[2020] UT 35
UTS/AP/19/0048

DECISION NOTICE OF SHERIFF MILLER

ON AN APPLICATION FOR PERMISSION TO APPEAL (DECISION OF UPPER TRIBUNAL FOR SCOTLAND)

in the case of

MR JOHN GARRETT, 553 Mosspark Drive, Mosspark, Glasgow, G52 1QP

Appellant

and

YOUR PLACE PROPERTY MANAGEMENT LIMITED, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL

Respondent

FTT Case Reference FTS/HPC/PF/19/0680

19 August 2020

Decision

The Upper Tribunal for Scotland, having considered the reasons why the applicant seeks the permission of the Upper Tribunal to appeal to the Court of Session the decision of the Upper Tribunal dated 24 June 2020 as those reasons are contained in his Application to the Upper Tribunal for Permission to Appeal a Decision of the UtT" dated 24 July 2020, Determines that the applicant has been unable to identify a point of law as required by section 48(2)(b) of the 2014 Act and therefore Refuses to grant him permission to appeal to the Court of Session.

Introduction

[1] The applicant seeks the permission of the Upper Tribunal to appeal the decision of the Upper Tribunal dated 24 June 2020 (the UT decision) to the Court of Session. He has done that in writing in a document headed "Application to Upper Tribunal Permission to Appeal a Decision of the UtT" dated 24 July 2020 (the Application).

Grounds of appeal

[2] The grounds of his request for permission are contained in the Application.

Discussion

[3] The right of appeal from the UT to the Court of Session was created and is governed by section 48 of the Tribunals (Scotland) Act 2014. That section provides:

> "(1) A decision of the Upper Tribunal in any matter in a case before the Tribunal may be appealed to the Court of Session.
>
> (2) An appeal under this section is to be made—
> (a) by a party in the case,
> (b) on a point of law only.
>
> (3) An appeal under this section requires the permission of—
> (a) the Upper Tribunal, or
> (b) if the Upper Tribunal refuses its permission, the Court of Session.
>
> (4) Such permission may be given in relation to an appeal under this section only if the Upper Tribunal or (as the case may be) the Court of Session is satisfied that there are arguable grounds for the appeal.
>
> (5) This section—
> (a) is subject to sections 43(4) and 55(2),
> (b) does not apply in relation to an excluded decision."

Subsection (5) does not apply to the Application.

[4] The right of appeal to the Court of Session is characterised by section 50 of the 2014 Act as a "second appeal": section 50(7). That section provides, so far as relevant to the Application, that:

> (1) Section 48(4) is subject to subsections (3) and (4) as regards a second appeal.
>
> (3) For the purpose of subsection (1), the Upper Tribunal … may not give its permission to the making of a second appeal unless also satisfied that subsection (4) applies.
>
> (4) This subsection applies where, in relation to the matter in question—
>
> (a) a second appeal would raise an important point of principle or practice, or
>
> (b) there is some other compelling reason for allowing a second appeal to proceed.

[5] The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 (the 2016 Regulations) give effect to these statutory provisions. Rule 32 sets out what an applicant must do when seeking permission to appeal. It provides:

> (1) A party seeking permission to appeal must make a written application to the Upper Tribunal.
>
> (2) An application under paragraph (1) must—
>
> (a) identify the decision of the Upper Tribunal to which it relates;
>
> (b) identify the alleged error or errors of law in the decision; and
>
> (c) state in terms of section 50(4) of the 2014 Act what important point of principle or practice would be raised by a second appeal or what other compelling reason there is that shows the appeal should be allowed to proceed.

[6] The applicant has complied with section 48(2)(a) of the 2014 Act and Rule 32(1) and 32(2)(a) of the 2016 Regulations. The question for determination is whether he has complied with sections 48(2)(b) and (4) and 50(3) and (4) of the 2014 Act as expressed in Rule 32(2)(b) and (c) of the 2016 Regulations.

[7] In reaching my decision on that question I have had regard to the UT decision and the Application.

