2026UT68
Ref: UTS/AP/26/0072

DECISION OF

Mr N S Taylor

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

Mrs Marie McCartney

Appellant

\- and -

Assessor for Dumbartonshire and Argyll and Bute Valuation Joint Board

Respondent

FTS Case Reference: FTS/LTC/CT/25/01938

11 September 2026

Decision

The application for permission to appeal by the appellant against the decision of the First-tier Tribunal for Scotland dated 13 March 2026 is refused.

Background

[1] This application for permission to appeal is in respect of the decision of the First-tier Tribunal for Scotland dated 13 March 2026 to refuse the appellant's appeal in relation to a decision to delete a property from the valuation roll and enter it as a 'dwelling' on the Council Tax List. The reasoning is explained in paragraphs 5.1 to 5.7 of the First-tier Tribunal's decision. In particular, paragraph 5.7 narrates—

'*It was not disputed between the parties that the Property was not let for more than 70 nights in the financial 2023/24. On that basis, the Property did not meet the legislative requirements for inclusion on the Valuation Roll and therefore, it required to be entered into the Council Tax Valuation List. A Property on the Council Tax Valuation List must be charged council tax in accordance with its assigned Band, in this case Band B. The Tribunal accepted the Appellant encountered unfortunate circumstances which prevented her from letting the Property as frequently as she had hoped, however the legislation does not allow discretion whether or not a Property is included in the Valuation Roll. The legislation is clear that the criteria must be satisfied or the Property is to be deleted from the Valuation Roll and entered into the Council Tax Valuation List.'*

Application for permission from the First-tier Tribunal to appeal to the Upper Tribunal

[2] The appellant sought permission from the First-tier Tribunal to appeal the decision of 13 March 2026 to this Tribunal. The appellant submitted the following reasons (received by the First-tier Tribunal on 13 April 2026) in support of the application for permission to appeal: that the Tribunal rejected the appeal '*despite evidence showing special extenuating circumstances*' and that the result she is seeking is '*that the law should take into account these mitigating circumstances*' and she is '*seeking to bring the evidence before the Higher Tribunal*'.

[3] The First-tier Tribunal refused permission to appeal to the Upper Tribunal by a decision dated 27 April 2026 (sent 30 April 2026).

Application for leave from the Upper Tribunal to appeal to the Upper Tribunal

[4] The application for permission from the Upper Tribunal to appeal to the Upper Tribunal was made on 29 May 2026. It was within time.

[5] The reasons for appeal lodged with the application to the Upper Tribunal were in the following terms—

'We wish to appeal about the decision made by the first tribunal because nowhere did the rule of 70 night occupancy explain what would happen if we did not meet that requirement. Nor did the rule explain that the appeal system did not take into account any extenuating circumstances which led to not achieving the minimum nights required. There was no information advising us about the right to appeal and we had to find out how to do it ourselves. There was not even a specific form to fill in. We had to navigate this without any help. Therefore our point is that when this ruling was introduced, there was nothing explaining what would happen should the 70 nights not be achieved and what the procedure if any is in place for an appeal to be made'.

Order of the Upper Tribunal: 11 August 2026

[6] I made an Order on 11 August 2026 in the following terms—

'*In advance of the hearing set for 7 September 2026, that parties submit such representations as they consider appropriate as to the relevance, if any, of regulation 5B of the Council Tax (Dwellings and Part Residential Subjects (Scotland) Regulations 1992 to the issues before the Upper Tribunal.*' (the '1992 Regulations')

Regulation 5B (Self-catering accommodation: determination where 70 day requirement is not met) states at paragraph (1)—

(1) A local authority may determine land and heritages in all or part of the local authority area which would fall within the class of self-catering holiday accommodation but for the requirement in paragraph 2(b)(ii) of schedule 2, to fall within the class of self-catering holiday accommodation where it is satisfied that—

(a) there are exceptional circumstances which have prevented the requirement in paragraph 2(b)(ii) of Schedule 2 being met in the financial year, and

(b) it is reasonable to do so, having regard to the interests of persons liable to pay council tax.

[7] Both the appellant and the respondent responded to this Order. The appellant's response was in the following terms—

'*...regarding further evidence that we wish to present at the meeting on Sep 7th. This is information that we were not aware of when we made our first appeal. This pertains to a point of law that we were not informed about either by DAVVJB or Argyll and Bute Council that we could lodge an appeal in regard to exceptional circumstances stated in 5b - Self Catering holiday accommodation: determinations where 70 day requirement is not met - 5b paragraph 2 (b) of schedule 2, see attached photo. At no time were we informed about this. We were directed to appeal using a form on the Council website which was actually about contesting the council banding. We were told by the Valuation Dept at DAVVJB that there was no official or direct way to appeal on the grounds that we laid out which were exceptional circumstances which we had no control over meaning that we could not let the property out for the full 70 nights*'.

