# UPPER TRIBUNAL (LANDS CHAMBER)

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**UTLC Case Number: LRX/136/2014**

## TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***PARK HOMES – procedure – Mobile Homes (Site Rules) (England) Regulations 2014 – time limit under regulation 10(1) expressed as being "Within 21 days of receipt of the consultation response document …" – appeal to F-tT brought within this time limit – regulation 10(3) also referring to this time limit – proper construction of this time limit (when does the 21 day period start?) – whether regulation 10(3) satisfied within this time limit – consequences if regulation 10(3) not satisfied***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**

**BETWEEN** **KATHRINE EMMA O'KANE** **Appellant**

**and**

**CHARLES SIMPSON ORGANISATION LIMITED** **Respondent**

**Re: Westfield & Willows Park Home Site,**
**Cane Lane, Grove,**
**Wantage,**
**Oxfordshire OX12 OAE**

**Before: His Honour Judge Nicholas Huskinson**

**Sitting at: Upper Tribunal (Lands Chamber), Royal Court of Justice,**
**Strand, London WC2A 2LL**
**on**
**23 June 2015**

*Neil Wylie,* instructed by Barcan + Kirby Solicitors on behalf of the appellant
*John Clement*, instructed by Charles Simpson Organisation Limited on behalf of the respondent

The following case is referred to in this decision:

*Mucelli v Government of Albania* [2009] UKHL 2

The following further cases were referred to in the respondent's skeleton argument:

*Chadwick v Burling* [2015] EWHC 1610

*Nata v Lee* [2014] EWCA Civ 1652

*Speedwell Estates Ltd v Dalziel* [2001] EWCA Civ 1277

## DECISION

### Introduction

1. This is an appeal from the decision of the First-tier Tribunal Property Chamber (Residential Property) (hereafter "the F-tT") dated 6 October 2014 whereby the F-tT dismissed an appeal by the appellant to the F-tT made under the Mobile Homes (Site Rules) (England) Regulations 2014 regulation 10(1), being an appeal brought by the appellant in respect of proposed site rules which the respondent, as owner of the relevant protected site, proposed to introduce pursuant to those 2014 Regulations.

2. The appellant's appeal was dismissed not after consideration of the merits but upon a procedural point. This led the F-tT to deal with the appeal under rule 31(4) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which permit the F-tT to strike out a case without a hearing provided adequate notice has been given. In the present case such notice had been given because, by a letter dated 10 September 2014 from the F-tT to the appellant the F-tT stated:

> "I have been asked to write to you by our Regional Judge. It seems that you did not give the site owner notice of your application to this Tribunal within the 21 day period as you are required to do by the relevant regulations and as was set out in the response to the initial consultation document.
>
> In those circumstances, it seems to Judge Edgington that your application has no chance of succeeding and this letter is to give you formal notice of the Tribunal's intention to dismiss your application. This letter is being sent to all parties and if anyone wants to make any representations, they should do so before 4.00pm on the 30 September 2014."

3. Accordingly, although the F-tT's decision does not expressly state this, it appears that the appellant's appeal to the F-tT was struck out under rule 31(4) together with rule 9(3)(e), namely on the basis that the F-tT considered that there was no reasonable prospect of the appellant's proceedings or case, or part of it succeeding. The reason for the F-tT reaching this conclusion was that, although the appellant had made her appeal to the F-tT within the relevant time limit within regulation 10(1) of 2014 Regulations, the appellant had failed to comply with regulation 10(3) in that she had failed within the relevant 21 day period to notify the respondent of her appeal and serve the relevant papers upon the respondent.

### The Facts

4. The appellant is the occupier of a park home at The Willows and Westfield Mobile Home Park, Cane Lane, Grove, Wantage, Oxfordshire, OX12 OAE ("the site"). The site is owned by the respondent. The site is a protected site for the purposes of the Mobile

Homes Act 1983 and, in particular, the Mobile Homes (Site Rules) (England) Regulations 2014.

