



DECISION OF

Sheriff I. M. Fleming

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

Mr Jack Stewart

Appellant

- and -

Lothian Valuation Joint Board

Respondent

FTS Case reference: FTS/LTC/CT/23/01065

3 January 2024.

Decision

Permission to appeal is refused.

Background

[1] This is an application for permission to appeal the decision of the First Tier Tribunal for Scotland (Local Taxation Chamber) (hereafter “the FTS”) at the instance of Mr Jack Stewart (hereafter “the appellant”) following the FTS decision of 10 August 2023.

[2] The appellant became a council tax payer in relation to the property at 16 Glenbare Court, Bathgate, West Lothian, EH48 1DR on 7 April 2000 (hereafter “ the property”).



[3] The appellant sent a proposal to alter the Council Tax Valuation List for the property dated 24 October 2022. The decision of the assessor dated 26 May 2023 was that the proposal is invalid as it was not submitted within the time limit specified within The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (hereafter “the 1993 Regulations”).

[4] The appellant submitted an appeal to the FTS dated 4 June 2023 which sought to appeal the decision of the assessor.

[5] The FTS determined that it was appropriate to dispose of the appeal on the basis of written representations in terms of Rule 9(2) of the First Tier Tribunal for Scotland Local Taxation Chamber Rules of Procedure 2022 (hereafter “the procedure rules”).

[6] The FTS held 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 1993 Regulations. As such the proposal had not been lodged with the assessor timeously in terms of regulation 5(7) of the 1993 Regulations. The FTS held that it has no discretion to waive the regulations to allow the hearing of an appeal where the proposal has not been lodged timeously with the assessor.

[7] Thereafter the appellant made an application for leave to appeal the decision of the FTS to the Upper Tribunal. In terms of a decision dated 7 September 2023 refusing permission to appeal to the Upper Tribunal the FTS confirmed its earlier position that it has no discretion to waive the provisions of the regulations in relation to the time limit to appeal. The FTS considered the matters raised in the application for permission to appeal and determined that no arguable grounds for the appeal are stated. As such the FTS refused permission to appeal to the Upper Tribunal.

[8] The appellant has exercised his right to now seek permission to appeal from the Upper Tribunal for Scotland.

[9] A hearing took place by Webex on 21 November 2023. The appellant represented his own interests and the respondent was represented by Mr Murphy, Advocate. Both parties had provided written submissions in advance of the hearing and I am grateful to them.

[10] Before the Upper Tribunal the appellant reiterated his position as stated within paragraph 7 of his application form. He avers that there was an error in the application of the law to the facts, that the FTS took a wrong approach to the case and that it made findings in fact without a basis in evidence.

[11] The appellant amplified his position in oral submission and made representations firstly that having accepted that he became the council tax payer in relation to the property on 7 April 2000 he was unable to put in a proposal in 2000 because the reasons for the proposal did not then



exist. He explained that his property was constructed in or around 2000. He moved into the property in April of that year. Other houses were in the process of construction near to his dwellinghouse (“the property”) and his neighbours only moved in later that year. He now found that the property has been categorised as Band F whereas others which have precisely the same square footage (and in one case a greater square footage) are in Band E. He could not understand why this distinction has been made.

[12] The appellant recognised the difficulty with the time limit but argued that he could not have made the application within 6 months because he assumed that the categorisation of the respondent was correct and he did not query it. He has carried out significant research and all the evidence he has obtained suggested his property is currently categorised within an incorrect band. He was unable to adhere to the time limit because he did not have the information available at that time. The appellant submitted that the FTS had a discretion to allow the proposal to proceed out of time on the basis that the appellant was unaware that his dwelling might be incorrectly banded.

[13] Further, he was critical of the FTS because he felt that he having provided evidence to it various enquiries should have been made by the FTS to determine the true position. He felt that he having quoted evidence, there was a duty incumbent upon the FTS to consider the quality of the evidence which was provided by the respondent.

