

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2019] UKUT 359 (LC)

UTLC Case Number: RA/36/2019

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – PROCEDURE – APPEAL FROM DECISION TO STRIKE OUT

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

BETWEEN:

ST JOHNS SENIOR SCHOOL

Appellant

And

**DAVID JACKSON (VALUATION
OFFICER)**

Respondent

**St John Senior School
The Ridgeway
Enfield EN2 8AH**

**Upper Tribunal Judge Elizabeth Cooke
Determination on written representations**

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Introduction

1. This is an appeal from the decision of the Valuation Tribunal for England (“the VTE”) to refuse to reinstate a rating appeal in respect of St Johns Senior School, The Ridgeway, Enfield EN2 8AH, which was struck out on 21 October 2014. The appellant is represented in the appeal by Mr Andrew Bacon of JMA Chartered Surveyors, and the respondent has chosen not to participate in the appeal.
2. The facts are as follows, according to Mr Bacon. The appeal to the VTE was made on 3 February 2011, and was lodged by Eddisons who were at that date the agents for the school. It was listed for hearing on 2 July 2013. On 23 May 2013 Eddisons sought a postponement of the appeal so that facts could be agreed with a new Valuation Officer, and the appeal was re-listed for hearing on 28 November 2014. Mr Bacon has been told by the VTE that when an electronic hearing notice was sent out Eddisons replied to say that they were no longer instructed, and that a hearing notice and directions were therefore sent out by post to Mr Tardios, the headmaster of the school.
3. Mr Tardios has since died. His son, the new headmaster of the school, and the school bursar Mr Lowe, have not been able to find any paperwork relating to the appeal, nor to shed any light on the reason why no statement of case was filed by the date required in the directions. But for whatever reason, none was filed, and the appeal was automatically struck out on 21 November 2014; no request for reinstatement was made to the VTE within the one month time limit for such an application.
4. The appellant applied to the VTE for reinstatement in September 2018 (although it was asked to re-submit the application on a new form and the application was therefore recorded as received on 14 May 2019). The reason given for the application was that the appeal should not have been listed for hearing in November 2014. Instead it should have been stayed, like those of other North London schools, to await the VTE’s decision on Goodwyn School and, later, the Upper Tribunal’s decision in *Turnbull (VO) v Goodwyn School and others* [2016] UKUT 0068 (LC). The VTE refused to reinstate the appeal because, it said, other school appeals had not been stayed and because of the significant delay in applying for reinstatement.
5. On appeal to the Tribunal Mr Bacon argues that the application for reinstatement was made as soon as the full facts were known to the appellant, which took some time because Eddisons had fallen out of the picture before the death of Mr Tardios and because the late Mr Tardios himself did not appear to have kept records. The Tribunal has asked Mr Bacon to produce the directions given in 2014 and also for evidence from someone involved at the time as to the circumstances in which the appeal was struck out. He has produced the VTE’s standard directions but there is no-one able to provide first-hand evidence of what happened in 2014. Mr Bacon maintains that other school appeals were stayed to await the decision relating to Goodwyn School.

6. The VTE, in common with tribunals in general, is not governed by the Civil Procedure Rules and is not bound by the guidance given by the Court of Appeal in *Denton v TH White Limited* [2014] EWCA Civ 906; but it is well-established (*BPP Holdings v Commissioners for Her Majesty's Revenue and Customs* [2017] UKSC 55; *Simpsons Malt Limited v Jones (VO)* [2017] UKUT 460 (LC)) that tribunals should apply a similar approach to procedural non-compliance and relief against sanctions. However, the VTE in its decision of 28 June 2019, refusing to reinstate the appeal, gave no consideration to the seriousness of the breach, or to whether there was a good reason for the breach; nor did it ask itself whether, even if the breach was serious and there was no good reason for the breach, relief might nevertheless be granted.

7. In view of that it would appear that the appeal should be allowed, and that the tribunal should substitute its own decision on the basis of the material available to it. In the circumstances that material is scanty. The breach – failure to file a statement of case – was serious; but in the absence of evidence from anyone involved at the time it is not known whether there was a good reason for the breach, nor whose responsibility it was. Should relief be granted in the light of all the circumstances? The delay in applying for reinstatement was considerable, but it would appear that when Eddisons dropped out of the picture the school was left with no information about the appeal. Mr Bacon says that other rating appeals relating to private schools in North London made at around that time were stayed pending the Goodwyn School proceedings, and that such appeals are only now being heard. The respondent has not contradicted that information; if true, it means that there will be no prejudice to the respondent in the appeal being restored at this point. Moreover, the Tribunal in *Simpsons Malt* said:

“The fact that the striking out of an appeal may leave an inaccuracy in the list uncorrected is a factor which may be taken into consideration at the third stage of a *Denton* assessment.”

8. That is an important factor relevance in this case. Accordingly the appeal from the refusal to reinstate is allowed; the Tribunal substitutes its own decision, and the rating appeal is restored in the VTE.

Upper Tribunal Judge Elizabeth Cooke
19 November 2019