5. The 2014 Regulations make provision for the procedure whereby the owner of a protected site can introduce new rules to apply to the site. It is not necessary to examine all of the provisions. In summary rule 7 requires an owner to consult every occupier (and any qualifying resident's association) on a proposal to make vary or delete a site rule. Rule 8 requires the owner to do this by notifying each consultee by issuing a proposal notice which must set out various matters. A period of consultation must be given. Within 21 days of the end of the relevant consultation period the owner is required, by rule 9, after taking account of any representations received, to make a decision as to whether to implement the proposal (with or without modification) and to send a document to each consultee. This document is called the "consultation response document" and it must notify each consultee of the decision and of certain other matters. It is to be in the form set out in schedule 2 or in a form substantially to the like effect.

6. Regulation 10 is entitled "Right to appeal to tribunal in relation to the owner's decision". Paragraph (2) of regulation 10 sets out the potential grounds of appeal and this provision is not presently relevant. Paragraphs (1) and (3) provide as follows:

> "(1) Within 21 days of receipt of the consultation response document a consultee may appeal to a tribunal on one or more of the grounds specified in paragraph (2).
>
> (3) Where a consultee makes an appeal under this regulation, the consultee must notify the owner of the appeal in writing [and provide the owner with a copy of the application made] within the 21 day period referred to in paragraph (1) above."

The wording in square brackets has been revoked by the Mobile Homes (Site Rules) (England) (Amendment) Regulations 2014, but this revocation only applied as from 19 December 2014. Accordingly at all times material to the events in the present case rule 10(3) was in force in the form set out above.

7. In the present case the respondent, as owner of the site, did notify each relevant consultee, including the appellant, by a proposal notice of the owner's proposals in relation to the rules applicable to the site. The proposal notice gave a consultation period. The owner received responses by way of consultation. The owner considered these responses.

8. The owner then, having reached a decision, sent the relevant consultation response document to each consultee, including the appellant. It is not suggested that the consultation response document was in anything other than an appropriate form or that it failed to give the relevant information. The consultation response document contained information notifying the appellant of the right of appeal within 21 days and stating, *inter alia*:

> "You must notify us of an appeal made to the Tribunal within 21 days of receipt of this consultation document."

9. The consultation response document was hand delivered to the appellant prior to 4.30pm on 25 July 2014. The document was therefore deemed to be served on the appellant on 25 July 2015, see regulation 3(2).

10. The appellant appealed to the F-tT under rule 10(1). Her appeal document was dated 29 July 2014 and was received by the F-tT on 1 August 2014. The F-tT noted that the appeal was sent on the wrong form (because the wrong form had been sent by the F-tT to the appellant) but the F-tT observed that that was of no consequence. It has not been suggested by the respondent that there is any relevance in the fact that the appellant made her appeal to the F-tT on the wrong form.

11. The appellant did not herself notify the respondent of her appeal in writing or provide the respondent with a copy of her application document (i.e. her application by way of appeal to the F-tT) within the 21 day period referred to in regulation 10(3).

12. The F-tT itself, having received the appellant's appeal documents, sent out documents to the appellant and to the respondent. The factual position is summarised in paragraph 10 of the respondent's skeleton argument which so far as concerns the facts (rather than the respondent's argument) records that on 15 August 2014 the respondent received a letter from the F-tT informing it of the application and enclosing a copy of the appellant's application notice. Accordingly on 15 August 2014 the respondent was in possession of the information and the documents to which it was entitled under regulation 10(3). However it is the respondent's case that these documents (a) arrived too late (by one day) and (b) were sent by the wrong person (namely the F-tT rather than the appellant).

