



First-tier Tribunal,  
10 Alfred Place,  
London  
WC1E 7LR

Case:	Emily Bowes Court (EBC) & Station Court (SC)
Case Nos.	<b>NS/LON/OOAP/HMF/2023/0015</b> <b>NS/LON/OOAP/HMF/2023/0205</b>
Property:	Flat B403 (EBC) & J32 (SC)
Subject:	<b>Re R stay request 8th August 2023</b>

By email only to: London.Rap@justice.gov.uk; cc Nichola.Stewart2@justice.gov.uk; jordon.kellett@walkermorris.co.uk

Date: 13/09/2023

Dear Sir/Madam,

We write following R's further letter of 8th August regarding a request to stay the above cases, where a hearing has been listed for 12th October for EBC B403 and where directions have recently been issued for SC J32.

We strongly resist the application for staying yet more cases against this Respondent (R) on the following grounds.

The Upper Tribunal (UT) has granted permission to R to appeal the North Lodge cases for which a decision was handed down by the First-tier Tribunal Property Chamber (Residential Property) (FtT) in May this year. We do not believe that there is any chance that the appeal will be upheld and cannot understand why permission was granted on the ground of "reasonable excuse". Time and time again both the FtT and the UT have emphasised that commercial landlords must make themselves aware of the law with respect to licensing and that failure to do so is no excuse. Nor is there any requirement in the legislation that a Local Authority (LA) must make contact with individual landlords during the consultation process. We make these points more extensively in our grounds of resistance to the application to appeal at the UT that is attached ("Tenants Response to application for permission to appeal NL.pdf").

Furthermore, we see that the UT has recently refused an application to appeal on a very similar ground only last month, also attached ("Caby UT refusal LC-2023-000509 Order - Permission to Appeal Refused- commercial landlord can be expected to make enquiries.pdf"), in which they stated:

*"The applicant's suggested lack of knowledge of the need to obtain a licence was a negative, rather than a positive consideration, as it is **clearly a commercial landlord which can be expected to make proper enquiries.**"* (Our emphasis).

That permission was granted for UNITE on this ground we can only understand due to the recent exclusion of the possibility to review a refusal by the UT to allow an appeal under the Judicial Review and Courts Bill (2022), Clause 2, together with the ramifications of any refusal for a company of this size. The likely scenario is now one in which the North Lodge cases will now be appealed all the way to the Supreme Court, if allowed, so further delaying justice for those Applicants in those cases for which a stay has been requested.

We feel that it has to be said that the decision of the UT to allow the appeal on this ground is yet another example of the inconsistency of the UT's decisions concerning RROs, also reflected in the quality of the guidance handed down. For example:

- that utilities should be deducted from rent (heavily criticised by Judges Nicol and Latham of the London FtT and against the definition of rent within the same Act: please see also our grounds for cross appeal, also attached (“LC-2023-418 Application to cross appeal and grounds.pdf”))
- that failure to license should be regarded as a less serious offence (also criticised by Judge Latham)
- that sentencing regimes should guide assessment of the seriousness of offences: when these are actually of virtually no help.


Furthermore, we repeat our objections to the staying of cases for other properties and periods as follows:

- We disagree that the results of any appeal of the North Lodge cases from 2020 to 2021 would be applicable to Emily Bowes Court cases from 2021-2022: as previously mentioned, the circumstances of the occupation were materially different. The same applies for Station Court.
- There is a substantial body of evidence, relating to the conduct of R, which was not available to the Tribunal in the North Lodge cases and which has been submitted for assessment in the Emily Bowes Court B403 case: this may not be permissible in any appeal, as new evidence, in the North Lodge cases. Respondent has not acceded to our earlier request to agree to not object to the submission of this evidence in their formal stay request. It is clear that R wishes to block this evidence by having all cases stayed pending the outcome of the earliest case where this evidence was not available.
- The second ground on which the appeal was granted by UT for the North Lodge cases was quantum: this is of no relevance to materially different circumstances in different buildings and different periods, and where further evidence is now available.

It would be perfectly reasonable for the FtT to refuse to stay cases pending an appeal which relates to a different period and a different building, let alone the fact that the only relevant ground of the appeal has absolutely no merit.

We would urge the Tribunal to reject the application to stay in the interests of justice.

With kind regards  
Yours faithfully



Guy Morris