

DECISION ON AN APPLICATION TO DISMISS THE PROCEEDINGS

1. The respondent in this appeal seeks to have the appeal dismissed on the ground that the LVT's purported grant of permission to appeal was invalid.

2. The appeal arises out of an application made by the respondent leaseholder to the leasehold valuation tribunal for the London Rent Assessment Panel under section 42 of the Leasehold Reform (Housing and Urban Development) Act 1993 for a determination of the terms and the price to be paid for an extended lease. The application related to Flat 2, 10 Eaton Place, London SW1. The LVT held a hearing into the application together with a similar application relating to Flat 4, 49 Eaton Place, London SW1. An appeal in respect of that property (LRA/129/2007) has been settled.

3. The LVT's decision was dated 4 May 2007, but it was only sent to the parties on 30 May 2007. On 11 June 2007 the leaseholders in each case requested an extension of time for applying for permission to appeal, and on 12 June 2007 the appellant Estate similarly requested an extension of time. On 22 June 2007 the LVT sent a correction certificate to the parties and extended to 20 July 2007 the time for applying for permission to appeal. On 17 July the leaseholders applied for permission to appeal, and on 24 July 2007 (after the expiry, therefore, of the extended time) the Estate too applied for permission to appeal. On 8 August 2007 the LVT granted permission to appeal both to the leaseholders and to the Estate, and this was sent to the parties on 7 September 2007. It said:

“1 The Tribunal grants leave to appeal to both the Applicant and the Respondent having regard to the very unusual nature of the GEB lease which has wide application across the Grosvenor Estate.

2 The issues raised in the application involved complex questions of law and/or valuation in relation to this lease and the Tribunal considers that each party has raised arguable grounds of appeal.

3 The grounds raised by each side on the appeal appear to the Tribunal to form opposite sides of the same question namely whether the unusual nature and reduction in value of the GEB lease should be reflected in the deferment rate or in the existing lease value.

4 The Tribunal therefore concludes that it would be wrong to grant leave to one party and not the other so that notwithstanding the late receipt of an application from the Applicant leave is granted to both parties on all grounds.”

4. On 7 September 2007 the Estate gave notice of appeal, and on 17 October 2007 the leaseholder gave notice of intention to respond. The notice of intention to respond was given without prejudice to the applicant's contention that the Estate had failed to obtain a valid permission to appeal from the LVT. This contention was advanced in an application made on the same day under rule 45(2) of the Lands Tribunal Rules 1996 seeking the dismissal of the

appeal on the ground that the Estate has no permission to bring the appeal and is now out of time to obtain permission. The leaseholder has not given notice of appeal, but she reserves her right to apply to this Tribunal for an extension of time to enable her to do so if her present application to dismiss the appeal is unsuccessful.

5. The right of appeal to the Lands Tribunal from a decision of an LVT is contained in section 175 of the Commonhold and Leasehold Reform Act 2002, which provides:

“175 Appeals

- (1) A party to proceedings before a leasehold valuation tribunal may appeal to the Lands Tribunal from a decision of the leasehold valuation tribunal.
- (2) But the appeal may only be made with permission of –
 - (a) the leasehold valuation tribunal, or
 - (b) the Lands Tribunal
- (3) And it must be made within the time specified under section 3(6) of the Lands Tribunal Act 1949.”

6. Section 3(6) of the Act provides for the making of rules for regulating proceedings before the Lands Tribunal, including (paragraph (a)(ii)) provision as to the time within which any proceedings before the Tribunal are to be instituted. Under the Lands Tribunal Rules 1996 as amended, where an LVT grants permission to appeal, notice of appeal must be given within 28 days. Where the LVT has not granted permission to appeal, permission is required from the Lands Tribunal, and this is provided for by rule 5C:

“(1) A person (‘the applicant’) may only apply to the Lands Tribunal for permission to appeal if he has made application to the first-tier tribunal for such permission and that application has been refused.

(2) An application for permission to appeal must be made to the Lands Tribunal within 14 days of the date on which the decision of the first-tier tribunal to refuse permission to appeal was sent to the applicant.”

Under rule 5B(A) “first-tier tribunal” includes an LVT.

7. Provision for permission to appeal is made in the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. Regulation 20 provides:

“20 Permission to appeal

Where a party makes application to a tribunal for permission to appeal to the Lands Tribunal –

(a) The application shall be made to the tribunal within the period of 21 days starting with the date on which the document which records the reason for the decision under regulation 18 was sent to that party; and

(b) A copy of the application shall be served on every other party.”

8. Regulation 24 makes provision for the extension of time:

“24 Allowing further time

(1) In a particular case, the tribunal may extend any period prescribed by these Regulations, or prescribed by a notice given under these Regulations, within which anything is required or authorised to be done.

