

**IN THE UPPER TRIBUNAL (LANDS CHAMBER)**



**Neutral Citation Number: [2017] UKUT 469 (LC)**

**Case No: RA/73/2017**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*RATING – Procedure – failure to file grounds of appeal with notice of appeal – extension of time granted – failure to file within permitted time after application for further extension – whether appeal to be struck out – application of Denton principles to compliance in Tribunal proceedings – application allowed*

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

**BETWEEN:**

**HAMMERSON UK PROPERTIES PLC**

**Appellant**

**- and -**

**MR GOWLETT  
(VALUATION OFFICER)**

**Respondent**

**Re: 32 retail units at the Westquay Shopping Centre,  
Southampton.**

**Martin Rodger QC, Deputy Chamber President**

**on**

**1 December 2017**

**Royal Courts of Justice**

*Mr Daniel Kolinsky QC, instructed by Eversheds Sutherland (International) LLP, for the appellant  
Mr Mark Westmoreland Smith, instructed by HM Revenue & Customs, for the Respondent*

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The following cases are referred to in this decision:

*BPP Holdings v Commissioners for Her Majesty's Revenue and Customs* [2017] 1 WLR 2945

*Denton v T H White Limited* [2014] 1 WLR 3926

*Simpsons Malt Ltd v Jones* [2017] UKUT 460 (LC)

*GPS (Great Britain) Ltd v Bird (Valuation Officer)* [2013] UKUT 527 (LC); [2014] R.A. 145

## **Introduction**

1. The application before the Tribunal is for a further extension of time for the appellant, Hammerson UK Properties PLC, to file grounds of appeal in support of an appeal from a decision of the Valuation Tribunal for England (“VTE”).

2. The determination of the application necessitates consideration of the approach to be taken by this Tribunal to non-compliance with its procedural rules, practice directions and case management orders. It therefore allows the Tribunal an opportunity to explain the relevance to its own practice of the principles considered by the Supreme Court in its recent decision in *BPP Holdings v Commissioners for Her Majesty’s Revenue and Customs* [2017] 1 WLR 2945 and by the Court of Appeal in *Denton v T H White Limited* [2014] 1 WLR 3926. The application of the same principles in connection with compliance with the VTE’s rules and practice directions has already been considered by the Tribunal in *Simpsons Malt Ltd v Jones* [2017] UKUT 0460 (LC), a decision published earlier this week.

3. At the hearing of the application the appellant was represented by Mr Daniel Kolinsky QC and the respondent by Mr Mark Westmoreland Smith. I am grateful to both of them for their assistance.

## **The relevant procedural rules**

4. Appeals to the Tribunal from the VTE are not within section 11 of the Tribunals, Courts and Enforcement Act 2007. The time limit for initiating such appeals is provided by regulation 42(3) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (“the 2009 Regulations”), by which an appeal may be dismissed if it is not made within four weeks of the date on which notice is given of the decision or order against which the appeal is made. This is a few days less than the period of one month allowed for other types of appeal by rule 24(2) of the Tribunal’s own procedural rules, the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (“the Rules”). Subject to that exception, the procedure which the Tribunal applies to the commencement and consideration of all appeals from the VTE is as prescribed by the Rules.

5. Rule 24(3) specifies that a notice of appeal must be signed and dated and must include the information listed in rule 21(3), which lists the information required to be contained in an application for permission to appeal. This information includes:

“(d) The ground of appeal on which the applicant relies.”

6. Where an appeal is brought against a decision of the VTE, a copy of its decision and a copy of the proposal or determination which was the subject of the appeal to the VTE must also be provided (rule 24(4)).

7. Under rule 5(3)(a) the Tribunal has a general power to extend or shorten the time for complying with any rule or practice direction and may order such an extension even if an application is not made until after the time limit has expired. This general power is referred to in rule 24(5) which requires that if an appellant provides a notice of appeal later than the time required, the notice of appeal must include a request for an extension of time and the reasons why the notice was not provided in time; the rule then provides that unless the Tribunal extends time under rule 5(3)(a) “the Tribunal must not admit the notice of appeal.”