13. By a letter to the F-tT dated 20 August 2014 the respondent's solicitors wrote to the F-tT (with a copy to the appellant) drawing attention to the provisions of rule 10(3) and stating:

> "Therefore, in order for an application to the Tribunal under Regulation 10 to be able to proceed, the applicant must take both of the steps required by paragraph 10(3) within the specified 21 day period. The wording of the Regulations is clear, in that these steps are mandatory. If the steps are not taken, then the application cannot proceed.
>
> In relation to the present application, the Consultation Response Document and supporting paperwork was delivered to the Applicant by the Respondent by being hand delivered to her home before 4.30pm on Friday 25 July 2014, and therefore under Regulation 3(2) are deemed to have been served on her that day.
>
> Consequently, the deadline for the Applicant to comply with Regulation 10(3) expired at 11.59pm on Thursday 14 August 2014, being 21 days from the date of delivery of the Consultation Response Document.

> However, the Applicant failed to serve either written notice of the appeal, or to provide the Respondent with a copy of the application made, at any time prior to the expiry of the statutory deadline, and consequently the application is invalid.
>
> There is nothing in the Regulations, the Mobile Homes Act or elsewhere which permits the Tribunal to exclude or vary the procedure specified in the Regulations, or to extend the prescribed time limit, or to dispense with the requirement of service altogether.
>
> The Respondent avers that in light of the matters set out above the Tribunal has no power to entertain the present application. We should therefore be grateful if you would refer this letter to the Tribunal Judge as soon as possible, with a request that the application be dismissed."

14. As a consequence of this letter the F-tT wrote to the appellant in the terms of the letter of 10 September 2014 set out in paragraph 2 above.

15. The appellant responded to the F-tT broadly to the effect that she had been told by a caseworker at the F-tT that she did not need to do anything beyond delivering her appeal documents to the F-tT.

**The F-tT's Decision**

16. By its decision dated 6 October 2014 the F-tT observed that the regulations are strict about time limits. The F-tT referred to regulation 10(3). The F-tT in paragraph 8 stated:

> "On 24 July 2014, the site owner sent out the consultation response document in the prescribed form including the warning about sending a notice of any appeal to the Tribunal within 21 days."

It is puzzling why there is this reference to 24 July when it was the respondent's own case that the respondent had served the consultation response document on 25 July 2014, see paragraph 13 above.

17. In its conclusions the F-tT stated as follows in paragraphs 14, 15 and 16:

> "14. The Tribunal carefully considered the Applicant's comments. She acknowledged that she had not given notice to the Respondent in time and, as is clear from the regulations, the time limit is strict. The Tribunal has no power to allow an extension of time, even if it wanted to.
>
> 15. The fact that the wrong application form was sent to the Applicant in error by the Tribunal is not relevant. The form was accepted as a valid application. The problem in this case is that the Applicant did not heed the warning she was given that notice of the application must have been given to the Respondent within the 21 days. It wasn't and this application must therefore be dismissed.

> 16. Rule 31(4) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a Tribunal to strike out a case without a hearing provided adequate notice has been given which, in this case, it has."

18. The F-tT then went on to refer to the appellant's allegations about what she said she had understood from the F-tT's caseworker. The F-tT concluded that this matter could not assist the appellant. The F-tT observed that:

> "All the caseworker said, which was exactly the case, was that the Tribunal would send a copy of the application to the Respondent."

19. The Ft-T dismissed the appellant's appeal under rule 31(4) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which provides that the F-tT may dispose of proceedings without a hearing under rule 9 (striking out of party's case). This is what the F-tT did.

20. Permission to appeal to the Upper Tribunal was granted by the Deputy President on 5 January 2015 and the following observations, *inter alia*, were added:

> "1. The issue raised by this appeal is whether, when an appeal has been lodged with the appropriate tribunal within the 21 days required by regulation 10(1) of the Mobile Homes (Site Rules) (England) Regulations 2014, the tribunal has no jurisdiction to determine the appeal unless the owner of the site has been notified of the appeal in writing and provided with a copy within the same 21 day period in accordance with regulation 10(3).
>
> 2. It is arguable, with a realistic prospect of success, that an omission to inform the owner of the appeal and to provide a copy, within the period of 21 days stipulated by regulation 10(1) is a procedural defect which is capable of being rectified and compliance with which is not essential to the justiciability of the appeal."

