



2026UT63

Refs: UTS/AP/26/0071

DECISION OF

Sheriff Jillian Martin-Brown

**ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF UPPER TRIBUNAL FOR SCOTLAND)**

IN THE CASE OF

Walter Zayachkivsky

Appellant

- and -

City of Edinburgh Council

Respondent

FTS Case Reference: FTS/LTC/CT/24/01130

Forfar, 4 August 2026

Decision

Permission to appeal is REFUSED.

Reasons For Decision

Background

1. The appellant (Mr Zayachkivsky) appealed against a decision of the respondent (City of Edinburgh Council) not to apply an exemption in respect of the property at 3F2, 62 Albion Road, Edinburgh for the period 12 April 2020 to 24 May 2020.
2. An evidential hearing took place on 6 February 2026. The First-tier Tribunal for Scotland ("FTS") determined that the property was let out to the same two tenants from 12 May 2017 until 11 April 2020. They left on 11 April 2020 having given their one month's notice. At that point the property was unoccupied and therefore council tax liability reverted to the appellant as the non-resident owner. The property was re-let to new tenants on 24 May 2020.
3. The FTS determined that council tax records indicated that one of the tenants who occupied the property from 12 May 2017 until 11 April 2020 was a student for council tax purposes for the period from 16 July 2017 until 30 September 2018. No other application for a student disregard or exemption was received from either occupant during the period they let the property. Neither occupant was classified as a student for council tax purposes when they left the property on 11 April 2020.
4. The FTS determined that the appellant carried out a number of repairs to the property whilst it was not let out between 11 April 2020 and 24 May 2020. These repairs were complete by the time the new tenant moved in on 24 May 2020.
5. The FTS determined that a flat below the property had been unoccupied for some time prior to 2020. As a result of its lack of occupation the flat had not been maintained. Due to Covid-19 restrictions the appellant was not able to show prospective tenants into the property, and he relied on showing them the outside only. A number of tenants chose not to sign the lease after being shown the property from the outside only. When the appellant was able to show the property from the inside it was immediately let. The property was advertised continuously from the time the previous tenants gave one month's notice to when it was re-let on 24 May 2020. The property was let as a furnished property.
6. The FTS considered there was insufficient evidence on which to make findings in fact to support the appellant's submission that the property should have been subject to an exemption during the relevant period and refused his appeal on 24 March 2026.
7. The appellant applied to the FTS for permission to appeal its decision to the Upper Tribunal. The FTS determined that the proposed appeal did not raise any points of law and therefore there were no arguable grounds of appeal. Permission was refused on 27 April 2026.
8. The appellant submitted an application to appeal to the Upper Tribunal on 26 May 2025. A permission to appeal hearing took place on 3 August 2026 by WebEx, attended by the appellant only. The respondent indicated in advance of the hearing that it was content with the decisions of the FTS and would not attend the hearing.

Grounds of Appeal

9. The appellant sought leave to appeal on three grounds as follows:
 - (i) whether a student exemption should have applied;
 - (ii) whether a dwelling under repair exemption should have applied; and
 - (iii) whether an empty dwelling exemption should have applied.

Submissions

10. In relation to ground (i), the appellant submitted that the tenants were students but conceded that he could not prove that now because of the delay in resolving this matter, which was due to the respondent. Back in 2020, the respondent had used an old email address that was no longer in use. The student exemption should have applied.
11. In relation to ground (ii), the appellant submitted that he had undertaken essential work externally to stabilise the parapet wall from collapse and internally to re-plaster in order to make the property habitable again for the next tenants. The dwelling under repair exemption should have applied.
12. Finally, in relation to ground (iii), the appellant submitted that the flat downstairs was empty, which put off prospective tenants because it meant there were mattresses outside the property, junk in the stairwell and a hole in the window. The respondent's senior engagement officer had shown no sympathy or consideration to the appellant for the inconvenience caused by leaving the flat downstairs neglected for decades. The appellant had required to carry out remedial works and deal with the furniture stored illegally in the common escape passage. The empty dwelling exemption should have applied.

