

DECISION AND STATEMENT OF REASONS OF NICOLA IRVINE, LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER PRESIDENT

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ("the Rules")

in connection with

60 Niddry Road, Winchburgh, West Lothian, EH52 6SA ("the Property")

Case Reference: FTS/HPC/EV/24/3901

Mr Ian McKillop (Applicant)

1. The Applicant submitted an application in terms of Rule 109 of the Rules dated 18 August 2024.

DECISION

2. The Legal Member considered the application in terms of Rule 8 of the Chamber Procedural Rules. That Rule provides:-

Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if—

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of

the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.

- 3. After consideration of the application and the documents submitted by the Applicant in support of same, the Legal Member considers that the application should be rejected on the basis that it is frivolous within the meaning of Rule 8(1)(a) of the Rules.**

Reasons for Decision

4. 'Frivolous' in the context of legal proceedings is defined by Lord Justice Bingham in *R v North West Suffolk (Mildenhall) Magistrates Court*, (1998) Env LR9. He indicated at page 16 of the judgment; *"What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic"*. It is that definition which the Legal Member has considered as the test in this application, and on consideration of this test, the Legal Member considers that this application is frivolous, misconceived and has no prospect of success.
5. On 26 August 2024, the Tribunal issued an email to the Applicant advising that further information was required. The Applicant responded by email on 1 September 2024 but not all information requested was provided.
6. The Tribunal issued a further email to the Applicant on 26 September 2024 requesting further information. The Applicant responded by email on 8 October 2024, but not all information requested was provided.
7. The Tribunal issued a further email to the Applicant on 13 November 2024 requesting further information. No response was received.
8. The Tribunal issued a further email to the Applicant on 17 January 2025

requesting further information. The Applicant responded by email on 10 February 2025, but not all information requested was provided.

9. The Tribunal issued a further email to the Applicant on 15 March 2025 requesting further information. The Applicant was advised that a response was required by 29 March 2025, otherwise the application may be rejected. No response was received.

10. The Applicant has been given several opportunities to provide the requested information but has failed to do so. The application has now been extant for 9 months and does not meet the requirements of rule 109. The application is therefore rejected.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Nicola Irvine

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Nicola Irvine
Legal Member/Chair

22 May 2025