8. By rule 8 the Tribunal is given power to strike out a party’s case. Rule 8(3) and the remaining sub-paragraphs are relevant to this application, and are as follows:

“(3) The Tribunal may strike out the whole or part of the proceedings if –

- (a) a party to the proceedings has failed to comply with a direction which stated that failure by that party to comply with the direction could lead to the striking out of the proceedings or part of them;
- (b) the appellant, applicant or claimant has failed to cooperate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
- (c) the Tribunal considers there is no reasonable prospect of the case of the appellant, applicant or claimant, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant, applicant or claimant an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings have not been struck out under paragraph (1) or (3)(a) the appellant, applicant or claimant may apply for the proceedings, or part of them, to be reinstated.

(6) An application made under paragraph (5) must be made in writing and received by the Tribunal within 14 days after the date on which the Tribunal sent notification of the striking out to the appellant, applicant or claimant.”

9. Rule 8 is in almost identical terms to rule 10 of the VTE’s 2009 Regulations. In *Simpsons Malt Ltd v Jones* at paragraphs 13 to 19 the Tribunal explained the operation of the VTE’s rule 10, and its observations are equally applicable to the Tribunal’s own rule 8. It is not necessary to repeat those observations but they nevertheless merit consideration by anyone conducting proceedings in the Tribunal.

10. In this case the Registrar’s order of 11 November did not contain the warning referred to in rule 8(3)(a), and the issue for Tribunal is therefore whether to exercise the power under rule 8(3)(b) because of the appellant’s repeated failure to file its grounds of appeal. For that reason the Tribunal has given the appellant the opportunity to make representations, as required by rule 8(4).

11. It is finally necessary to refer to rule 2(1) which describes the overriding objective of the Rules - to enable the Tribunal to deal with cases fairly and justly. As rule 2(2)(a) explains,

dealing with a case fairly and justly includes dealing with it in a way which is proportionate to its importance and complexity, the anticipated costs and the resources of the parties. It also involves avoiding unnecessary formality (rule 2(2)(b)) and avoiding delay, so far as compatible with proper consideration of the issues (rule 2(2)(e)). The Tribunal is required by rule 2(3) to seek to give effect to this objective when exercising any power under the Rules, or interpreting any rule or practice direction. Parties are also required by rule 2(4) to help the Tribunal to further the overriding objective, and to co-operate with it.

### **The Tribunal's Practice Direction**

12. Guidance on the conduct of proceedings is provided in the Tribunal's 2010 Practice Directions. These include section 6, which deals with "statements of case."

13. PD 6.1(1) explains that each party to an appeal must provide a statement of its case. Although it does not say so expressly, having regard to rule 24(3) (incorporating the requirement of rule 21(3) to provide an appellant's "grounds of appeal"), it is apparent that the statement of case referred to in PD 6.1(1) is not a separate document in addition to the grounds of appeal but comprises the grounds of appeal themselves. That is also reflected in the notes accompanying the standard form of notice of appeal which, under the heading "grounds of appeal", refer to the need for the appellant to set out "the grounds on which you rely ... in an attached statement of your case." In the context of an appeal, therefore, the expressions "statement of case" and "grounds of appeal" are used interchangeably.

14. The purpose of a statement of case is explained in PD 6.1(2):

"The purpose of statements of case is to enable the issues to be determined by the Tribunal to be identified. Each statement of case must therefore set out the basis of fact and of law on which the party relies. It must be in summary form but contain particulars that are sufficient to tell the other party the case that is being advanced and to enable the Tribunal to identify the issues."

The notes included in the standard form of appellant's notice for appeals from the VTE direct that the appellant's statement of case must include every valuation relied on, with particulars and computations, and full particulars of any comparable properties or transactions.

15. In view of the way in which this application has been presented it is necessary to emphasise that the purpose of a statement of case, especially a statement of case in an appeal, is "to enable the issues ... to be identified". It is not an opportunity for a party to set out the evidence on which it relies, let alone to argue the appeal, and the reference to setting out "the basis of fact and of law on which the party relies" must not be understood as a requirement, invitation or permission to do so. As the same paragraph emphasises, a statement of case must be in summary form. The detail required is such only as is sufficient to enable the other party to understand the case that is being advanced against it and to enable the Tribunal to identify the issues.