(2) A party may make a request to the tribunal to extend any such period but must do so before that period expires.”

9. For the respondent Mr Anthony Tanney submits that, since under regulation 20 the right of a party to seek permission is time limited, a party who is outside the time limit has the right to apply for permission to appeal only if he is granted an extension of time. The LVT can grant a valid extension on an application by a party under regulation 24(2), but there was in this case no application to extend time beyond 20 July 2007. The LVT can also extend time of its own motion under regulation 24(1), but the LVT did not act of its own motion; and, since own motion powers are tools for the efficient management of litigation, such power cannot be used to condone a failure to comply with regulation 24(2) at the request, and for the benefit, of one party. The result, Mr Tanney says, is that when the estate applied for permission to appeal it did so without any right to make the application. Nowhere in the Regulations is any power given to the LVT to confer a right to seek permission to appeal on a party that has lost the right, save by validly extending the time.

10. In purporting to grant permission to appeal to the appellant, says Mr Tanney, the LVT did not purport to extend the time limited for applying for permission to appeal. The grant of permission was therefore invalid. Alternatively, if it did purport to extend the time, it had no power to do so. On either basis the purported permission to appeal was invalid.

11. Mr Tanney submits that the approach urged on behalf of the respondent is consistent with the view expressed by the Lands Tribunal (George Bartlett QC, President, and N J Rose FRICS) in *Arrowdell Ltd v Coniston Court (Hove) Ltd* [2007] RVR 39, where at paragraph 9 it said:

“Regulation 20 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 imposes a time limit for applying to the LVT for permission to appeal against a decision made by it. Under regulation 24 the LVT has power to extend this period, but only if an application to do so is made before the period has expired.”

12. For the Estate Mr Anthony Radevsky submits that the effect of regulation 24(2) is that a party cannot make a request for an extension after the time period has elapsed. However, that does not prevent the LVT from extending the time in the exercise of its own discretion under regulation 24(1). What the Tribunal said in *Arrowdell* was obiter, and in any event it did not address the specific wording of regulation 24(1).

13. There are other reasons, Mr Radevsky submits, why the respondent's interpretation should not be followed. It would deprive a party who is a couple of days late in seeking permission of the right to appeal, even where (as here) the LVT considers that the justice of the case requires permission to be granted. The 2003 Regulations should not be construed in a way which is inconsistent with the 2002 Act, which authorised them to be made. There is nothing in the 2002 Act which permits inflexibly strict time limits to be imposed on the grant of permission to appeal.

14. In the event that these arguments of his are not successful Mr Radevsky seeks to contend further that the Lands Tribunal has no power to determine that the LVT's purported grant of permission to the Estate was invalid and of no effect. Its validity, he says, can only be challenged by judicial review.

15. I cannot accept Mr Tanney's contention that, assuming that the LVT had power to extend the time limit, it nevertheless failed to do so. In paragraph 4 of its decision granting permission to appeal it said that "notwithstanding the late receipt of an application from the Applicant leave is granted to both parties on all grounds". It could only grant permission on the application of the party concerned, and, where the application was out of time, it could only do so if the time for applying was extended. The terms in which it expressed itself in paragraph 4 make clear that the LVT was granting permission, expressly taking into account the fact that the appellant's application was out of time. Necessarily, therefore, it was by implication extending time, and it was unnecessary for it to state explicitly that it was doing so.

16. I also reject Mr Tanney's contention that the LVT has no power to extend the time for applying for permission to appeal to a party that has requested permission to appeal but after the time for applying has elapsed. Mr Tanney accepts that under regulation 24(1) the LVT has power of its own motion to extend the time for applying even though the time has elapsed. It would be extraordinary if the effect of the provisions is that it loses the power to extend the time if the party in question has applied out of time for permission to appeal. I can see no reason in justice or in terms of the scheme of the provisions why that should be the effect. Of course a party that applies for permission out of time has no right to have its application determined, so that, if the LVT, having received such an application out of time, does nothing about it, it cannot be compelled on judicial review to determine the application. But if the LVT considers in the exercise of its discretion that permission to appeal out of time should be given, in my judgment it has power to grant permission.

17. The statement by the Tribunal in *Arrowdell* that under regulation 24 the LVT has power to extend the period for applying for permission to appeal, but only if an application to do so is made before the period has expired, is in terms not correct, as both counsel in the present case agree. The matter is put correctly by saying that the LVT does have power to extend the period but a party applying to have the period extended after it has elapsed has no right to have its application determined. The reasoning of this part of the *Arrowdell* decision, which is concerned with cross-appeals in the Lands Tribunal, in my view holds good if the correction is made.

18. In view of these conclusions, the respondent's application fails. There is therefore no need to consider Mr Radevsky's alternative argument that her only remedy in any event is by judicial review.

Dated 27 March 2008

George Bartlett QC, President