



**DECISION OF**

Sheriff F McCartney

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

Mrs Maureen Fitzpatrick

Appellant

- and -

Lanarkshire Valuation Joint Board

Respondent

FTS Case reference: FTS/LTC/CT/23/00673

**19 January 2024**

**Decision**

Permission to appeal is refused.

**Introduction**

[1] This is an appeal against the decision of the FTS in relation to council tax banding. Mrs Fitzpatrick, the appellant, sought a review of her council tax banding from the Assessor for Lanarkshire Joint Valuation Board ('the Board'). She was acting on behalf of herself and her husband, who own the property in question. The Board refused to formally accept her review



application, deeming her to be out of time to do so. She appealed to the First-tier Tribunal for Scotland ('FTS'), and when refused, sought leave from the FTS to appeal to the Upper Tribunal. That was refused by the FTS. She now seeks leave to appeal direct from the Upper Tribunal.

## The FTS' decision

[2] The FTS considered Mrs Fitzpatrick's appeal on the papers only. It had representations from the Board to the effect that any appeal against banding was out of time. The FTS considered that to be correct. It decided the appeal to the Board was lodged more than 6 months after Mrs Fitzpatrick became the council tax payer in terms of Regulation 3 (1) of the Council Tax (Alternation of Lists and Appeals) (Scotland) Regulations 1993, and was not a timeous appeal in terms of Regulation 5 (5) of those regulations. The FTS considered it had no discretion in the matter, and Mrs Fitzpatrick's appeal was dismissed.

## Grounds of appeal

[3] The 4 grounds of appeal submitted by Mrs Fitzpatrick are:

1. "An error of general law, the content of its rules – if this is a general law why have other councils (as listed in my previous letter to you) changed their original findings outwith the 6 month period and reassessed bandings.
2. An error in the application of the law to the facts - our house has been misidentified and is in a different banding to every other chalet villa in our estate.
3. Making findings in fact without a basis in the evidence – our house has been misidentified and we have contested this on numerous occasions since realization in 2015 but at no time have you considered our evidence.
4. Taking a wrong approach to the case – because of 6 month rule you have not considered all of the evidence we have previously submitted, i.e. 50 + identical houses to ours in different banding and historic sale prices submitted to you previously."



[4] At the Upper Tribunal's request, Mrs Fitzpatrick also provided a time line of the events in relation to her contesting the council tax banding. She and her husband had moved into the property in 2013. There had been a previous appeal attempt by her in 2015 which had been refused as out of time.

### The hearing

[5] A hearing was held to consider the application for leave to appeal. That hearing took place by webex on 18 January 2024. The Board submitted written representations in advance. In addition to Mrs Fitzpatrick, her husband and daughter were also present, with her husband (without objection) adding some points. The Respondents were represented by Mr Murphy, Advocate, with Mr Pacitti from the Board also in attendance.

[6] Mrs Fitzpatrick spoke to her 4 proposed grounds of appeal. The first was an error of general law, which she explained arose because other Councils allowed appeals after 6 months. She acknowledged the Upper Tribunal hearing had been delayed to allow her to make requests for information from other areas, but that had not been provided to her by those other Councils. The second ground was a misapplication of the facts. The value of the property had been misidentified. Wrong assumptions had been made about the value of the property. In 2015 they discovered their nephew, who had recently moved into the estate, was in a different council tax band from her and her husband. This was despite, in their view, living in an identical house. The third ground related to wrong findings in fact without there being available evidence. The assessor had claimed to re-examine the banding and said it was correct. That was simply not true. There was no evidence for that. Fourthly the approach taken to the 6 month time limit throughout the history of this dispute was simply the wrong approach.

[7] More generally Mrs Fitzpatrick set out her frustration with the process. An appeal in 2015 had failed because it was deemed to be out of time. No one had properly listened to her. In response to the Upper Tribunal questions as to what the FTS's error of law was, she said that she



had hoped the Upper Tribunal would now understand the merits of her case. She did not understand that the Upper Tribunal was only considering the issue of time limits. The current appeal arose because she ticked a box in a council tax notification that she was unhappy with the banding.