Decision

13. Section 72(1) of the Local Government Finance Act 1992 provides that council tax shall be payable in respect of any dwelling which is not an exempt dwelling. Student exemptions were available under schedule 1 of the Council Tax (Exempt Dwellings) (Scotland) Order 1997, which was temporarily amended by the Coronavirus (Scotland) (No. 2) Act 2020. The FTS determined in its decision of 24 March 2026 that that the appellant had not provided sufficient evidence to demonstrate that either of the tenants were students in terms of the relevant legislation when they left the property. Neither tenant was cited as a witness, and no evidence was provided to rebut the evidence put forward by the respondent that no student disregard or exemption had been applied for since the period 16 July 2017 until 30 September 2018.

14. The FTS took into account that the appellant initially raised a grievance regarding the council tax applicable for the period on 26 October 2020. That was responded to by the respondent on 8 December 2020. The appellant was not content and raised a complaint with the respondent. That was investigated and it was noted that the response of 8 December 2020 went to an email address no longer used by the appellant. The respondent therefore issued a further response dated 13 May 2024 advising the appellant of the outcome of his complaint and advising him of his right to appeal to the FTS. The appellant did not submit his appeal within four months of 13 May 2024 but in light of the confusion caused by the email to the old address, the FTS exercised its discretion to extend the time for appeal.
15. The onus of proof lay with the appellant to demonstrate that the student exemption was applicable. In its decision of 24 March 2026, the FTS found that the appellant did not submit credible and reliable evidence to satisfy it that the criteria were met (para. 7.7.4). The appellant was candid during the Upper Tribunal hearing that he could not do so. I determined that while the confusion caused by emailing an old address merited an extension of time, it did not alter the burden of proof and did not consider that the appellant had set out a basis as to how the FTS had erred in law. Accordingly, I refused this ground of appeal.
16. Turning to ground (ii), dwellings under repair exemptions were available under schedule 1 of the 1997 Order for dwellings incapable of and not being lived in because of structural repairs, improvements or reconstructions. The FTS determined that, based on the evidence submitted, the property was habitable during the period. The FTS considered the photographs, some of which were outwith the period in question (para. 7.8.2). It considered the oral submissions of the appellant and found that the works carried out by the appellant and tradespeople instructed by him amounted to minor repair and redecoration (para. 7.8.3), rather than significant repairs without which the property would not be able to be lived in. The appellant continued to advertise the property for let and to show the property to potential tenants throughout the period (para. 7.8.4).
17. Again, the onus of proof lay with the appellant to demonstrate that the dwelling under repair exemption was applicable. Though he disagreed with the findings of the FTS in relation to the nature of the repairs carried out, I did not consider that he had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.
18. Finally, in relation to ground (iii), empty dwellings exemptions were available under schedule 1 of the 1997 Order for properties both unoccupied and unfurnished. The FTS determined that while the property was unoccupied, it was not unfurnished (para. 7.9.1). The legislative tests did not apply to the status of another dwelling, i.e. the flat downstairs.
19. Again, the onus of proof lay with the appellant to demonstrate that the empty dwelling exemption was applicable to his property. Though the flat downstairs was empty and

put off prospective tenants, that did not assist with meeting the legislative criteria. I did not consider that he had set out a basis as to how the FTS had erred in law and accordingly, refused this ground of appeal.

20. Rule 39 of the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 provides that an application for permission to appeal a decision of the FTS *must* identify the alleged points of law on which the person making the application wishes to appeal. I determined that the FTS applied the correct test in considering whether to grant permission to appeal and did not consider that the appellant had set out a basis as to how the FTS had erred in law.

Refusal of Permission

21. Permission can only be granted if there are arguable grounds of appeal on a point of law (section 46 of the Tribunals (Scotland) Act 2014). As that statutory test is not met in relation to any of the three grounds, permission is refused.

Sheriff Jillian Martin-Brown
Member of the Upper Tribunal for Scotland