Upper Tribunal for Scotland

2023UT32
Ref: UTS/AP/23/0033

DECISION OF

Sheriff I Fleming

ON AN APPLICATION TO APPEAL
IN THE CASE OF

Mrs Joan McIntosh, 2/3 2 Capelrig Gardens, Newton Mearns, Glasgow, G77 6NF
per Mr Archibald Reid,
2/3 2 Capelrig Gardens, Newton Mearns, Glasgow, G77 6NF

Appellant

- and -

Renfrewshire Valuation Joint Board, The Robertson Centre, 16 Glasgow Road, Paisley, PA1 3QF

Respondent

FTS Case Reference - FTS/LTC/CT/23/01015

6 November 2023.

Decision: Permission to appeal is refused.

Introduction

[1] This is an application by Ms Joan McIntosh (hereafter "the Appellant") for permission to appeal to the Upper Tribunal for Scotland (hereafter "the Upper Tribunal") against a decision of the First-tier Tribunal for Scotland (Local Taxation Chamber) (hereafter "the FTS") dated 13 July 2023 (ref.:FTS/LTC/CT/23/01015) (hereafter "the Decision").

[2] The background to this matter is as follows; the Appellant became a council taxpayer in respect of her dwelling on 28 September 2012. Her dwelling entered the valuation list on the same day. The Appellant lodged a proposal against the valuation band. The proposal was

referred as an appeal to the Valuation Appeal Committee for the Renfrewshire Valuation Joint Board (hereafter "the Committee"). The Committee heard the appeal on 27 June 2013 upon which date the Committee dismissed the appeal and issued a statement of its reasons (hereafter"the VAC decision."). No appeal against the VAC decision was lodged with the Court of Session within the time limit of 42 days required by Rule 41.26(1)(b) of Schedule 2 to the Act of Sederunt (Rules of the Court of Session) 1994.

[3] The Appellant lodged with the Assessor a new proposal against the valuation band of her dwelling on 16 August 2022 (hereafter "the Proposal"). The Assessor refused the Proposal as being out of time. The Appellant referred the refusal to the FTS which dismissed her case on 13 July 2023. The FTS's reasoning is contained within the Decision of that date.

[4] The FTS determined that it was appropriate to hear and dispose of the appeal on the basis of written representations alone and without hearing oral evidence. It was entitled to do so. It concluded that the Proposal had been submitted to the Assessor more than 6 months after the Appellant became the council tax payer in relation to the property, as defined in regulation 3(1) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (hereafter "the 1993 regulations".) The Proposal had not been lodged with the Assessor timeously in terms of regulation 5(7) of the 1993 regulations. The FTS had no discretion to waive the regulations to allow the hearing of an appeal when the proposal had not been lodged timeously with the Assessor. The FTS concluded that it had no power to review the decision of the VAC. The Appellant sought permission to appeal that decision by the FTS. That application was refused by the FTS on 9 August 2023 upon the basis that no point of law had been established.

[5] The appellant has exercised her right to make application for permission to appeal to the Upper Tribunal. A WebEx hearing in respect thereof took place on 13 October 2023. The appellant represented her own interests assisted by Mr Reid and the Assessor was represented by Mr Murphy, Advocate. Both parties had provided a written statement of their respective positions in advance of the hearing and I am grateful to them.

The Appellant

[6] By means of amplification the Appellant has sought permission to appeal upon what she categorises as a point of law. She feels aggrieved that the decision reached at her "*original appeal in June 2013 was based on incorrect information*." She advised the Upper Tribunal that she had not received the statement of reasons and had not been advised of her right to appeal the decision to the Court of Session. Her criticism seemed to be directed towards the VAC decision and the way in which that decision was reached. She was also critical of the fact that she had never been advised of the right to appeal to the Court of Session. The Appellant categorises her case as being reliant on three points of law, namely:

(i) Error in the application of the law to the facts;
(ii) Making findings in fact without basis in evidence; and
(iii) Taking a wrong approach to the case.