**The appellant's submissions**

21. In summary, on behalf of the appellant Mr Wylie advanced the following submissions:

1. The respondent was in fact notified of the appellant's appeal and was provided with the relevant documentation, as required by regulation 10(3), on 15 August 2014 which was in time rather than being 24 hours too late.

2. It is true that the documentation was provided to the respondent by the F-tT rather than by the appellant herself, but that is of no significance. The respondent had all the necessary information and documentation within the relevant time limit.

3. In any event, while the time limit in regulation 10(1) for the making of an appeal to the F-tT may be mandatory in the sense that failure to comply with it prevents an appeal being valid, a failure to comply with the provisions of regulation 10(3) does not result in an otherwise valid appeal becoming invalid. No sanction is provided by the regulations for a failure to comply with regulation 10(3).

4. This is in contrast with certain other provisions of the legislation, in particular schedule 1 paragraphs 7B and 8B of the Mobile Homes Act 1983 as amended, which do make express provision for the consequence of failing to notify another party of an application to the F-tT.

22. As regards the question of whether the relevant information and documentation was actually all received by the respondent in time, by reason of being in the hands of the respondent by 15 August 2014, Mr Wylie referred to the Civil Procedure Rules rule 2.8 and to the provision that a period of time expressed as a number of days shall be computed as clear days and that clear days means that in computing the number of days "the day on which the period begins" is not included. I drew attention to Halsbury's Laws of England 5th Edition vol. 97 at para 336 which appears under a heading reading "Period in which an act must be done." Paragraph 336 commences in the following terms:

> "**336. Exclusion of first day**. The general rule in cases in which a period is fixed within which a person must act or take the consequences is that the day of the act or event from which the period runs should not be counted against him."

23. The 21 day period referred to in rule 10 is expressed in the following terms:

> "Within 21 days of receipt of the consultation response document …"

The consultation response document was received by the appellant on 25 July 2015. The relevant 21 day period therefore started with 26 July and ended with (and including) 15 August 2014. Accordingly the respondent had been served with the relevant information and documentation within the time limit. The fact that it came from the F-tT rather than from the appellant cannot be relevant.

24. Even if there has in the present case been a failure to comply with regulation 10(3) by reason of the documentation arriving from the wrong sender (i.e. from the F-tT rather than the appellant) or by reason of the documentation arriving one day late (if the respondent's argument to this effect were accepted) this does not matter. The time limit in regulation 10(1) for making an appeal to the F-tT is, Mr Wylie accepted, mandatory. However in the present case the appellant did make a valid appeal within that 21 day period. It was in fact made on 1 August 2014. Accordingly as from 1 August 2014 there was a valid appeal before the F-tT. The provisions of regulation 10(3) cannot be read as providing that a valid appeal is to cease to be valid and effectively to disappear if subsequently there is failure to comply strictly with regulation 10(3).

25. The Mobile Homes Act 1983 section 4(1) provides:

"4(1). In relation to a protected site, a tribunal has jurisdiction –

(a) to determine any question arising under this Act or any agreement to which it applies; and

(b) to entertain any proceedings brought under this Act or any such agreement"

The statute itself therefore confers jurisdiction upon the F-tT to determine an appeal brought by the occupier of a site under regulation 10(1) provided that the appeal is brought within the time limit in regulation 10(1), which it was in the present case. Express words would be needed to remove that jurisdiction by reason of some failure, subsequent to the making of a valid appeal, to serve some information or documents upon the site owner. It is of significance that an express provision of this nature is made in the Mobile Homes Act 1983 as amended schedule 1 paras. 7B and 8B. These deal with the procedure where an occupier wishes to sell the mobile home or to make a gift of the mobile home. Paragraph 7B provides that the occupier is entitled to sell the mobile home and assign the agreement without the approval of the owner if the occupier serves a notice of proposed sale and either the first or second condition is satisfied. Paragraphs (2) (3) and (4) then provide as follows:

"(2) The first condition is that, within the period of 21 days beginning with the date on which the owner received the notice of proposed sale ("the 21-day period"), the occupier does not receive a notice from the owner that the owner has applied to a tribunal for an order preventing the occupier from selling the mobile home, and assigning the agreement, to the proposed occupier (a "refusal order").

