



**IN THE FIRST-TIER TRIBUNAL(CHARITY)
GENERAL REGULATORY CHAMBER**

Case No. CA/2010/0001

Appellants: Geoffrey Edward Morris and Edward Mason

Respondent: The Charity Commission for England and Wales

Determined on the Papers

By

**Alison McKenna
Principal Judge**

**Subject matter: Romsey Public Walk and Pleasure Ground;
Tribunal Procedure;
Jurisdiction of the Tribunal**

DECISION OF THE FIRST-TIER TRIBUNAL

This appeal is struck out pursuant to Rule 8(2) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASONS FOR DECISION

1. Background

- 1.1 The Appellants are residents of Romsey in Hampshire and therefore beneficiaries of the Romsey Public Walk and Pleasure Ground, which is an unregistered charity providing land for public recreation. Its sole corporate trustee is Test Valley Borough Council (“the charity trustee”).
- 1.2 On 15 February 2010 the Appellants became aware that the Respondent had agreed to make Orders pursuant to sections 26 and 36 of the Charities Act 1993 (as amended by the Charities Act 2006), which would authorise the charity trustee to grant an easement over part of the charity land in favour of the Parochial Church Council of the Abbey Church of Saint Mary and Ethelfraeda (Romsey Abbey), for use as a car park.
- 1.3 The Respondent informed the Appellants by e mail dated 15 February 2010 that although it had indicated to the charity trustee its willingness to make such Orders, and had provided the charity trustee with draft Orders for its consideration on 7 August 2009, the matter has not been progressed further by the charity trustee and so the Orders had not to date been brought into effect. Nevertheless, it appeared that the Respondent had made a decision to make the Orders.
- 1.4 The Appellants are opposed to the Orders being made as they take the view that the use of the land as a car park would represent a breach of trust and loss of amenity for local people. The Appellants have asked the Respondent to provide them with an explanation for its decision, to review its decision to make the Orders and have also applied to the Tribunal asking it to quash the Respondent’s decision to make the Orders.

2. The Jurisdiction of the Tribunal

2.1 The Tribunal’s jurisdiction is established as follows. Section 2A of the Charities Act 1993 (“the Act”) provides that

**“(4) The Tribunal shall have jurisdiction to hear and determine—
(a) such appeals and applications as may be made to the Tribunal in accordance with Schedule 1C to this Act, or any other enactment, in respect of decisions, orders or directions of the Commission.....”.**

2.2 The entries in the table in Schedule 1C in respect of s.26 and s.36¹ of the Act are:

Type of Appeal/ Application	Appellants/Applicants	Tribunal’s Power
Decision by the Commission not to make an order under section 26 of this Act in relation to a charity.	The persons are (a) the charity trustees of the charity, and (b) (if a body corporate) the charity itself.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission not to make an order under section 36 of this Act in relation to land held by or in trust for a charity.	The persons are (a) the charity trustees of the charity, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.

2.3 Some of the decisions, directions and orders listed in the table in Schedule 1C create a right of review rather than a right of appeal. The

¹ The full text of Schedule 1C is available on www.charity.tribunals.gov.uk

matters are those listed in Schedule 1C paragraphs 3(2) and (3) to the Act, and include decisions:

“...
(e) not to make an order under section 26 of this Act in relation to a charity,
(f) not to make an order under section 36 of this Act in relation to land held by or in trust for a charity”.

2.4 It follows that:

- (i) There is a right of application to the Tribunal (for a review only) in circumstances where the Charity Commission refuses to make an Order under s.26 or s.36 of the Act but not where it makes a positive decision to make such Orders;
- (ii) In relation to s.26 Orders, it is only the charity or its trustees who may apply for a review, whereas a wider class of persons (including beneficiaries) may apply to the Tribunal for review of a s.36 Order.

2.5 In the circumstances I have concluded that the Tribunal does not have jurisdiction to determine the Appellants' application in this matter. This is because:

- (i) The Respondent has made a decision to offer the Orders rather than a decision to refuse to make them, which means that the Respondent's decision does not fall within the schedule 1C table; and
- (ii) Persons other than the charity trustee or the charity itself have no right to make an application to the Tribunal in respect of a s.26 Order, although they do in relation to a s.36 Order. These Appellants therefore have no right of application in respect of one of the Orders in dispute in any event.

3. Procedure – The Rules

3.1 I now turn to consider the relevant procedure to be adopted in these circumstances. I have specifically considered rule 5 (3)(k)(i) and rule 8(2) and 8(3)(c) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Rules”)², which provide as follows:

“Case management powers

5.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

² The full text of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 is available on www.charity.tribunals.gov.uk

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

....

(k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—

(i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;

Striking out a party's case

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...

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

(a) does not have jurisdiction in relation to the proceedings or that part of them; and

(b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

- 3.2 An Appellant has the right to make representations prior to a Tribunal taking the decision to strike out an appeal, under rule 8(4) of the Rules. I have, accordingly, sought the Appellants' comments on this ruling in draft and have finalised it having taken those comments into account. The Appellants accepted my analysis of the law and thanked me for considering their application carefully. They also expressed understandable frustration that the relevant provisions of the 2006 Act do not provide them with a right of appeal to the Tribunal in these particular circumstances.
- 3.3 The process required by the Rules does not include a right for the Respondent to make representations on a proposed strike out. I do recognise, however, that the receipt of an application by the Tribunal Administration generates notification of the appeal to the Respondent, with the result that the "clock starts ticking" under rule 27 of the Rules for the filing of the response. It would be unfortunate if this were to put the Respondent to unnecessary work in relation to an application which must be struck out, and the case management power in rule 5(3)(a) of the Rules, which allows the Tribunal to extend the time for complying with any rule, has therefore been invoked in this case, suspending the

requirement for the Respondent to file a response pending determination of the jurisdiction issue.

4. Other Matters

- 4.1 In circumstances where there is a right of application to the Tribunal against a refusal to make an Order but no similar right in respect of a positive decision to make an Order, it may be that the Appellants could challenge the decision to make the Order by way of judicial review. It is likely that such an application would be heard in the Upper Tribunal (Tax and Chancery Chamber), however the application which has been made is not in a form that would allow me to transfer this matter directly to the Administrative Court or the Upper Tribunal under rule 5 (3)(k)(i) of the Rules. The Appellants may nevertheless wish to take professional advice on this option. Details of various free legal advice services are on the Tribunal's website.
- 4.2 On receipt of a copy of the Notice of Appeal in this matter, the Respondent wrote to the Appellants on 11 March 2010 to tell them in categorical terms that they had no right of application to the Tribunal and asking for "*confirmation that your appeal has been withdrawn*".
- 4.3 On 16 March 2010 the Appellants wrote to the Tribunal and complained that the letter they had received from the Respondent was "*confusing, dismissive and not worthy of the organisation*". I agree with the Appellants that it was inappropriate for the Respondent to write to them in the terms of the 11 March letter. A decision as to whether the Tribunal has jurisdiction in relation to any application made to it is properly one for determination by the Tribunal itself and not by the Respondent to the proceedings. I am aware that in previous cases where an application has appeared to be outside the Tribunal's jurisdiction, the Respondent has (quite properly) suggested to the Appellant that the Tribunal should be invited to give a preliminary ruling on the matter. I am concerned by the different approach of the Respondent in this case and express the hope that it is not now the Respondent's practice to put pressure on Appellants to withdraw their applications to the Tribunal as an alternative to seeking a ruling on jurisdiction.

Signed:

Dated: 26 March 2010

Alison McKenna

Principal Judge