006/123/EC on services in the internal markets which deals with administrative simplification to overcome and avoid complex, lengthy uncertainty procedures of red tape." He spends two pages (10 and 11) criticising Miss Stickler and her professional qualifications. Although the Appellant periodically mentions the tribunal during these four pages there is no reference to the decision and no attempt to tie in any purported ground of appeal to the decision, let alone to set out any arguments that would satisfy the criteria before permission to appeal can be granted. Once again, for the Appellant's benefit, we point out that the tribunal did not hear evidence or make a decision upon these matters in any event.

14. On page 12 of his application, there is a heading **"Has the appellant course of conduct of submitting valid protective HMO applications, meant that tribunal no longer has jurisdiction in this regard?"**. He then, under his numbered paragraph 16 (on pages 12 and 13 of his application) advances his case that the properties are not HMOs because the historic building work would be compliant with the relevant prevailing regulations at the time of conversion. He refers to various paragraphs of a previous decision of the tribunal in relation to 152 Mackintosh Place. Again, these were not matters that were the subject of evidence or oral argument during the strike out hearing and were not the subject of the decision of 10th of December 2019 although reference was made to them as part of the background. We mention this part of the Appellant's

application for the sake of completeness notwithstanding that it contains no valid grounds for appeal.

15. There is a further heading on page 13 of the application; **"The repercussions of breach of Service Directive 2006/123/EEC and the provision of services regulations 2009/2999 implementing the Directive regarding Cardiff Council in the HMO licensing scheme?".** The Appellant then devotes several paragraphs (17 – 22 on pages 13 – 15) to this theme. None of these matters formed part of the hearing or the decision of 10 December 2019 and there is no suggestion within this part of the application of any ground for appeal. We again mention this for the sake of completeness although it is of no relevance to the application for permission to appeal.

16. The Appellant then (from paragraphs 23 – 33 on pages 15 – 19) argues that the Respondent has infringed Article 14 of the Human Rights Act 1998 by discriminating against individuals from ethnic minority backgrounds and that the Respondent had provided a defective bundle of documents. These were not subjects of the hearing or the decision of 10 December 2019 and accordingly there are no discernible grounds of appeal arising from these pages. The Appellant does say at page 16, "The tribunal is wrong by stating that I could have discuss the issues when I received the draft licence conditions." At paragraph 75 of the decision of 10th of December 2019, the tribunal recorded Miss Stickler's evidence that a 14 day consultation period is given to landlords to comment upon draft licences. The reasons for the tribunal striking out the applications are clearly set out in the decision and the Appellant's claim at page 16 that "the tribunal has errored in fact and law by stating that I failed to review the licence conditions given that the window of review is short and had closed" is not accurate. The tribunal did not make this assertion and even if it had, this is of no relevance to the issues that were under consideration with regard to compliance with directions and strike out. Although we do not accept that there is a properly arguable ground for appeal here, such purported grounds relied upon by the Appellant are refused and dismissed as having no prospect of success.

Ground Five- Costs. There should be no award of costs as each party should be responsible for their own costs. The proceedings have been consolidated in any event which has resulted in one hearing saving costs.

17. The above is the Appellant's argument upon costs. He also repeats that there should be no order for costs as he has at all material times complied with directions promptly and without any unnecessary delay. He criticises the Respondent's conduct of the case. These are all arguments that were made before the original hearing and were taken into account. The Appellant makes no attempt, other than disagreeing with the tribunal's decision, to make out an argument that the tribunal was wrong in law in its decision on costs, or that any of the other factors set out in paragraph 2 of this decision apply in this case. This ground for appeal is accordingly refused as having no prospect of success.

18. The Appellant also argues that the upfront fee of £550 that he paid the Respondent for processing his licence fee application would also cover the

tribunal costs under the provision of 'the Service Directive 2009 (SI2009 No 2999) regulation 18'. This is not an argument that he has previously made and it was not before the tribunal. It cannot therefore be said that the tribunal erred in law by failing to take into account an argument to which it was not referred. However, this latest argument in any event has no prospect of success. The tribunal is empowered to award costs under the regulations and law referred to in the original decision.

19. The Appellant also repeatedly refers to his contention that he has an important live issue that requires determination by the court. This is a submission that was included in his original arguments but is in any event the test in the civil courts relating to interim injunctive relief (as originally set out in the case of American Cyanamid Co (No 1) v Ethicon Ltd [1975] UKHL 1 (05 February 1975)) rather than the award of costs in the RPT and does not displace the factors that this tribunal was entitled to take into account when considering whether costs should be awarded. Likewise, the Appellant complains about the content of the bundles produced by the Respondent. This too was a complaint made at the original hearing, but it was then and remains now, irrelevant to the issues of the Appellant's conduct that were under consideration. The Appellant does not advance any arguments on costs that meet the tests set out in paragraph 2 of this decision that would justify permission to appeal being granted.

20. Accordingly, there are no arguable grounds of appeal that have any prospect of success contained within the Appellant's submissions and his application for permission to appeal is refused.

DATED this 10th day of January 2020

Richard Payne

CHAIRMAN