(3) The second condition is that –

(a) within the 21-day period –

(i) the owner applies to a tribunal for a refusal order, and

(ii) the occupier receives a notice of the application from the owner, and

(b) the tribunal rejects the application.

(4) If the owner applies to a tribunal for a refusal order within the 21-day period but the occupier does not receive notice of the application from the owner within that period –

(a) the application is to be treated as not having been made, and

(b) the first condition is accordingly to be treated as satisfied."

26. Mr Wylie drew attention to paragraph 7B(4) which expressly provides that if the occupier does not receive notice of the application to the F-tT from the owner within the 21 day period then the owner's application to the F-tT is to be treated as not having been made (with the result that the first condition is to be treated as satisfied). If it had been

intended to have a similar consequence by reason of a failure by an occupier to serve notice of the application (and copy documents) upon the site owner under regulation 10(3) within the 21 day period then such a provision could indeed have been made. However no such consequence has been laid down in the 2014 Regulations for failure to comply with regulation 10(3). This omission supports the appellant's argument that a failure to comply with regulation 10(3) is procedural only and does not deprive the F-tT of jurisdiction to entertain the appellant's appeal under regulation 10(1) and deal with it upon its merits.

**The respondent's submissions**

27. In summary Mr Clement advanced the following arguments on behalf of the respondent:

> 1. The respondent only received the relevant information and documents on 15 August 2014. This was outside the 21 day time limit. The period of 21 days should be calculated by including 25 July (which was the date on which the consultation response document was received by the appellant) as the first day of the 21 day period.
>
> 2. In any event the appellant did not herself comply with regulation 10(3). She cannot rely upon the fact that the F-tT happened to send the relevant information and documentation to the respondent.
>
> 3. There was therefore a failure to comply with regulation 10(3). The time limits are strict.
>
> 4. There is no power to extend time under the 2014 Regulations. This is in contrast to the power to extend time under paragraph 17(9A) of schedule 1 to the Mobile Homes Act 1983 as amended (which is concerned with the review of pitch fees).
>
> 5. The fact that time limits were strict and the fact that notification of an owner under regulation 10(3) was strictly required was confirmed by the provisions of regulation 12(2). The regulations make provision for the deposit by the owner of site rules after the consultation and decision procedures have been undertaken. A time limit is imposed for the deposit of these rules, but provision is made for suspending this time limit where an appeal has been made to the F-tT. The relevant provisions of this suspension provision are in regulation 12(2):
>
> > "(2) Where an owner has received notification of an appeal to the tribunal in accordance with regulation 10, the owner shall not make a deposit until the appeal has been disposed of, determined or abandoned."
>
> It was submitted that this confirmed the importance of strict compliance with regulation 10(3).

28. As regards the proper calculation of the 21 day period Mr Clement observed that the respondent had not understood it previously to be argued that documentation had

arrived with the respondent in time. However upon the merits of the point he submitted that time should be calculated by treating 25 July 2014 as the first day of the 21 day period. I drew attention to the wording of paragraph 7B(2) of the first schedule to the 1983 Act (see paragraph 25 above) which makes reference to a time limit of 21 days in the following terms:

> "… within the period of 21 days beginning with the date on which ….".

Mr Clement agreed that if this phraseology was used then the day on which the relevant event occurred would be included as the first day of the 21 day period because of the expression "beginning with the date on which". He submitted that the legislation and statutory instruments thereunder should be construed together and that in consequence a similar result should be reached under regulation 10 as is correct under schedule 1 paragraph 7B, namely the day of the event itself should be included.