The Assessor

[7] On behalf of the Assessor Mr Murphy, Advocate, adopted his written argument and submitted that the task for the FTS was a requirement to determine whether the Proposal was a valid proposal under regulation 5 of the 1993 regulations.

[8] He argued that The Upper Tribunal required to determine whether there are arguable grounds of appeal in the application, as required by section 46(4) of the Tribunals (Scotland) Act 2014 ("the 2014 Act.") The submission of counsel for the Assessor was that The Upper Tribunal should refuse permission to appeal as the application does not disclose an arguable ground of appeal against the Decision. Counsel relied on the following propositions:

(a) The points of law relied upon by the Appellant are not directed at the FTS Decision; and,
(b) The Tribunal was correct to consider and determine whether the Proposal was invalid in terms of regulation 5 of the 1993 Regulations.

[9] As such, he argued, The Upper Tribunal should refuse permission as the points of law relied upon by the Appellant do not relate to a decision of the FTS. Each point of law is directed at the VAC Decision. There is therefore no arguable ground of appeal based on those points of law.

[10] Counsel further submitted that in deciding this application the Upper Tribunal requires to consider that an appeal to the Upper Tribunal under section 46 of the 2014 Act must be against a decision of the FTS. The points of appeal relied upon by the Appellant relate only to the VAC Decision. The authority for this proposition can be found in section 46 of the 2014 Act, which provides, inter alia:

> "(1) A decision of the First-tier Tribunal in any matter in a case before the Tribunal may be appealed to the Upper Tribunal.
> (2) An appeal under this section is to be made—
> […]
> (b) on a point of law only."

[11] On the clear wording of section 46, an appeal under that section must be (i) an appeal of a decision of the First-Tier Tribunal and (ii) on a point of law only. The points of law identified by the Appellant must relate to "*a decision of the First tier Tribunal*".

[12] In the present case, the VAC Decision is not a decision of the FTS and neither is it a decision which regulation 18 of the First-tier Tribunal for Scotland (Transfer of Function of Valuation Appeals Committees) Regulations 2023 applies to as there was no exercisable right to appeal to the Court of Session at 1 April 2023.

[13] Counsel submitted that the Appellant identifies three errors in law which she maintains apply to the FTS decision (i) Error in the application of the law to the facts; (ii) making findings in fact without basis in evidence and (iii) taking a wrong approach to the case.

[14] It is the submission of Counsel that the points of law are directed against the VAC decision and not that of the FTS. He founds in particular upon the following passages within the application seeking permission to appeal be the appellant.
"The decision reached at the original appeal in June 2013 was based on incorrect information relating to the size of my property in comparisons to others." and *"The original decision was based on flawed data then the decision should be worthy of review rather than being dismissed out of hand due to time limits."*

[15] That the points of law are being directed against the VAC Decision is further confirmed by the Appellant's letter to the FTS dated 12 July 2023 and contained within the current application submitted Counsel. In paragraph 3 of that letter, the Appellant asserts "*the original hearing decision …was based on flawed information*". She further states that "*at no time has the council answered any of the written evidence I have subsequently provided*" and refers to evidence of different measurements of her dwelling.

[16] Counsel also drew the Upper Tribunal's attention to the rhetorical questions of the Appellant within her application which is before the Upper Tribunal; "*where is the evidence of a 2 band differential?"* and "*Should my property logically therefore fall in* the *middle as band F*". The Appellant further mentions that "*Having attended my original appeal hearing …it is my opinion that the Panel had already made it's [sic] decision*". She makes clear that her reasoning "*for re-visiting this case …was due to the* fact *that [she] had noticed the Appeal Board had apparently based their decision on 124 sqm*". Counsel further submitted that the Appellant also refers, at paragraph 3 of her application, to the "*Appeal notes of 27/06/2013*" and asserts that "*they have continually failed to respond to this fact*" when highlighting an asserted difference in measurement. The "*Appeal notes*" was understood by counsel to be the VAC Decision and "*they*" refers to the VAC. Finally the Appellant refers to comparisons in support of the banding of her dwelling, which is a matter determined by the VAC Decision.

