



DECISION OF

SHERIFF GEORGE JAMIESON

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

Sue Grant

Appellant

- and -

Assessor for The Highland and Western Isles Valuation Joint Board

Respondent

FTS Case Reference: FTS/LTC/CT/24/00205

Paisley 14 October 2024

Decision

The Upper Tribunal for Scotland refuses the Appellant permission to appeal to the Upper Tribunal for Scotland against the decision of the First Tier Tribunal for Scotland Local Taxation Chamber (“LTC”) dated 10 June 2024 dismissing her appeal against the determination of the assessor dated 23 March 2024 that her statutory proposal to re-band her dwelling from band E to band D was invalid.



Introduction

[1] An “interested party” (here the Appellant, the taxpayer) may make certain proposals to the assessor for alteration of the council tax valuation list. Some of those proposals must be made within a six month period. In particular, where a person becomes a taxpayer in respect of a dwelling after 31st May 1993, that person may only make a proposal, by virtue of becoming the taxpayer, to change the property’s valuation band within six months of becoming the taxpayer (regulations 5(1) (c), (2) and (5), Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993). The First-tier Tribunal for Scotland does not have discretion to extend that particular time limit (*Miller v Assessor for Renfrewshire Valuation Joint Board* [2023] UT 30; *McIntosh v Renfrewshire Valuation Joint Board (sic)* [2023] UT 32; *Stewart v Lothian Valuation Joint Board* [2024] UT 01; *Andrews v Ayrshire Valuation Joint Board* [2024] UT 02; *Fitzpatrick v Lanarkshire Valuation Joint Board* [2024] UT 07; *Mitchell v Renfrewshire Joint Valuation Board* [2024] UT 22; and *Murdoch v Assessor for Renfrewshire Valuation Joint Board* [2024] UT 29). An original taxpayer in respect of a dwelling entered on the list as originally compiled on 1st April 1993 must, however, have made a proposal for re-banding on or before 30th November 1993 (regulation 5(2)).

[2] Not all proposals which may be made under the 1993 Regulations require to be made within a six month or other time limit however. For example, a proposal based on a material reduction in the value of the dwelling may be made *at any time* after 1st April 1993 (regulations 4(1) (a) (ii) and 5(1); section 87(10), Local Government Finance Act 1992).

[3] Regulation 5(5) does not qualify this right by imposing a six month time limit on such proposals (*Anderson v Assessor for Orkney and Shetland Joint Valuation Board* 2019 SC 619).



[4] Taxpayers may propose an alteration in banding under regulation 5(6) where a “relevant decision” was made by the valuation appeal committee, the First-tier Tribunal for Scotland, the Court of Session or the Upper Tribunal for Scotland in respect of a comparable dwelling’s council tax banding (regulation 3(2)). Such a proposal must, however, have been made by the Appellant within six months of that decision.

[5] The taxpayer may appeal to the First-tier Tribunal for Scotland Local Taxation Chamber (“LTC”) where an assessor treats a proposal as invalid on account of not having been made on time (regulations 8(2) and 10), as in this case.

[6] The LTC has no jurisdiction to consider an appeal on the merits in respect of a proposal treated as invalid for time bar (regulation 15(5)(b)); the assessor is entitled to treat a proposal, not timeously appealed under regulation 8(2), as invalidly made and does not require to take any further action in relation to the proposal (regulation 8(3)).

Grounds of appeal

[7] The Appellant argues that the LTC’s decision was inadequately reasoned.

[8] The LTC refused her appeal because of the six month time limit in regulation 5(5). However, she had not made her proposal as a new council tax payer. The six month time limit in regulation 5(5) was therefore not relevant to this appeal. The LTC Decision took no account of her actual proposal. This was not discussed in the Decision. The LTC had applied the six month time limit in regulation 5(5) without considering the exact circumstances of her proposal.

[9] Her proposal was based on the following recent changes in circumstances: (1) a cottage opposite to hers, renovated after lying derelict for a long time, being placed in the same council



tax band as her property, though now considerably more valuable than hers; (2) the banding for a comparable property to hers having been altered after a successful challenge; and (3) her recently ascertaining that comparable properties in her locality were in a lower band.

Discussion

[10] I heard the Appellant in person in respect of her application for permission to appeal by way of webex on 7 October 2024.

[11] The Respondent was not represented at the hearing.

[12] I discussed with the Appellant the possible bases on which her proposal might be considered valid in terms of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993.

[13] I understood the Appellant purchased her property in 1988 and became a council tax payer in respect of that property when council tax was introduced in 1993. She did not take any steps to challenge the council tax banding until recently, when the above changes in circumstances occurred. Her proposal to re-band the property was therefore only permissible until 30th November 1993 in accordance with regulation 5(2). The six month period referred to in regulation 5(5) would only have applied to her if she had first become the taxpayer after 31st May 1993. However, she could not characterise her proposal as one to which no time limit applied in the 1993 Regulations. She could not point to any “relevant decision” having been made to justify her proposal made within 6 months of any such decision, in terms of regulation 5(6).



[14] In those circumstances, I could see no basis for granting the Appellant permission to appeal against the Decision of the LTC and, ultimately, that of the assessor to treat the proposal as invalid on the basis of time bar.

Possible Error of Law by the LTC

[15] The Decision of the LTC states that the Appellant became liable to council tax in respect of the property in 1998. The Appellant stated to the UTS she purchased the property in 1988. If that be the case, regulation 5(5) would not have applied to this case as it applies only where the person first became a taxpayer in respect of a dwelling after 31st May 1993. The relevant regulation would have been regulation 5(2); this would have applied where the Appellant had become the taxpayer on or before that date. In that case, she would have had until 30th November 1993 to make her re-banding proposal (eight months instead of six).