16. PD 6.2(2) draws attention to the requirement, in an appeal, for the appellant's grounds of appeal to be provided with the notice of appeal. PD 6.2(3) and (4) contemplate circumstances in which this requirement is not complied with, and indicate the approach which the Tribunal will adopt in that event:

“(3) Where any notice of appeal or respondent's notice does not contain or provide a statement of case that complies with the requirements in paragraph 6.1(2), application must be made at the time the notice or respondent's notice is provided for an extension of time for providing the statement of case.

(4) Where the Tribunal is of the view that any notice or respondent's notice does not contain or provide a statement of case that complies with the requirements of paragraph 6.1(2) it will order that a statement of case will be provided.

(5) A party that considers that another party has failed to provide a statement of case that complies with the requirements of paragraph 6.1(2) may apply to the Tribunal for an order that such statement of case be provided, and the Tribunal will decide whether or not that should be made.”

17. PD 6.2(4) indicates that where a statement of case is not provided with a notice of appeal the Tribunal will direct that it be provided, rather than refuse to admit the notice of appeal. Nevertheless, a party which does not provide a statement of its case containing its grounds of appeal with the notice of appeal is in breach of the Tribunal's Rules and must provide an explanation why an extension of time is required. The provision of reasons is a specific requirement of rule 24(5) where the notice of appeal itself is provided later than required by rule 24(2). If grounds of appeal are regarded as an indispensable component of a compliant notice of appeal, rule 24(5) applies as much to those grounds as to the rest of the notice. Even if the notice of appeal and the grounds of appeal are considered to be distinct, without the provision of reasons for the appellant's failure to file its grounds of appeal, the Tribunal will have no material on which to base the exercise of its discretion under rule 5(3)(a) when it is asked to extend time for complying with rule 24(3). The expectation of clemency created by PD 6.2(4) does not dispense with the requirement for the Tribunal to exercise its discretion, nor with the need for an appellant to supply the material necessary for that exercise.

18. Where a notice of appeal is filed without grounds of appeal but with an explanation for that omission, the Tribunal will be minded to grant an extension of time. If the Tribunal is not satisfied that the explanation is a good one the period of time which the Tribunal will allow is likely to be short. If good reasons are given the extension of time permitted is likely to be more generous. However, every extension of time within which to provide grounds of appeal will take into account certain important considerations.

19. The first is that an appellant (especially one which has been professionally represented throughout) should be fully informed of the subject matter of the dispute and will already have presented its case to the VTE. As the standard form of notice of appeal makes clear, the indispensable minimum to be contained in grounds of appeal is the appellant's valuation and

particulars of the comparables on which it is based. That material should have been in the appellant's possession, at the very latest, by the time it presented its case to the VTE.

20. Secondly, since appeals from the VTE are conducted by this Tribunal as re-hearings, the appellant's case will ordinarily be substantially the same case as it has already presented to that tribunal, rather than one which depends on an analysis of errors said to have been made by it.

21. Thirdly, the time allowed by the 2009 Regulations for an appellant to provide its notice of appeal is twenty eight days; that may be taken to reflect the time reasonably required, in most cases, to prepare a compliant notice, which will include grounds of appeal sufficient for the purpose described in PD 6.1(2).

22. Fourthly, as I have already explained, the purpose of the grounds of appeal, as with any statement of case, is to identify the issues and to set out in summary form the basis of fact and of law on which the appellant relies; its purpose is not to set before the Tribunal in minute detail all of the facts which may be relevant, let alone all of the evidence which may be required to prove those facts, nor to provide a detailed legal argument.

23. Fifthly, the detail required of grounds of appeal, and therefore the time reasonably needed to provide them, may take into account the twin safeguards provided by PD 6.2(4) and (5). If either the Tribunal or another party considers that the grounds of appeal do not sufficiently identify the basis of the appellant's case, so that it can be properly understood, further directions can be given. Given that the dispute will already have been the subject of a hearing before the VTE, which will have given a reasoned decision explaining why it did not accept the appellant's case, the need for such a direction is likely to arise infrequently.

## **The facts**

24. The background to the application can be summarised briefly.

25. The appeal itself concerns proposals made by the appellant on 28 July 2015 to reduce the rateable values of 32 retail units at the Westquay Shopping Centre in Southampton. The proposed reductions were said to be justified by a material change in circumstances which had occurred in May 2013 when the Whiteley Shopping Centre opened on the outskirts of Fareham and Southampton. The appellant's case was that this had adversely affected the trade, and thus the value, of the less prominent units in the Westquay Centre.

