



DECISION OF

Sheriff SG Collins KC

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

Mr Donald Mitchell,

Appellant

- and -

Renfrewshire Valuation Joint Board,

Respondent

FTS Case reference: FTS/LTC/CT/23/41317

2 April 2024

Decision

1. Permission to appeal is refused.

Introduction

2. This is application by Donald Mitchell (“the appellant”) for permission to appeal against a decision of the First-tier Tribunal for Scotland (Local Taxation Chamber) (“the FTS”) dated 22 January 2024. By this decision the FTS refused the appellant’s appeal against a decision of Renfrewshire Valuation Joint Board (“the respondent”) dated 26 October 2023, which rejected as invalid the appellant’s proposal of 23 October 2023, by which he had sought alteration of the council tax valuation banding of the property at Flat 2/1, 16 Station Road, Renfrew (“the property”).



3. An oral hearing was held by Webex today, 2 April 2024. The appellant appeared in person and made oral submissions. The respondent was represented by Mr Murphy, Advocate, who lodged written submissions and elaborated on them. At the conclusion of the hearing I indicated that I would refuse permission to appeal, and give my reasons in writing.

Ground of appeal

4. The appellant submitted, in effect, that the FTS erred in law in stating that it had no discretion to allow the hearing of an appeal when a proposal to alter the council tax banding of a property is made more than 6 months after moving into it.

Discussion

5. The appellant became the council tax payer in relation to the property on 21 November 2018. It was then a new build property which had not previously been entered on the valuation list. It was assessed as falling within council tax band D. On 23 October 2023 the appellant submitted a proposal to the respondent challenging this banding in terms of regulation 6 of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (“the 1993 Regulations”). Pursuant to regulation 6(1)(e) the proposal states that

“The entry in the valuation list for [the property] is incorrect” ...

“The property is worthy of band D status” ...

“Which should be effective from 1 April 1991.”

As the property was already in band D the respondent took this to mean that the appellant sought alteration to band C.

6. By decision dated 26 October 2023 the respondent decided that the proposal was invalid on the basis that it was lodged out of time.
7. The appellant appealed the respondent’s decision to the FTS. His ground of appeal was that

“There’s an extensive Power Station directly across the road from the property in question. The extensive Electricity Power Station has over the past year had on site work extending the extensive Electricity Power Station by size and voltage.”



This had not been mentioned in the appellant's proposal of 23 October 2023.

8. On 22 January 2024 the FTS decided the appeal on the basis of written representations only. It held that the appellant's proposal had not been lodged within six months of the relevant date and that the FTS had "no discretion to waive the Regulations to allow the hearing of an appeal when the Proposal has not been lodged timeously." Reference was made to the cases of *Joan McIntosh* [2023] UT 32, *Jack Stewart* [2024] UT 01 and *Paul Andrews* [2024] UT 02
9. The FTS was correct to hold that the appellant proposal was not made within six months of any of the relevant dates in regulation 5 of the 1993 Regulations. And assuming that this time limit was applicable to the appellant's proposal, the FTS was also correct to hold that it had no discretion to waive it. This is amply vouched by the authorities cited.
10. As the Court explained in *Anderson v Assessor for Orkney & Shetland Valuation Joint Board* 2019 SC 619, however, it is not every proposal for alteration of a valuation band which is subject to a six month time limit. A proposal made on the basis that there has been a "material reduction in the value of the dwelling" may be made "at any time": 1993 Regulations, regulations 4(1)(a)(ii), 5(1). A "material reduction" is defined in section 87(10) of the Local Government Finance Act 1992 as including a reduction which is caused by "any change in the physical state of the dwelling's locality".
11. The appellant's proposal was not made on the basis that there was a material reduction in the value of the property. Accordingly this was not the basis on which the respondent made its decision. Rather, as counsel submitted, the appellant's proposal can only properly be understood as being that the valuation band for the property was not the band which should have been entered when it was added to the valuation list in 2018. It was accepted, rightly, that the respondent would allow some latitude when dealing with members of the public unfamiliar with the relevant law. But in the present case the appellant's proposal contained no reference to any change of circumstances since the entry of the property on the list which might have given rise to a material reduction in its value. The reference to the extension of a nearby power station was made for the first time in the course of the appeal to the FTS.
12. The proposal which was actually made by the appellant under regulation 6 was therefore invalid as being out of time, and the FTS was correct to refuse the appeal against the respondent's decision to this effect. It is not arguable that the FTS erred in law in this regard.
13. As counsel for the respondent expressly accepted, however, it remains open to the appellant to lodge a further proposal. He could do so today. Should he wish to do so, however, he should make clear, in writing, that his proposal is being made on the basis that he claims that there has been a material reduction in the value of his property due to extension of a nearby power station. He would be well advised to provide evidence of this, if available, rather than merely to assert his belief that it is so.



14. But in any event, if such a proposal is now made by the appellant, the respondent will have to address it on its merits, rather than to merely refuse it as invalid on the basis of the time limits in regulation 5 of the 1993 Regulations. And if the respondent's decision on the merits is adverse to the appellant, he will be entitled to apply to the FTS to review that decision, and it too will then be required to examine the facts and decide whether there has been a material reduction in the value of the property such as to justify alteration of the council tax band.

Conclusion

15. The FTS did not err in law. The proposed appeal is not arguable. Permission to appeal is refused.

Sheriff Collins
Member of the Upper Tribunal for Scotland