



DECISION OF

Sheriff Kelly

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

Mr Stuart Wood

Appellant

- and -

The Moray Council

Respondent

FTS Case Reference - FTS/LTC/CT/23/41290

Glasgow, 2 July 2024

Decision

The Upper Tribunal refuses permission to appeal.

Introduction

[1] This is an appeal against the decision of the First-tier Tribunal for Scotland (Local Taxation Chamber) (“FTS”) dated 19 February 2024 to refuse the appeal of Mr Wood relative to his property at 9 King Street, New Elgin, IV30 6BX (“the Property”). The decision of the local authority is appealed against in terms of section 81 of the Local Government Finance Act 1992. The proceedings



before the FTS are governed by the First-tier Tribunal for Scotland, Local Taxation Chamber (Rules of Procedure) Regulations 2022.

[2] The decisions appealed against arise from the respondent's decision to find that the property was entitled to a 100% exemption from council tax on the basis of it being unoccupied and under repair from 16 February 2022 until 15 February 2023; and to impose an additional 100% council tax charge against the property from 25 May 2023 on the basis that it had been unoccupied for a 12 month period.

[3] At paragraph 4 of its decision, the FTS noted findings in fact and recorded these as being "largely not in dispute". In summary these are:

- (i) The previous owner of the property died on 15 February 2022. The property was unoccupied from 16 February 2022.
- (ii) Mr Wood purchased the property on 25 November 2022. He did not occupy the property. Major repair work was being carried out.
- (iii) The property remained exempt from council tax from 25 November 2022 until 15 February 2023. At that point in time, the 12 month exemption period for an unoccupied property undergoing major repair work expired.
- (iv) From 16 February 2023 until 24 May 2023 the property was subject to a 50% property repair discount of the rate of council tax payable – regulation 5(c) of The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 ("the 2013 Regulations").
- (v) The 50% property repair discount ceased on 25 May 2023 being the 6 month anniversary of the appellant's purchase of the property.



(vi) From 25 May 2023 the amount of council tax payable reverted to 100% of that normally due. The respondent local authority charged a further 100% of the council tax payable. This initial amount was permitted under the 2013 regulations which provide for a discretion to levy an additional council tax charge in relation to long-term empty properties.

[4] Moray Council's Policy and Resources Committee on 8 October 2013 adopted a policy charging an additional amount on all properties empty for more than 12 months. A further meeting of that committee on 19 January 2016 (see pp.524 – 531) confirmed that the additional levy should remain at 100% on properties unoccupied after 12 months if undergoing repair work.

[5] The FTS go on to note the appellant's apparent acceptance of the absence of a discretion in implementing council tax policy. He was disappointed in the outcome. He submitted that there should be a different legislation or policy implemented to avoid him and those like him being penalised. The FTS concluded at paragraph 4.5 that the local authority had applied the regulations and policies correctly in relation to the property.

Appeal

[6] The appellant appealed against the decision in the first instance to the FTS. By decision dated 17 April 2024 it refused permission to appeal. The appellant now seeks permission to appeal from the Upper Tribunal.

Arguable

[10] In terms of rule 3(6) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, where the FTS has refused leave to appeal, the Upper Tribunal may give permission to appeal



if “the Upper Tribunal is satisfied that there are arguable grounds for the appeal”, section 46(4) of the Tribunals (Scotland) Act 2014.

[11] An appellant requires to set out the basis of a challenge from which can be divined a ground or grounds of appeal capable of being argued at a full hearing. This is an important qualification or condition on appealing which serves a useful purpose. If no proper ground of appeal is capable of being formulated then there is no point in wasting further time and resources in the matter proceeding. The respondent in a hopeless appeal ought not to have to meet any further or additional procedure in a challenge with no merit. It is in the interests of justice that a ground of appeal which is not arguable, is stopped in its tracks.

[12] The task of the Upper Tribunal in any application for permission to appeal, is to ascertain, with reference to the material submitted, whether the appellant has identified in the proposed ground or grounds of appeal an error of law that is capable of being stated or argued before it at a full appeal hearing.

Hearing: Permission to appeal 20 June 2024

[7] The appellant Mr Wood was present and Ms Street, Solicitor, represented the interests of the respondent local authority.

Ground 1

Appellant

[8] The respondent had erred in determining the period after which exemption could be claimed. The appellant submitted that the respondent had determined that only after 183 days of continuous occupation could exemption be sought. This is not provided for in the terms of any



primary legislation or in the 2013 regulations.

Respondent

[9] In response Ms Street drew attention to the terms of the Council Tax (Exempt Dwellings) (Scotland) Order 1997 and the 2013 regulations. She noted the chronology provided by the FTS at paragraph of its decision. This was not the subject of challenge. There was no error of law.

Decision – Ground 1

[10] For present purposes, the computation of the period during which the property was unoccupied commenced on the death of the previous owner, i.e. 16 February 2022. From 16 February 2023 until 24 May 2023 a 50% repair discount had application in terms of regulation 5(c) of the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013). It was not the case, as the appellant sought to characterise it, that a period of 183 days had to elapse before an exemption could be sought. The period was calculated in accordance with the chronology provided for in the regulations and accurately narrated by the FTS. The starting date for the discount – 24 May 2023 - had a basis in regulation. I agree with the respondent’s submission that the FTS approach to this matter contains no error of law.

Ground 2

Appellant

[11] The appellant sought to rely upon discretionary powers said to have been provided in the statutory guidance notes. He noted - and did not take issue with - the FTS observation that statutory guidance notes are not binding. They are not statements of law. However, the appellant went on to submit that there was a discretionary power that could have been invoked and was not.



[12] In development of this point he submitted that the reports of the Policy and Resources Committee of the respondent did not expressly address this point. He pointed to a paragraph where, by resolution of the committee, members agreed to look at this point at a future date. This did not preclude the adoption of the discretionary power.

Respondent

[13] For the respondent Ms Street submitted that the FTS approach to this issue betrayed no error of law. Statutory guidance was just that; guidance. It was not binding. In any event the positive decisions made by the Policy and Resources Committee on 19 January 2016 were made express in the FTS decision.

Decision

[14] The Scottish Government issued guidance (“Supplementary Guidance on Local Authority Discretion to: Reduce Council Tax discount on Second and Long-Term Unoccupied Homes; and apply an increase to Long-Term Unoccupied Homes”) to all local authorities on 31 March 2015. This provided for a power to depart from the terms of the council tax regulations. The local authority had to consider whether to arrogate to itself that power. The respondent’s Policy and Resources Committee on 8 October 2015 (pp.358-371) took express cognisance of this power but promulgated a policy that said that they did not wish to invoke it. That is an end to this point. The fact that they said that they may wish to exercise the powers in the future and would want to look at options to be identified in that regard does not alter the position.

Ground 3

Appellant



[15] The appellant made reference to the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Amendment Regulations 2023 with a commencement date of 1 April 2024. It was the appellant's submission that these could be backdated in their effect.

Respondent

[16] For the respondent Ms Street said there was a presumption against retroactivity in primary and secondary legislation. The regulations applied to submissions made to the local authority after that date after that date.

Decision – Ground 3

[17] I agree with the respondent's submission. The regulations were made with a commencement date of 1 April 2024. The decisions to which the FTS determination relates are those from 16 February 2023 to 25 May 2023. The FTS decision betrays no error of law.

Conclusion

[18] The appellant has failed to identify an arguable point of law capable of being argued at a full hearing. Permission to appeal is refused.

Sheriff T Kelly
Member of the Upper Tribunal for Scotland