26. The proposals were not accepted by the Valuation Officer who referred them as appeals to the VTE. The appeals were considered at a hearing on 25 August 2017, at which the appellant was represented by Mr Simon Griffin of GL Hearn. He presented evidence in support of a reduction in rateable value of 35% on the basis that the appeal hereditaments could not compete with the new shopping centre. In support of that contention Mr Griffin relied on trade figures and

details of recent lettings which were said to show a fall in the value of units at Westquay. The Valuation Officer resisted the appeals on the grounds that the evidence showed no consistent pattern of decline and no real evidence had been produced of trade prior to the opening of the new centre to enable a comparison and assessment of any impact it may have had.

27. On 20 September 2017 the VTE published a decision in which it accepted the Valuation Officer's case and dismissed the appeals.

28. On 17 October 2017, within the period of four weeks allowed by regulation 42(3) of the 2009 Regulations, a notice of appeal to this Tribunal was filed on behalf of the appellants by their solicitors, Eversheds Sutherland (International) LLP.

29. The standard form of notice of appeal provided by the Tribunal informs an appellant of the need to attach the grounds of appeal on which the appellant intends to rely. Immediately following that information is a section of the notice of appeal headed "Time Limits". This allows an appellant to apply for an extension of time for filing the notice of appeal itself and requires that reasons for any such application be provided.

30. In its notice of appeal the appellant requested an extension of time of 60 days within which to provide its grounds of appeal, explaining:

"The complexities of the arguments and the sums involved mean the appellant requires this additional time to properly prepare its statement of case in circumstances where counsel will likely need to be instructed."

No further explanation of the suggested complexities of the arguments was supplied in support of this request. A copy of the VTE's decision was provided which demonstrated that the arguments deployed before it had been relatively straightforward. The notice of appeal also stated that the appellant wished to call only one expert witness, Mr Griffin, and suggested that the appeal be dealt with under the Tribunal's standard procedure. The standard procedure is appropriate where the issues of fact, law or valuation are not simple, but nor are they so complex or of such general importance as to merit the closer case management afforded by the special procedure. The impression created by the information in the notice of appeal was therefore that the appeal was unremarkable.

31. On 11 November the Registrar considered the request for an extension of time and directed the appellant to file and serve its grounds of appeal by 17 November. Thus, in addition to the four weeks allowed by regulation 42(3), the appellant was allowed a further month. The Registrar's direction was received by the appellant's solicitors on 13 November, which allowed a full working week before the expiry of the permitted time on the following Friday, 17 November.



## **The application**

32. On 15 November the appellant's solicitors wrote to the Tribunal requesting a further extension until 15 December. The only explanation given for the request was a repeat of the grounds originally used to support the request for 60 days, namely:

“This extra time is needed for the appellant to properly prepare its case in light of the complexities and value of this case. The appellant has also not yet had the opportunity to instruct counsel and anticipates doing so to assist with the preparation of its case.”

33. Once again, no insight into the alleged complexities or even the value of the appeal was allowed by this statement. Nor was it explained why the appellant had not yet “had the opportunity to instruct counsel”, almost two months after the VTE's decision and more than two years after the proposal.

34. Although not acknowledged in the application, the effect of the proposed extension would be to allow the full 60 days originally requested in the notice of appeal, which the Registrar had declined to grant. No request was made for the Registrar's decision to be considered afresh by a Judge under rule 4(3) of the Rules, nor was it suggested that the decision had been wrong.

35. It is the Tribunal's current practice that an application for a *further* extension of time to file grounds of appeal, where one has already been allowed by the Registrar, is referred to a Judge to be considered at an oral hearing. On 23 November I therefore directed that the application be considered at a hearing on 1 December at which the appellant would be required to explain why the appeal should not be struck out.

## **The principles applicable to extensions of time for compliance with procedural rules and directions and relief against sanctions in the event of default**

36. The appellant provided its notice of appeal within the time permitted by regulation 42(3) but has so far failed to provide the grounds of appeal required by rule 24(3). It is not a case where the notice of appeal ought not to have been admitted under rule 24(5) since the Registrar's order of 11 November extended time for compliance. This case is therefore concerned with an appeal which has been admitted for consideration but which is nevertheless defective for want of grounds of appeal, and where the appellant has failed to comply with the Tribunal's direction that those grounds be supplied within a specified time. In principle, the approach which the Tribunal should take in such a case ought to be the same as it will take to an application to grant a second extension of time for a notice of appeal to be filed.