29. Mr Clement submitted that even if the respondent received within the relevant time limit all of the relevant documentation and information, there was nonetheless a fatal failure to comply with the strict provisions of regulation 10(3), because the information and documentation had not been provided by the appellant herself.

30. On the basis that the information and documentation were given one day too late (as contended for by him), Mr Clement argued that there was no relevant power under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to extend a time limit within a statute or a statutory instrument. He referred to *Mucelli v Government of Albania* [2009] UKHL 2 . He submitted that in effect the F-tT (and now the Upper Tribunal on appeal) was being invited to extend time for compliance with regulation 10(3).

31. Mr Clement submitted that it was significant that within the same legislative code regarding mobile homes there was an express time under paragraph 17(9A) of schedule 1 to the Mobile Homes Act 1983 as amended to extend time for a particular step (concerned with the review of the pitch fee) but was no such provision in respect of the time limits under the 2014 Regulations.

32. The 2014 Regulations set out a carefully constructed code and time table pursuant to which new site rules would become deposited with a local authority and become operable. The proper working of the scheme of these regulations would be undermined if an appeal under regulation 10 was able to proceed as a valid appeal despite the omission properly to comply with regulation 10(3) by way of notifying the site owner.

**Discussion**

33. The general rule for measuring a period of time within which a person must take some action is as stated in paragraph 336 of Halsbury's Laws as set out in paragraph 22 above. This is long and well established.

34. The consultation response document was received by the appellant on 25 July 2014. Accordingly the requirement under regulation 10 that an appeal could be brought "within 21 days of receipt of the consultation response document" involves a consideration of what is meant by "within 21 days of 25 July 2014". The answer, absent any contrary indication, is that the 21 day period begins with the first moment of 26 July and will therefore end with the last moment of 15 August.

35. There is nothing in the 2014 Regulations to indicate that a different method of calculating the period should be adopted. I notice that a different phraseology is used in paragraph 7B(2) of the first schedule of the Mobile Homes Act 1983 as amended which refers to a period of 21 days "beginning with the date on which …..". However it is notable that this expression is not used in regulation 10. I am unable to accept Mr Clement's suggestion that in order to obtain consistency regarding calculation of time periods throughout the legislation concerning mobile homes, the time period in regulation 10 should be calculated in the same way as contemplated in paragraph 7B(2) of the first schedule, such that the day of the event itself is the first day of the 21 day period. The fact that different wording is used points against (rather than towards, as suggested by Mr Clement) the same basis of calculation being used in the two provisions.

36. Accordingly within the relevant 21 day period the respondents had been notified in writing of the appeal and had received the relevant documentation required under regulation 10(3). In my judgment it cannot matter that this information and documentation was sent not by the appellant personally but by the F-tT. This is especially so in a case where the appellant had been told by a caseworker at the F-tT that the F-tT would send a copy of the application to the respondent. In such circumstances the F-tT is not acting as agent for an appellant. Also if an appellant omits herself to comply with regulation 10(3) then she is taking the chance that the relevant information and documentation may not be sent by the F-tT to the site owner within the relevant time period. However if an appellant does leave it to the F-tT to serve the documents and if in fact the F-tT does serve the documents such that the respondent is in possession of all the relevant information and documents within the relevant 21 day period, an appellant can in my judgment take advantage of the fact that this has fortuitously occurred.

37. For the foregoing reason alone I consider that this present appeal must be allowed. The respondent had all the relevant information and documentation within the relevant time period. In support of the F-tT I should observe that the argument was not presented to it in this manner.

38. However quite apart from the foregoing I conclude that the appeal must be allowed for the following reasons.

39. I am prepared to assume for the purposes of the present case (and Mr Wylie did not submit otherwise) that the time limit in regulation 10(1) for the making of an appeal to the F-tT is a strict time limit under the regulations in respect of which there is no

power to extend time. However in the present case the appeal was made comfortably within that period.

