



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,  
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**

**Land Site Reference 691857212, Feeder Pillar 2, Busby Place, Newmains,  
Wishaw, ML12 9QA ("the Property")**

**Case References: FTS/HPC/LM/22/4257, FTS/HPC/LM/22/4259,  
FTS/HPC/LM/22/4262, FTS/HPC/LM/22/4264, FTS/HPC/LM/22/4265,  
FTS/HPC/LM/22/4266, FTS/HPC/LM/22/4263, FTS/HPC/LM/22/4258,  
FTS/HPC/LM/22/4264, FTS/HPC/LM/22/4261**

**Janet Weatheritt, Fiona Garden, Emily Meek, Nicola Kyle, David Kendall, David  
McCleary, Fiona Dorrian, Kayleigh Weir, Damian Baczewski, M. Dgicwice, ("the  
Homeowners")**

**Janet Weatheritt, Representative of the Homeowners ("the Representative")**

**Hacking and Paterson ("the Property Factor")**

1. The Representative submitted ten applications to the Tribunal dated 21<sup>st</sup> November 2022 in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). One of the applications was on behalf of the Representative as an individual and the other nine applications were submitted by the Representative on behalf of other homeowners. On 13<sup>th</sup> December 2022, 11<sup>th</sup> January 2023, 14<sup>th</sup> February 2023 and 9<sup>th</sup> March 2023 the Tribunal issued a request for further information and documents to the Representative. The Representative was asked to consider whether a Form C1 should be submitted in respect of matters arising prior to 21<sup>st</sup> August 2022, to provide a

copy of the Property Factor's written statement of services, to properly complete the application forms which had been submitted, to provide evidence of notification to the Property Factor in terms of Section 17 of the 2011 Act, to address the matter of inclusion of property factor's duties in the applications, to provide written authority from the Homeowners in respect of the authority of the Representative and to provide a copy of a relevant Land Certificate or Title Sheet. No response has been received from the Representative. In the letter to the Representative dated 9<sup>th</sup> March 2023, she was advised that, if a response was not forthcoming by 23<sup>rd</sup> March 2023, the President may consider rejecting the application.

## **DECISION**

2. The Legal Member considered the application in terms of Rule 5 and Rule 43 of the Chamber Procedural Rules and Section 17 of the 2011 Act. Rule 5 provides: - (1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. "
3. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which states**

**that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” The basis of the decision is that the Applicant has failed to comply with Rule 5 and Rule 43 and Section 17 of the 2011 Act.**

## **REASONS FOR DECISION**

4. The Homeowners’ applications are in terms of Section 17 of the 2011 Act and Rule 43. Section 17 states that an application must set out “the homeowner’s reasons for considering the property factor has failed to carry out the property factor duties or, as the case may be, to comply with the section 14 duty” (Section 17(2)). Section 17(3) states that no application may be made unless the homeowner has notified the Property Factor in writing of the complaint and the property factor has refused or delayed resolving the matter. Rule 43 states, “(1) In addition to the homeowner’s reasons as required by Section 17(2) of the 2011 Act,...(2) The homeowner must attach to the application a copy of – (a) the notification from the homeowner to the property factor for the purposes of Section 17(3)(a) of the 2011 Act; (b) any response provided by or on behalf of the property factor to that notification;...(d) any statement of services provided by the property factor to the homeowner as required by the property factor code of conduct.”
5. The Homeowners have failed to provide the information and documents required by Rule 43 of the Rules and Section 17 of the 2011 Act. The Homeowners have also failed to provide this information and documentation, having been directed to do so in a request for further information by the Tribunal, in terms of Rule 5(3) of the Rules. The Legal Member therefore determines that the application cannot be accepted. The application is rejected on that basis.

### **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.

Martin J. McAllister, Legal Member  
20<sup>th</sup> April 2023