[8] Mr Murphy adopted his written submissions. Permission to appeal should not be granted for the reasons set out in the written submissions. There was two errors in the written submissions with missing words, and Mr Murphy sought to correct those. However, when it became clear that two proposed amendments he wished to make to those submissions were causing confusion for Mrs Fitzpatrick, he was content to proceed with the submissions as lodged. On the submission of this appeal, the Board had checked their assessment of the correct banding of Mr & Mrs Fitzpatrick's home. It was accepted that, in theory, such a decision might be amenable to a judicial review against the Board, and the Board were happy to provide some further details as to how the valuation had been checked. The Respondents used a method known as the comparative method of valuation, which examined various factors and methods available at the time. It was accepted that Mr & Mrs Fitzpatrick's dispute was more concerned with why their home was differently banded to others in the estate, and the Board would be happy to write or speak to Mr & Mrs Fitzpatrick to offer any further information they could on that issue. That was best done out with this hearing, given it was not a matter before the Upper Tribunal. It was acknowledged that this appeal was concerned with whether the FTS had erred in law in determining the appeal out of time.

## Discussion

[9] It is unfortunate that this case has come before the Upper Tribunal in circumstances where Mrs Fitzpatrick appeared not to understand the limited role of the Upper Tribunal. It may assist to provide the following context.



[10] As explained at the hearing, the Upper Tribunal is not a general court of re-hearing or review. Its role is limited to considering whether the FTS has erred in law in its consideration of a case. An error of law includes matters such as misinterpreting or misapplying the law, failing to understand the facts or acting in such a way that results in one or other party not having had a fair hearing.

[11] In this case the sole question before the Upper Tribunal is whether leave to appeal should be granted against the FTS' decision. The FTS dismissed Mrs Fitzpatrick's application as out of time; it did not look at the merits of any arguments about banding. Accordingly the issue is whether leave to appeal should be granted. That involves considering whether the FTS were wrong in law to decide that Mrs Fitzpatrick's application to the Board was indeed out of time, and were right to dismiss her appeal on that basis. For Mrs Fitzpatrick to obtain leave to appeal, she needs to show that she has arguable grounds for success before the Upper Tribunal. It is acknowledged that it is a low test.

[12] I decide that the FTS is correct in its decision, and whilst leave to appeal is a low test, Mrs Fitzpatrick has not persuaded the Upper Tribunal that she should be granted leave to appeal. However unfortunate it is for Mr & Mrs Fitzpatrick, the law does not allow her statutory appeal against the council tax banding to be made at any time. In general terms, an appeal must be made within 6 months of the property being valued within a council tax band, or proprietors moving into the property. Exceptions do apply for later appeals beyond 6 months. Mr & Mrs Fitzpatrick do not argue that they fall within any of the categories which would allow them to submit a late appeal.

[13] In considering each of the 4 grounds of appeal that Mrs Fitzpatrick submitted:

1. If other Councils have accepted late appeals, such evidence was not provided to the FTS (Mrs Fitzpatrick produced a list of Councils, but no documents or decisions to show that



those Councils had acted in that way). Whether or not any such evidence would assist her is a separate question.

2. On the second point, as to whether there is an error in law in the application of the facts, the FTS did not make any findings in fact and thus could not have erred. The FTS decided this case on the basis of the law only.
3. In relation to point 3, the answer is similar to that to point 2. The FTS did not make findings in fact.
4. Mrs Fitzpatrick's last point is that the FTS took a wrong approach to the case. That is an assertion only and is not specified. It is difficult to see how this could be given the issue of the time limits.

[14] Accordingly none of the grounds of appeal submitted by Mrs Fitzpatrick assist her in arguing that leave to appeal should be granted. I appreciate she will be disappointed by this decision. It is often difficult for persons representing themselves to understand the law. The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 are not, at first blush, easy to read or to understand. Whilst the FTS was entitled to determine the appeal without an oral hearing, that inevitably would make it more difficult for Mrs Fitzpatrick to understand both the process and the substantive decision as to why the merits of her appeal was not being considered. From Mrs Fitzpatrick's point of view, the question of whether her home has been placed in the wrong council tax band has never been satisfactorily answered.

[15] Whilst I encouraged the Respondents to offer to meet with Mrs Fitzpatrick, that is a matter outwith the Upper Tribunal's powers. I cannot force such a meeting. However, as Mr Murphy accepted, in theory given the Respondents have possibility rechecked or reconsidered the valuation of the property, that could mean there is a decision which could be susceptible to a judicial review. I make no comment as to whether that could be done, or the merits of that. On a pragmatic basis it seems to me that if the Respondents have considered the merits of the points that Mr & Mrs Fitzpatrick make, it is in the interests of transparent administration that there is



communication between the parties and such information is shared with Mr & Mrs Fitzpatrick. I would encourage those discussions to take place.

Conclusion

[16] I refuse permission to appeal. There are no arguable grounds to put before the Upper Tribunal. There are no arguable grounds to conclude the FTS erred in its application of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993.

Sheriff F McCartney  
Member of the Upper Tribunal for Scotland