



**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

**11 Kelvinside Terrace South, Glasgow, G20 6DW
("the Property")**

**Land at 5-9 Kelvinside Terrace West, Glasgow G20 6DW
("the Land")**

Case Reference: FTS/HPC/pf/22/1569

Ms Jennifer Wicks ("the Applicant")

Redpath Bruce ("the Property Factor")

1. The Applicant submitted an application received by the Tribunal on 20th April 2022 in terms of Section 17 of the Property Factor (Scotland) Act 2011 ("the 2011 Act"). On 25th July 2022 the Tribunal issued a request for further information and documents to the Applicant. The Applicant was asked to provide information on the location and boundaries of the Land and clarification on whether she was a homeowner in terms of Section 10(5) of the 2011 Act. The Applicant was asked to provide information on why the Land was available for use by the Applicant as it did not seem to be included in Section A of the Land Certificate GLA137596. No response was received. On 9th August 2022 the Tribunal issued a further letter directing the Applicant to provide a response to the request. No response has been received to either of the letters.

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 of the Rules and has failed to demonstrate that she is a homeowner in terms of Section 10(5) of the 2011 Act.**

REASONS FOR DECISION

4. The Applicant’s application is in terms of Section 17 of the 2011 Act and Rule 43. Section 10 (5) of the 201 Act defines a homeowner:

- (a) An owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or
 - (b) An owner of residential property adjoining or neighbouring land which is-
 - (i) managed or maintained by a property factor, and
 - (ii) Available for use by the owner.
5. The Applicant has failed to demonstrate that she is a homeowner as defined in the 2011 Act.
 6. The Applicant has failed to provide the information and documents required by the Tribunal. She has 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
1st September 2022