[17] The Appellant is, therefore, upon the basis of the identified passages, appearing to direct the thrust of her appeal against the VAC Decision and not against the Decision of the FTS submitted counsel.

[18] Counsel did, however, accept that the Appellant could argue that her reliance upon "the continued citing of time constraints by the FTS is irrelevant in this case." could be construed a ground of appeal.

The Decision

[19] An appeal against the decision of the FTS is not unrestricted. It is only available on a point of law. It is not available because the losing party might disagree with the FTS's decision. It will not be permitted to be argued unless the point of law on which it is sought is at least arguable.

[20] Section 46 of the 2014 Act permits an appeal against a decision of the FTS. It does not permit an appeal which is directed at the VAC decision. For the reasons argued by counsel on behalf of the respondent insofar as the Application relates to the VAC Decision, there is no arguable ground on the points of law relied upon that could be advanced against the decision of the FTS. What happened in this case is that the appellant was unsuccessful in her application to the VAC in June 2013. The appellant had a right to appeal to the Court of Session against that determination provided that she lodged the application timeously. She did not take advantage of that option. The submissions of counsel for the assessor for the reasons provided are well founded and sustained.

[21] That only leaves one issue for consideration. In my view the Appellant could be said to rely on "*the continued citing of time constraints*" by the FTS as being directed against the FTS Decision.

[22] Such a ground of appeal is, however, unarguable. Regulation 5(7) of the 1993 regulations does not permit proposals to be lodged nine years after the taxpayer receives a notice under regulation 16(4) of the 1993 regulations in respect of a new entry in the valuation list. The FTS in its decision correctly recognised that it has no power or discretion to waive the regulations to allow the hearing of an appeal in circumstances whereby the proposal has not been lodged timeously with the Assessor. The FTS correctly identified that the Appellant only had a right to appeal the decision of the RVAC to the Court of Session. She did not do so. The FTS correctly identified that it has no power to review the decision of the RVAC. Although the Appellant claimed that she had not been specifically advised by the VAC of her right to appeal to the Court of Session in 2013 that particular issue is not a matter which is relevant to the current decision. The fact of the matter is that no appeal was lodged.

[23] The FTS and the Upper Tribunal are regulated by statute, regulations, rules and orders. Irrespective of the appellant's views upon the fairness or otherwise of the procedure in this instance, if the legal frame work within which it operates does not permit a course to be followed the nature of the jurisdiction is such that the FTS has no discretion to waive the regulations to allow the hearing of an appeal when the Proposal has not been lodged timeously with the

Assessor. The FTS concluded that it was legally unable to review the decision of the Committee. There is no error in law which is identifiable. Indeed the FTS determined the application in the only way in which the statutes, rules and regulations which govern its existence allowed. To do otherwise would have been an error in law.

[24] On that basis, there is no arguable ground of appeal and permission to appeal falls to be refused.

[25] In this decision I have set out in comparative detail the submissions made by counsel on behalf of the Assessor. I have done so in order to fully demonstrate to the Appellant, who did not have the benefit of legal representation (although she was ably assisted by Mr Reid), the reasons why she has been unsuccessful. Even allowing for the fact that this is an appellate tribunal it seems to me that there is a need for the Upper Tribunal to be accessible to those who do not have the benefit of legal representation and for their cases to be handled fairly. It was undoubtedly a daunting prospect for the Appellant and Mr Reid to have the respondent's case presented by Counsel. The Appellant strongly feels that she has been dealt with unjustly and although she has not been successful before the appellate tribunal it is part of the process of accessibility that comprehensive reasons be provided to her in order that she can understand fully why permission to appeal was refused. It is for that reason that rather than simply convey within this decision the submissions of counsel I have referred to numerous examples upon which the submission was based in order to fully amplify the reasoning behind the decision.

Member of the Upper Tribunal for Scotland