37. In *Simpsons Malt Ltd v Jones* the Tribunal has discussed at some length the modern emphasis in civil litigation and tribunal proceedings on the importance of compliance with rules, directions and orders and on the need, in the interests of the parties and in the wider public interest, for disputes to be resolved efficiently and at proportionate cost. Beginning with the courts, and there based on rule 3.9(1) of the Civil Procedure Rules, a stricter, more systematic

approach to the consequences of non-compliance has evolved. The hallmark of that approach, as explained by the Court of Appeal in *Denton v TH White Ltd* [2014] 1 WLR 3926, is the enforcement of compliance by the imposition of appropriate sanctions for default, from which relief is available only after consideration of the causes and consequences of the relevant default.

38. It is now clear that the same approach is available to tribunals which possess a greater degree of procedural autonomy, as the Supreme Court has explained in *BPP Holdings v Commissioners for Her Majesty's Revenue and Customs* [2017] 1 WLR 2945, [2017] UKSC 55 (an appeal in proceedings which commenced in the First-tier Tribunal (Tax Chamber)). There is nothing in the expectation of compliance which is inconsistent with the distinctive culture or overriding objectives of tribunals, including this Tribunal. At paragraph [24] of *BPP*, Lord Neuberger PSC described decisions of the courts on the application of the Civil Procedure Rules as providing “a salutary reminder as to the importance that is now attached in all courts and tribunals throughout the UK to observing rules in contentious proceedings generally.” Those decisions were directed to, and only strictly applicable to, the courts of England and Wales, “save to the extent that the approach in those cases is adopted by the UT, or, even more, by the Court of Appeal when giving guidance to the Ft-T.”

39. When the *BPP* proceedings were before the Court of Appeal ([2016] 1 WLR 1915), the Senior President of Tribunals, Lord Justice Ryder, lent his authority to the application of the *Denton* jurisprudence to tribunals, saying this (at [37]) concerning the application of the general legal policy it exemplified:

“As to that policy, I can detect no justification for a more relaxed approach to compliance with rules and directions in the tribunals and while I might commend the Civil Procedure Rules Committee for setting out the policy in such clear terms, it need hardly be said that the terms of the overriding objective in the tribunal rules likewise incorporate proportionality, cost and timeliness. It should not need to be said that a tribunal's orders, rules and practice directions are to be complied with in like manner to a court's. If it needs to be said, I have now said it.”

40. The civil courts approach the imposition of sanctions and the grant of relief from sanctions by adopting the three stage approach recommended by the Court of Appeal in *Denton*. Following *BPP* it is now to be expected that the Tribunal will do the same. The Tribunal may not follow the approach developed by the courts in every respect, and will respond to applications in specific circumstances as they arise. But the principle that the Tribunal's orders are to be complied with in like manner to any court's has been definitively established and requires that the Tribunal have regard to the manner in which the courts achieve that compliance in developing its own consistent approach.

41. For the purpose of this application it is not necessary to consider the *Denton* approach in detail. The Tribunal has already done so in *Simpsons Malt*, which directly concerned relief against sanctions. This application is not for relief against sanction, but is for a further extension of time for compliance. It is also relevant that the Tribunal's original direction extending time for

the filing of grounds of appeal to 11 November did not indicate that a sanction would be applied in the event of non-compliance and, as a result, rule 8(3)(a) is not applicable. Finally, it is significant, as Mr Kolinsky QC emphasised, that the application in this case for a further extension of time was made before the period allowed by the Registrar had expired. As a result, the degree of disobedience to the Tribunal's order is less acute, and the need for a sanction to be imposed less immediate, than if time had been allowed to expire before the appellant sought further time to comply.

42. It is nevertheless convenient to refer in summary form to the three stage approach to sanctions for non-compliance (and by analogy, to applications for extension of time to remedy non-compliance) which the Court of Appeal has laid down in *Denton*.

43. The first stage of the *Denton* guidance requires the court to assess the seriousness or significance of the breach. If, after considering its effect on the particular litigation and on litigation generally, a judge concludes that a breach is not serious or significant, relief from sanctions will usually be granted.