[14] In response Mr Murphy for the respondent adopted his written submissions. He invited the Upper Tribunal to refuse permission to appeal as the application does not disclose arguable grounds of appeal against the FTS decision. Firstly it was submitted that the FTS was correct to conclude that it had no discretion to allow the proposal to proceed, secondly the FTS was correct to restrict itself to the question of the validity and not the substance of the proposal and thirdly certain sections of the grounds of appeal do not relate to the decision of the FTS.

[15] Regulation 5(7) of the 1993 Regulations is the relevant regulation for this appeal. It provides

“Where a list is altered so as to show a dwelling which was not shown on the list as compiled, no proposal for alteration of the valuation band first shown in respect of that dwelling on the grounds that it is not the band which should have been so shown may be made unless –

...

- (b) the proposal is made within 6 months of –
 - (i) the date on which the only or last notice in respect of that alteration was served under regulations 14 and 16”.



[16] It was submitted by the respondent that on a clear reading of regulation 5(7) of the 1993 Regulations the appellant was unable to lodge a proposal unless it was made within 6 months of the assessor issuing a notice under regulation 16. The respondent relied upon the unreported case of *Assessor for Fife Council v "Fife Valuation Committee"* dated 21 September 2012 (ref XA73/11), which granted the assessor's appeal against a decision of valuation committee to extend the time for lodging such a proposal. The Court held that there is no power for a Valuation committee to extend the time under regulation 5(5) of the 1993 Regulations.

[17] Accordingly the sole question for the FTS was whether the proposal was valid under regulation 5 of the 1993 Regulations.

The decision

[18] An appeal to the Upper Tribunal under section 46 of the 2014 Act must be on a point of law only.

“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.”

[19] There is no lawful discretion afforded to the FTS in determining that under the 1993 Regulations, or under its own procedure rules, it may allow a proposal to be permitted out of time, irrespective of the asserted justification by the appellant. Authority for that proposition was lodged by the respondent in terms of the unreported case of *Assessor for Fife Council v "Fife Valuation Committee"* dated 21 September 2012 (ref XA73/11). The Court of Session held that there is no power for a Valuation committee to extend the time under regulation 5(5) of the 1993 Regulations.

[20] Accordingly there is no arguable ground of appeal that could be advanced by the appellant. It is clear that no proposal can be made in respect of a dwelling that was entered in the Valuation List after it was compiled unless it is made within 6 months of the date that a notice under Regulation 16 was issued. While the FTS was sympathetic to the position of the appellant that sympathy is not a relevant consideration to the decision of the Upper Tribunal. Further, knowledge of the appellant as to whether there may be an issue in respect of the banding was also irrelevant to the question before the FTS. There is no flexibility afforded within the 1993 Regulations which would allow the appellant's proposal and accordingly permission to appeal must be refused. The appellant has argued that a point of law exists but the reality is that the only issue before the FTS and the Upper Tribunal related to the application of regulation 5(7)

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of the 1993 Regulations, the terms of which are guillotine clear. The FTS had no discretion to allow a proposal to be lodged 21 years late. There is no discretion afforded to allow a proposal which does not conform to the 1993 Regulations. No point of law arises.

[21] In deference to the submission by the appellant in relation to whether the FTS was correct to restrict itself to the question of the validity of the proposal rather than the merits of the appellant's position, this is not an arguable ground of appeal as the sole question for the FTS was whether the proposal was a valid proposal under regulation 5 of the 1993 Regulations. The only relevant evidence was firstly the date of the dwelling first entered the valuation list, the date the assessor issued his notice under regulation 16 and the date the appellant lodged the proposal with the assessor. That evidence was before the FTS when it reached its decision.

[22] Had it been the case that the FTS had taken account of evidence relating to the merit of the proposal it would have erred in law.

[23] There being no error in law permission to appeal is refused.

Sheriff I.M. Fleming
Member of the Upper Tribunal for Scotland