



EMPLOYMENT TRIBUNALS

Appellants

Respondent

Mr Shabir Ahmed

v

Tania Bernice Shiffer

Miss Bethany Ahmed

**(One of His Majesty's Inspectors of
Health and Safety)**

Heard: In Leeds

On:

3 June 2024

Before:

Employment Judge JM Wade

Mr W Roberts

Mr M Taj

Representation:

Appellants: In person (Mr Shabir Ahmed for Miss Ahmed)

Respondent: Mr L Hughes, counsel

The unanimous Judgment of the Tribunal is:

JUDGMENT

The appellants' application to appeal the Tribunal's Judgment sent to the parties on 14 August 2023, treated as a re-consideration application withing Rule 71, is refused.

REASONS

Introduction

1. The appellants are father and daughter. They appeal/seek to reconsider the Tribunal's decision, given in August last year, to affirm, with some amendments, a prohibition notice relating to works at a property they own, 51 Haworth Road.

The chain of events giving rise to this hearing

2. The Tribunal's reasons for affirming the Inspector's notice were sent to the parties on 29 September 2023 and again, on 2 October 2023 in hard copy. On 12 October 2023 the appellants presented a 7 paragraph letter wishing to appeal the Tribunal's decision for reasons expressed over six paragraphs). The grounds of appeal were:
 - 2.1. The prohibition notice remaining valid made no sense;

- 2.2. The Tribunal was wrong to accept the evidence of Mr Inman and Miss Spicer;
 - 2.3. The building has always been safe;
 - 2.4. The Tribunal should have visited the site;
 - 2.5. Works were carried out in the next door property;
 - 2.6. The case is similar to HM Inspector of Health and Safety v Chevron North Sea Limited [2018] UKSC 7;
 - 2.7. An enclosed structural engineer's report demonstrated the building had always been safe.
3. Pursuant to Rule 72 I conducted a "sift" of this reconsideration application, and considered that on the basis of the reasoning expressed in the Tribunal's reasons, grounds 1, 2, 4 and 5 had no reasonable prospects of success. Grounds 3, 6 and 7 amounted to a reconsideration based on new evidence, a new structural report, and I could not say such an application had no reasonable prospects of success on the face of that August report.
 4. The application was then served on the Inspector and grounds of opposition were filed. The Inspector accepted that if the grounds of opposition pertaining the new report (the Inspector asserted it was not reliable) were to be challenged, there would need to be a hearing. The appellants were then invited to consider whether they still pursued the appeal, and they did. This hearing was listed.
 5. A reserved costs Judgment was also sent to the parties on 15 December 2023, dismissing the Inspector's costs application arising from the August hearing.

This hearing

6. Mr Ahmed has appeared as a litigant in person. He had assistance in the drafting of the grounds of appeal/reconsideration, but that person could not attend today. He said that he had received the electronic bundle for today's hearing on Tuesday (28 May 2024), having been sent the skeleton argument on 24 May. He had not been able to print the bundle until Friday, and his eyesight and work over the weekend prevented him reading it. He was invited to apply for a postponement on that basis, but he did not wish to do so.
7. The Tribunal gave Mr Ahmed the opportunity to say what he wanted to say in support of his application. He added to the written grounds, by saying he had done nothing wrong, he had not removed the chimneys, and the property was safe. The Tribunal asked him questions, including about how he had obtained the new report and whether it could have been provided on the last occasion. He said it could have been.
8. In light of the difficulties in balancing state funded legal representation with the claimant's litigant in person status, in a case where this Tribunal has no specialist knowledge of engineering, Mr Hughes was invited to suggest what a lawyer acting for the appellants would say. He said if answering the hypothetical question, acting for the appellants, what could he reasonably argue, he could not argue for revocation on the basis of the new report, and the best that could be achieved was the modification made on the last occasion.

9. The Tribunal also asked questions of both Mr Ahmed and the respondent in seeking to understand the landscape of the reconsideration application generally.
10. A skeleton argument had been submitted on behalf of the respondent and it accurately sets out the law on reconsiderations before this Tribunal pursuant to Rule 72, including the principles on admitting new evidence within Ladd v Marshall [1954] All ELR 746.

Conclusions

11. Ultimately these proceedings are being funded by public expense and we do not wish to add to that expense by taking longer than is necessary to address the position as we see it.
12. The respondent's ten page skeleton addresses all the points in the claimant's letter and we mean no disrespect in not repeating it here. It is clear that we agree that our previous reasons stand to address all matters save for the new report.
13. As to that, the respondent's bundle of documents for today evidenced the essential submissions made in the skeleton, and in the respondent's grounds of opposition to the appeal/reconsideration. The Tribunal could not have known about the latter versions of the report before seeing that bundle today.
14. In simple terms the respondent said that the new engineering report for load bearing in the premises was not reliable because:
 - 14.1.1. The author was not clearly identified; and
 - 14.1.2. There had been revisions to the report not disclosed to the Tribunal.
15. As to the first point, Mr Ahmed said he had found the author of the report "on line" and only met him once, and he could not comment further. As to the second point, Mr Ahmed said he had not seen the revisions to the report which are now before this Tribunal or correspondence leading to those revisions, conducted with Ms Spicer, who is the respondent's structural engineer.
16. The Tribunal is in the position of having to decide whether it is in the interests of justice to consider new evidence, which the claimant relies on to establish this is a Chevron situation – the property was always safe but the Inspector did not have the evidence to establish that at the time, but she does now.
17. We do not agree with him for the following reasons.
18. Firstly, a structural engineer's report could reasonably have been obtained for the hearing back in August of last year 2023, when we would have had the opportunity to discuss it with witnesses and satisfy ourselves as to the author's qualifications.
19. Secondly, the report on which the claimant relies has been revised because the August version contained calculation errors which were later identified by Ms Spicer.

20. Thirdly, having seen the dialogue between the person instructed by Mr Ahmed and Ms Spicer, in September 2023, we have also observed that the revised version of the report contains two “Fails”, as to a support timber’s bending and deflection. The person providing the amended reports seeks to persuade Ms Spicer to consider other mitigating factors. This is not a sound basis in fact to revoke or change our previous judgment. We note that in September 2023 Ms Spicer said by email: “I have found that the timber is inadequate to support the load from the chimney and floor” and since then there has been no further dialogue.
21. The prohibition notice is the respondent seeking to do her statutory duty to protect the public and those working in the premises. She is spending public funds to do it. We are sure the best conservation of those funds is for the parties to work together to address the chimney structure support such that all can be satisfied the premises are safe. The appellants believe they are; the respondent has yet to be persuaded.
22. The appellants’ new evidence, for the reasons above, does not persuade us it is in the interests of justice to vary or revoke our previous decision and it is therefore confirmed. The other grounds of appeal are also confirmed as without merit and the previous judgment confirmed.

Employment Judge JM Wade

3 June 2024

Judgments and written reasons are published on the Tribunal’s website shortly after they are made available to the parties. There is a practice direction about recording in Tribunal proceedings.