44. If the breach is serious or significant, the second stage requires consideration of why the failure or default occurred. The person in default has a burden to persuade the court to grant relief and must therefore explain what happened and why. If there is a good reason, such as illness or accident, relief against sanctions is likely to be granted, but merely overlooking a deadline, for whatever reason, is unlikely to be a good reason.

45. Even where there is no good reason for default, an application for relief against sanction is not inevitably doomed to failure, because at the third stage the court must consider all the circumstances of the case, to enable it to deal justly with the application. At this stage particular weight is given to be given to the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with the court's rules, directions and orders. In looking at all the circumstances, the court may take into account the promptness of the application for relief against sanction and any other past or current breaches by the parties.

46. Finally, both the Court of Appeal in *Denton*, and the Supreme Court in *BPP*, have warned against an unduly draconian approach to relief and emphasised that there must be a limit to the permissible harshness of sanctions. Compliance is not an end in itself and adherence to rules must not be allowed to assume a greater importance than doing justice in any case.

### **This case**

47. The application for a further extension of time in this case was supported by a witness statement by Mr Griffin, in which he explained that he has substantial knowledge of the hereditaments concerned in the appeal and of the appeals themselves. He summarised the basis of the application in this way:

“The value, complexity and importance of the appeal has meant that the appellant has spent a considerable time collating the evidence necessary and formulating its valuation and legal arguments in order to present a persuasive and considered statement of case.”

48. Mr Griffin informed the Tribunal that both he and the appellant were conscious “that refined arguments could be raised in any appeal to the Upper Tribunal.” He had therefore begun investigating information necessary to support an appeal after the decision of the Valuation Tribunal was published on 20 September. Those investigations and compilation of evidence were said to be ongoing “as the amount of data is voluminous” and included a detailed analysis of footfall, trade data and general economic factors not just in Southampton but in other retail centres across the UK.

49. Mr Griffin also said that the appellant required legal support to manage the appeal and assess its merits. Its solicitors were therefore appointed on 12 October, five days before the notice of appeal was due to be filed, and leading counsel had later been instructed to advise on the appeal (although not, it transpired at the hearing, until after the Tribunal’s order directing that the appellant show cause why the appeal should not be struck out). The purpose of this involvement was said to be “the potential identification of new arguments and the formulation of the basis of the appeal... [and] ... to test the evidence presented at Valuation Tribunal and consider whether further evidence is available to augment its case.”

50. In originally requesting a further 60 days to file grounds of appeal the appellant had taken into account “the level of detail necessary to present its statement of case comprehensively”. Mr Griffin explained that the appellant wished to adduce empirical evidence to demonstrate the economic effect of the opening of the new Whiteley Shopping Centre on Westquay; this evidence may include sensitive sales data, footfall analysis and customer surveys produced by the landlords or tenants of the appeal properties on whose cooperation the appellant is dependent. All of this material was said to be “necessary” to enable the appeal to be dealt with justly.

51. Mr Griffin also points out that the consent of the Valuation Officer was obtained to the request of 15 November for a further extension of time to 15 December.

52. In his submissions in support of the application Mr Kolinsky QC suggested that the appellant’s case before the VTE had failed to engage with the significance of the Tribunal’s decision in *GPS (Great Britain) Ltd v Bird (Valuation Officer)* [2013] UKUT 527 (LC) and that a reassessment had been required by its advisers of the scope of the evidence needed to justify a reduction in rateable value on the grounds of a material change in circumstances. That appreciation, coupled with a desire to present its case in as comprehensive a manner as possible in its grounds of appeal explained the inability of the appellant to furnish those grounds with its notice of appeal. Mr Kolinsky also pointed out that PD 6.2(3) contemplated that such difficulties might sometimes be faced by an appellant and indicated that a request for an extension of time could expect to receive favourable consideration. The Tribunal’s decision to allow an extension of a month, rather than the 60 days requested, had been communicated to the appellant only five

working days before that month expired, by which time the appellant was still not in a position to provide the comprehensive grounds of appeal it considered would be most helpful to the Tribunal.

53. Mr Westmoreland Smith confirmed that the Valuation Officer was content to support the appellant's request for a further two weeks within which to file its grounds of appeal.

