



DECISION OF

Sheriff T Kelly

**ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)
IN THE CASE OF**

Mr Paul Andrews

Appellant

- and -

Ayrshire Valuation Joint Board

Respondent

FTS Case reference: FTS/LTC/CT/23/41152

Glasgow, 11 January 2024

Decision

The Upper Tribunal refuses permission to appeal.

Introduction

[1] The appellant made application to the First Tier Tribunal for Scotland (Local Taxation Chamber) (“FTS”) seeking to appeal the decision of the respondent in respect of council tax banding. The chronology and background is helpfully set out by the FTS which is undisputed.

[2] The assessor decided that the proposal lodged by the appellant was submitted more than



6 months after the date in respect of which the alteration of the valuation list to include the property was served under Regulation 16 of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (“the 1993 Regulations”). It was therefore not lodged timeously with the assessor in terms of Regulation 5(7). There is no discretion to waive the Regulations. The FTS dismissed the appeal.

Application for permission to appeal

[3] The appellant sought permission to appeal from the FTS. By decision dated 12 October 2023 it refused to grant permission to appeal.

Upper Tribunal

[4] The appellant now seeks permission to appeal from the Upper Tribunal in terms of section 46(3)(b) of the Tribunals (Scotland) Act 2014. The appellant would be entitled to such permission only on the basis that there were arguable grounds for the appeal (section 46(4)).

Hearing: 22 December 2023

[5] The appellant was personally present via WebEx as was Mr Murphy, Advocate for the respondent. I explained to parties the procedure to be adopted and the nature of the review to be carried out by the Upper Tribunal in determining whether there were arguable grounds for the appeal.

Appellant

[6] The appellant explained the background to his application which had been canvassed in some detail before the FTS. He was concerned that the original decision in relation to his valuation band was now inviolable. He expressed concern about the lack of information provided by the



respondent.

[7] I invited the appellant to address the error said by him to be present in the decision of the FTS. He contended that the FTS had “taken the wrong approach to the case”. The appellant came to submit that the error in approach was in the FTS not looking at the substantive challenge that he had stated but rather dealing with it on the basis that the appeal was non-timeous.

Respondent

[8] Mr Murphy, Advocate moved the Upper Tribunal to refuse permission to appeal. He adopted his written submissions. The FTS was correct to determine that the proposal made was not a valid one. The FTS asked itself the right question and answered it correctly. There was no challenge to the findings in fact of the FTS. The FTS was compelled to refuse the application.

Decision

[9] The challenge mounted by the appellant is to the original valuation decision of 3 May 2007. The appellant became the taxpayer on 15 March 2007. The proceedings before the FTS concerned the proposal lodged by the appellant with the assessor dated 29 March 2023. The assessor decided that this was an invalid proposal in terms of Regulation 8 in conjunction with Regulation 5 of the 1993 Regulations. The FTS decision was to the same effect, see paragraph 3.3.

[10] This was the correct approach in law. The appeal to the assessor by way of a proposal for alteration of the list requires to be made within 6 months of becoming a taxpayer (Regulations 5(5) and 5(7)(c) of the 1993 Regulations). It is a matter of agreement that when the proposal was lodged by the appellant that time period had expired. In the circumstances the assessor was entitled to treat that proposal as invalid and serve the appropriate notice to that effect – Regulation 8 of the



1993 Regulations. The appellant was entitled to appeal that notice to the FTS. The FTS was correct to dismiss the appeal against the notice on the basis that it was properly served because the proposal was out of time.

[11] In the circumstances the appellant has failed to formulate an arguable ground of appeal and permission to appeal is refused.