[16] I discussed this with the Appellant at the hearing on permission to appeal on 7 October 2024. I was not able to clarify with her when she first became liable to pay council tax. I believe her position was she became liable on the introduction of the council tax, on 1st April 1993, as she both owned and resided in the property then. However, the time limit under either regulation has long expired and it was therefore not necessary for me to pursue this point with her further.

Inadequate Reasons by the LTC

[17] The LTC Decision on time bar appears to be in accordance with a *pro forma* template. A search on its website for Decisions in relation to “invalid” proposals, and a brief examination of a few of those 358 Decisions as at 12 October 2024 (which may include invalidity appeals on grounds other than time bar), confirms this impression.



[18] The LTC Decision in this case refers to it considering the Appellant's proposal, but without describing or discussing the nature of that proposal in any way. While it might have carried out the same exercise that I did, its Decision does not explain that it did so. It is not therefore possible to ascertain whether the LTC did, in fact, give proper consideration to this appeal. Ordinarily that would amount to an inadequacy of reasoning, amounting to an error of law. Such an approach is unfair to an Appellant who is entitled to expect a brief discussion about her proposal and why it was not valid in terms of the 1993 Regulations, and it also prevents the UTS ascertaining, for the purposes of appellate review, whether the LTC correctly applied the law to the circumstances of the individual appeal.

[19] The Court of Session made it clear in *Anderson v Assessor for Orkney and Shetland Joint Valuation Board* 2019 SC 619 that regulation 5(5) does not operate as a general time bar for all proposals under the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993. The LTC requires not only to be aware of this, but to make clear in its Decisions in respect of invalidity appeals on time bar that it has considered each appeal on an individual basis and has not applied regulation 5(5) as an indiscriminate time bar in respect of all proposals made under the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993.

[20] Failure to do this may give the impression the LTC is not acting in conformity with *Anderson v Assessor for Orkney and Shetland Joint Valuation Board* 2019 SC 619. It appears, in any event, that the Appellant's proposal was more likely prevented by regulation 5(2) than regulation 5(5) for the reasons discussed above.



[21] Accordingly, while the LTC practice of dealing with “invalidity” appeals by way of written submissions generally makes administrative sense, the Appellant in this case understandably thought that the LTC had not given adequate consideration in its Decision to *her* particular appeal, given its lack of acknowledgement therein as to the actual basis of her proposal and the reasons for its invalidity.

[22] Further, the LTC has a duty to use its case management powers to make relevant enquiries if the issues in a particular invalidity appeal to the LTC require further clarification, as in my view, was the position in this case: this is necessary in furtherance of its overriding objective to determine proceedings fairly and justly (*cf NB v Social Security Scotland* 2023 UT35; *Bell v South Lanarkshire Council* 2023 UT44).

[23] The UTS has had accordingly to perform that investigative role in this case to ascertain the nature of the proposal and whether there was any substance to this appeal. Unfortunately for the Appellant, after I had made relevant investigations prior to, and enquiries with the Appellant directly at, the hearing on permission to appeal, it transpires her case is, in fact, not one that the LTC or UTS may consider under the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 for the reasons explained above.

[24] In those circumstances, an inadequately reasoned Decision by the LTC, any failure on its part to make relevant enquiries in accordance with the overriding objective, or by applying regulation 5(5) instead of regulation 5(2), were not material errors of law on the part of the LTC: there would have been no material difference to the outcome of this appeal if those errors had not been made by the LTC.



Decision

[25] This appeal raises a similar but potentially discrete point from that in the seven UTS Decisions in *Miller v Assessor for Renfrewshire Valuation Joint Board* [2023] UT 30; *McIntosh v Renfrewshire Valuation Joint Board (sic)* [2023] UT 32; *Stewart v Lothian Valuation Joint Board* [2024] UT 01; *Andrews v Ayrshire Valuation Joint Board* [2024] UT 02; *Fitzpatrick v Lanarkshire Valuation Joint Board* [2024] UT 07; *Mitchell v Renfrewshire Joint Valuation Board* [2024] UT 22; and *Murdoch v Assessor for Renfrewshire Valuation Joint Board* [2024] UT 29. Those cases concerned taxpayers who had acquired the property after 31st May 1993 and therefore regulation 5(5) applied to them. *Mitchell v Renfrewshire Joint Valuation Board* [2024] UT 22 involved a new build property entered on the valuation list after 1st April 1993 and it may be that regulation 5(7) (c) more properly applied to that property, although that regulation creates the same rule that the taxpayer has six months to make a proposal from first becoming a taxpayer in respect of the dwelling.

[26] As noted above, this case may in fact have been governed by the time limit of 30th November 1993 in regulation 5(2). However, that time limit has expired and following the *ratio decidendi* (the reason for the decision) of the foregoing cases, neither the LTC nor the UTS have discretion to extend it. This appeal is accordingly not arguable. Permission to appeal must therefore be refused.

Conclusion

[27] Although permission to appeal has been refused, there is nothing in law to prevent the assessor considering the Appellant's proposal on its merits. The assessor is not required to do so, but neither is the assessor prevented in law from doing so.



[28] The Scottish tribunals have no jurisdiction over this matter. That is the only effect of my decision in this appeal. The Appellant's request for re-banding does not fit the precise statutory scheme, but arguably on the facts stated by her, her property's banding may now, unfairly to her, be too high based on the recent changes in circumstances outlined above, compared to those of her neighbouring properties. The Appellant should therefore seek to pursue this matter with the assessor on a discretionary basis.

George Jamieson
Sheriff of North Strathclyde
Judicial Member of the Upper Tribunal for Scotland