54. I indicated at the conclusion of the parties' submissions that I would permit the appellant the additional time it requested and require it to serve its grounds of appeal by 15 December. In view of the position taken by the Valuation Officer I can explain my reasons briefly.

55. The appellant filed its notice of appeal in time and applied for an extension of time for its grounds of appeal. In light of the practice reflected in PD 6.2(3) and in the standard notice of appeal the failure to provide grounds of appeal with the notice of appeal, although a breach of rule 24(3), cannot be regarded as being especially serious.

56. The breach of the Tribunal's direction on 11 November for the provision of a notice of appeal by 17 November is more serious, but is mitigated by three factors. The first is that by the time the decision was communicated to the appellant the additional period allowed was short (although, having supplied no proper explanation for its request, the appellant had no good reason to expect the extension of 60 days it had originally requested). The second is that the appellant made its request for a further extension promptly, and before the time for compliance with the Tribunal's order had elapsed. The third is that the appeal is still at an early stage, and the practical consequences of the breach of the order of 11 November are not serious.

57. I have no reason to doubt the appellant's explanation for its failure to provide its grounds of appeal within the permitted, and then extended, time. I accept that its reason was that it was not yet in a position to provide the comprehensive statement of its case, with the benefit of further research commissioned after the VTE's decision, which its advisers considered necessary. Nevertheless, despite the persuasive submissions of Mr Kolinsky QC, I do not accept that the appellant's reason for delay was a good one. The appellant's case has not changed, and remains a relatively simple one, namely, that the value of units at Westquay has fallen since, and as a result of, the opening of the rival shopping centre. Only the appellant's appreciation of the evidence which may be required to establish that case has changed, despite the passage of time since the change of circumstances on which it relies. But it is not necessary to the preparation of the appellant's grounds of appeal that all of the evidence in support of its case be referred to, nor is it appropriate for the preparation of the grounds of appeal to await investigations which may or may not support that case.

58. The surveys and inquiries described by Mr Griffin in his witness statement are very extensive and, as he explained, they depend to a considerable extent on the cooperation of third parties over whom the appellant does not have control. It therefore remains a matter of speculation whether those investigations will bear the fruit that the appellant hopes for at all, or in sufficient time to enable the appellant to meet its suggested deadline of 15 December. But

whether they do or not, an appellant's desire to present its case in as favourable a light as possible is secondary to its obligation to state its grounds of appeal. I therefore do not accept that the appellant's failure to comply with the Tribunal's order of 11 November was for a good reason.

59. Despite this conclusion, and largely for the reasons I have already indicated at paragraph 56 above, this is not a case in which the imposition of a severe sanction would be justified. The appellant has not disregarded the Tribunal's order entirely, but has sought an extension before the expiry of the permitted time. The application has been supported by a full explanation of the appellant's reasons for delay, which indicates that the appellant's intention has been to prepare a document which it considers will assist the Tribunal, and the Valuation Officer, fully to understand its case. The appropriate order is to require the appellant to file its grounds of appeal by 15 December, failing which its notice of appeal may then be struck out.

60. It was emphasised by Mr Kolinsky QC in his submissions that, in practice, the commencement of an appeal to this Tribunal from a decision of the VTE is often an occasion on which an appellant and its advisers will take stock of its position and consider how it may be improved. The additional costs of an appeal to the Tribunal, and the risks associated with moving from the no-costs environment of the VTE to a jurisdiction where cost shifting applies also sharpen the attention which is brought to bear by an appellant on its own case which may be modified as a result. I do not accept that the desire to refine or enhance an appellant's case is a reason for delaying the submission of its grounds of appeal but, equally, I appreciate the importance of both the Tribunal and the respondent being made aware, at an early stage, of the case which the appellant wishes to advance, especially if it is materially different from the case presented at the VTE.

61. Where an appellant anticipates that its case will be significantly different from its case below, and wishes to be allowed additional time to file grounds of appeal, or to amend grounds supplied with its notice of appeal, it should make that clear to the Tribunal when filing its notice of appeal. It should also request that the appeal be assigned to the special procedure, which is likely to result in a case management hearing at which the issues can be discussed and an appropriate procedural timetable can be considered by the Tribunal. The Tribunal may, in such a case, direct that the appellant file its evidence first, rather than simultaneously with the respondent.

Martin Rodger QC  
Deputy Chamber President  
6 December 2017