40. Accordingly from the date when the appeal was made, in the present case 1 August 2014, there was before the F-tT a validly made appeal. Upon the time limits as contended for by the respondent, the appellant had until 14 August 2015 to comply with the provisions of regulation 10(3). There is no provision in regulation 10(1) itself that in order to make a valid appeal it is not only necessary to make the appeal to the F-tT within 21 days but also necessary to serve certain documents upon the respondent.

41. The provisions of regulation 10(3) come into operation when a valid appeal to the F-tT has been made. In my view it would require clear language, which is not present in relation to regulation 10(3), if the subsequent failure (after making a valid appeal) to comply with the notification requirements in regulation 10(3) was to have the effect of rendering a previously valid appeal invalid. There could have been some express provision to this effect. The wording in the 1983 Act schedule 1 paragraph 7B(4) is instructive and shows that the draftsman can, if he wishes, easily provide that failure to serve a notification of an application to the tribunal is indeed to have the effect of requiring that a previously valid application is to be treated as not having been made.

42. It is true that there is laid down in the regulations a procedural code with various steps leading to the deposit of valid new site rules. It is also true that if an appellant were able to pursue an appeal (having made it within the 21 day period) in circumstances where the site owner had been told nothing about it and had perhaps already gone to the next step of depositing rules, then this could throw out the proper working of the code. However the F-tT has power to strike out proceedings if the F-tT considers that the proceedings, or the manner in which they are being conducted, is frivolous or vexatious or otherwise an abuse of the process of the tribunal, see rule 9(3)(d). This provision could enable the F-tT adequately to protect a site owner from an appeal which had been notified to the site owner sufficiently late to prejudice the site owner.

43. I accept Mr Clement's argument that there is no power under the relevant Tribunal Rules to extend a time limit within the 2014 Regulations. The decision in *Mucelli* is indeed an authority for that proposition. However in the present case (leaving aside the separate point dealt with in paragraphs 33 to 37 above) the F-tT is not being asked to extend any time limit. It is merely be asked to conclude that, although the time limit in regulation 10(3) has been missed, the consequences of this missing of the time limit are not to deprive the F-tT of the jurisdiction to continue to entertain the appeal which had been validly brought within the relevant time limits. I do so conclude. The F-tT was in my judgement in error in declining so to conclude.

44. I do not consider that regulation 12(2) assists the respondent. Properly read, regulation 12(2) is not limited to requiring the owner to refrain from making a deposit of the new rules only in circumstances where both (i) an appeal to the F-tT has been made within the regulation 10(1) time limit and also (ii) the owner has been notified (and served with documents) within the time limit in accordance with regulation 10(3). The

suspensory provisions (requiring the owner not to make a deposit) apply where an owner has received notification that an appellant has made an appeal to the F-tT under regulation 10. The owner may consider that it has arguments that the appeal is in some way defective or can be defeated upon some procedural basis. However the fact remains that the owner has been notified that an appeal has been made in accordance with regulation 10. Until the appeal has been disposed of or determined or abandoned the owner is not required to make the deposit of the rules (unless of course the owner has already done so).

**Conclusion**

45. In the result I conclude that the appellant's appeal must be allowed. Her appeal to the F-tT was made in time in accordance with regulation 10(1). It was a valid appeal. The respondent received the relevant notification and documentation within the relevant time limit under regulation 10(3). In any event, even if in the present case there has been a failure strictly to comply with regulation 10(3), this does not cause the appellant's appeal, which had been validly brought under regulation 10(1), to become invalid.

46. I remit the case to the F-tT so that it can consider the appellant's appeal upon its merits. I leave it to the F-tT to issue such further directions as it considers appropriate to enable the hearing of the appellant's appeal to proceed appropriately and expeditiously.

His Honour Judge Nicholas Huskinson

26 June 2015