

Case Name: *Giraffe Concepts Ltd v David Jackson (VO)* [2018] UKUT 0344 (LC) (11 October 2018)

Topic: A failure to state grounds of appeal to the Upper Tribunal pursuant to Rule 24(3) (either with the notice of appeal or later) coupled with no explanation of the failure can be expected to lead to the case being struck out. A strike out was ordered in this case despite efforts having been focused on settling the dispute.

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Summary: The ratepayer requested the VTE to postpone the hearing date due to holiday commitments, but the tribunal declined to consider the request until a statement of case had been lodged. The VTE subsequently dismissed the appeal, when no statement had been filed by the original hearing date. The consolidated practice statement required exceptional reasons to prevent dismissal, which had not been established. The Upper Tribunal found that the VTE ought to have considered if a lesser sanction was appropriate and proper consideration should have been given to the postponement application. The case was remitted to the VTE for further consideration.

Commentary: This Upper Tribunal case concerned an application for a further extension of time for the filing of a statement of case setting out the grounds for an appeal against a decision of the VTE to reduce the RV of a Giraffe restaurant at King's Cross Station (where the appellant was seeking on appeal a larger reduction than the VTE had been prepared to agree).

Rule 24(3) of the Tribunal's Rules provides that a notice of appeal must state the grounds of appeal, which is often referred to as a statement of case (as appeals from the VTE are usually determined by the UT as re-hearings). The Tribunal has power to grant extensions of time, but also has the power to strike out a party's case.

The UT made reference to its decision in *Simpsons Malt Ltd v Jones* [2017] UKUT 460 (LC) and, in particular, paragraphs 13-19 explaining the operation of the VTE's rule 10 (power to strike out). Those comments are equally applicable to the UT's Rule 8 (the corresponding strike out provisions). The UT also referred to the overriding objective of its Rules, namely to enable the Tribunal to deal with cases fairly and justly.

The Tribunal's 2010 Practice Directions govern procedural aspects. PD 6.1(2) provides that a statement of case must set out the basis of fact and of law on which the party relies. Under PD 6.2(3) if no statement is provided with the notice of appeal the appellant must apply for an extension of time and under PD 6.2 (4) the Tribunal will direct that a statement be provided if it does not accompany the notice of appeal. A party who does not provide a statement of case with its notice of appeal is in breach of the Tribunal's Rules and must provide an explanation as to why an extension is required – the Tribunal will normally grant an extension if requested to do so.

A notice of appeal was filed on 9 May 2018 without a statement of case or any grounds of appeal, but with a request for a 60-day extension. That request was granted, to allow time for counsel to be instructed. In the event, no steps were taken to instruct counsel but

attempts were made to resolve the issue by agreement with the VO. Shortly before the extension expired, a request was made for a further extension of 90 days, which was granted (but without an oral hearing for confirmation of the need for a further extension, which was itself contrary to the practice of the Tribunal as referred to in *Hammerson UK Properties Limited v Gowlett (VO)* [2017] UKUT 469 (LC)).

Some three weeks before expiry of the further extension no agreement had been reached with the VO and a third application for an extension (until 27 November) was made on 18 September, to allow additional information to be obtained by both parties to enable negotiations to be concluded. An oral hearing for 11 October was ordered by the Tribunal. On 8 October the surveyor informed the Tribunal that agreement had been reached to settle the appeal, provisional upon the VO receiving approval within the higher levels of the VOA.

The appellant's rating surveyor explained at the hearing on 11 October that his firm's efforts had been focused on settling the matter by agreement and that draft directions had been agreed with the VO allowing further time for filing the statement of case, making 28 weeks in all since the notice of appeal was filed.

The Tribunal was highly critical of the failure to comply with the Rules and Practice Directions and the lack of an explanation for the failure to file a statement of case. It therefore took the decision to strike out the appeal, as foreshadowed in *Hammerson*.

This case gives a clear signal to appellants and their advisers that they disregard the Upper Tribunal's Rules and Practice Direction at their peril.