[8] The Application presents the applicant's reasons for seeking permission to appeal in extensive detail over 27 pages and 146 paragraphs. He sets out his position throughout under reference to paragraphs of the UT decision and does so by adopting and following its paragraph numbers consecutively starting at paragraph [17]. He has something to say about all its subsequent paragraphs with the exception of paragraphs 18, 19, 22 to 26, 28, 32, 33, 35, 39, 48, 50, 55, 71 and 72.

[9] The applicant seeks permission to challenge practically the entire grounds on which the UT decision determined that the information presented by the appellant in support of his application did not justify the UT in granting him permission to appeal the FtT decision to the UT and accordingly refused to grant him permission to appeal. It includes the UT's decision on whether the FtT had fallen into errors of law, had entertained the wrong issue and had reached a decision on facts that was so unreasonable that no reasonable tribunal, aware of the law and the whole facts and circumstances of the case before it and acting reasonably thereon, could have reached or imposed it. In the course of doing that he seeks to bring under review the UT decision on the following sections of the Code of Conduct for Property Factors: 1A, 1B, 2.1, 2.2, 2.4, 2.5, 3.3, 4.1, 4.2, 4.9, 5.4, 5.6, 5.7, 6.3, 6.4, 6.9 and 7.1.

[10] By starting at paragraph [17] he indicates that two important matters are not in dispute. The first is that he does not seek permission to appeal against those parts of the UT

decision that determined the first three issues set out in its paragraph [5]. His comments at paragraphs 142 and 144 of the Application do not amount to a challenge to the determination of the first and third issue respectively. His appeal is concerned with the determination of the fourth, the dismissal of his application to the Upper Tribunal on the ground that he had been unable to identify a point of law as required by section 46(2)(b) of the 2014 Act. The second is that he does not take issue with the documents that the UT used to reach its decision as listed in paragraph [16] and must therefore be taken to accept that the UT made use of the correct documentation. This is reinforced by the applicant taking no issue with the statement in paragraph [18] of the UT decision that "His final statement of his position on the appeal is contained in the Note of Appeal." His comment at paragraph 145 of the Application does not raise any question about that use or that statement.

[11] For all the paragraphs of the UT decision that the Application does have something to say about, the content of all consists of assertion, comment and observation, sometimes extensive and discursive, and expressions of his personal opinion. None of these raises or amounts to an error of law, either individually or collectively.

[12] In some of the paragraphs he uses phrases that echo some of the criteria that must be applied when determining whether to grant permission to appeal to the UT and which are discussed at paragraphs [20] to [22] of the UT decision. For example, he refers to the FtT:

- failing to have regard to material evidence (paragraphs 5 and 12);
- failing to take into account relevant and material considerations which it ought to have taken into account (12b and 12d);
- misdirecting itself in law (12c);
- making an arguable material error of law by proceeding upon a misapprehension or misconstruction of the evidence (42 and 54);

- reaching a decision so extravagant that no reasonable tribunal properly directing itself in law could have arrived at, making the decision "ultra vires" (61);
- having no factual basis to support its decision (68);
- exercising its discretion on the basis of irrelevant factors (69);
- taking into account matters which were irrelevant to its decision (96);
- entertaining the wrong issue (99).

None of these usages is attended by facts, circumstances or inferences that could support the conclusion that any raises or amounts to an error of law, either individually or collectively.

Conclusion

[13] For the foregoing reasons I have concluded that I must answer the question in the negative because the application does not comply with Rule 32(2)(b) of the 2016 Regulations in respect that it does not identify the alleged error or errors of law in the UT decision and therefore fails to comply with section 48(2)(b) of the 2014 Act. It follows that it cannot comply with section 48(4) and section 50(3) and (4) of the 2014 Act or with Rule 32(2)(c).

[14] I determine that the applicant has been unable to identify a point of law as required by section 48(2)(b) of the 2014 Act and therefore refuse to grant him permission to appeal to the Court of Session.