[8] The respondent submitted a six-page note dated 27 August 2026. The essence of this note was that the discretion to consider exceptional circumstances where it is reasonable to do so contained in regulation 5B of the 1992 Regulations is conferred upon the local authority and not the assessor. There was no determination by the local authority under regulation 5B to treat the property as self-catering holiday accommodation despite not meeting the 70 day requirement. The assessor was therefore bound by the mandatory terms of the regulations where a property fails the 70 day requirement. Regulation 5B therefore has no relevance to the current proceedings.

<u>*Permission hearing before the Upper Tribunal: 7 September 2026*</u>

[9] A hearing took place on 7 September 2026 by Webex on the appellant's application for permission to appeal. The appellant, Mrs McCartney, appeared. The respondent was represented by Mr Charleston (Divisional Valuer for the Assessor).

[10] I noted from the appellant that, as narrated to me, she had received mixed information about what she could appeal and how she could appeal (from both the local authority and the Assessor's Office). She had never been made aware of the terms of regulation 5B of the 1992 Regulations despite the substance of her representations being about circumstances for not meeting the 70 day rule which she viewed as exceptional. She expressed frustration with how this has been handled given she now understands she can only argue points of law in this appeal process and not have her representations heard by this Tribunal about what she considers constitute exceptional circumstances in relation to the 70 day rule.

[11] I took the opportunity of the Webex hearing to outline to Mrs McCartney the constraints on the matters on which I am able to adjudicate. My primary focus at the hearing was to hear from both parties as to whether there were any arguable errors of law contained in the decision of 13 March 2026.

[12] It is not the purpose of this Tribunal to assess whether the First-tier Tribunal erred in law when making its decision on permission (the decision of 27 April 2026). A refusal by the First-tier Tribunal to give permission required by section 46(3) is not appealable (section 55(2) of the Tribunals (Scotland) Act 2014).

[13] The task of this Tribunal is to make its own assessment as to whether there are arguable points of law presented to it in relation to the decision of 13 March 2026.

The law as regards appeals to the Upper Tribunal

[14] An appeal to the Upper Tribunal can only be made on a point of law: section 46(2)(b) of the Tribunals (Scotland) Act 2014. Permission to appeal is required under section 46(3) which must be sought first from the tribunal below, and if there refused, must be sought directly from this Tribunal. Permission will only be granted if there are arguable grounds for the appeal (section 46(4)).

[15] The meaning of an appeal on a point of law in the context of appeals against a tribunal decision was set out in *Advocate General for Scotland v Murray Group Holdings Ltd* 2016 SC 201, [2015] CSIH 77 at paragraphs 41 to 43. There are four categories: general law (being the content or interpretation of the law); application of the law to the facts; a finding for which there is no evidence or which is inconsistent with the evidence and contradictory of it; fundamental error in the tribunal's approach or a decision which no reasonable tribunal could have reached.

[16] The test for arguability is not a high one. The appellant is not required to prove that the tribunal did actually err in law. That is for determination at a later hearing should permission be granted. However, the appellant does require to identify at permission stage that there is an error in law that is capable of being argued at a full hearing for proper resolution.

Reasons

[17] Before I deal with the responses to my Order of 11 August 2026, I will deal with the original reasons submitted by the appellant to the Upper Tribunal with her application.

[18] It is not correct to assert that the consequences of not meeting the 70 day rule are not set out anywhere. The 1992 Regulations set that out: an entry in the valuation roll should remain only if the legislative requirements have been met within the financial year (see regulation 5D(2) and schedule 2 of the 1992 Regulations).

[19] The 70 day rule does not explain that the appeal system does not take into account extenuating circumstances. That is because the Tribunal (Scotland) Act 2014 (and subsequent procedural rules) sets out that appeals to the Upper Tribunal are on points of law only.

[20] I need not consider the assertion that there was no information about the right to appeal or what forms to use given the appellant did manage to navigate the process of applying for permission to appeal (both from the First-tier Tribunal and from this Tribunal).

[21] The responses to my Order of 11 August deserve closer consideration. The appellant's point of law, it seems to me having read her written reasons and spoken to her at the hearing, is that at no point in the process was there any indication of the existence of regulation 5B of the 1992 Regulations. There is no mention of regulation 5B in the decision of the 13 March 2026 (or the 27 April 2026).

[22] At para 5.7 of the decision of 13 March 2026 the First-tier Tribunal says *'…the legislation does not allow discretion whether or not a Property is included in the Valuation Roll.'*

[23] That statement refers, in the view of the assessor, to the absence of any discretion conferred on the assessor (or indeed any Tribunal). Another interpretation would be that the phrasing of the First-tier Tribunal in this respect gives an impression that the relevant legislation, in its entirety, allows for no discretion in relation to what is included in the valuation roll. In one respect it clearly does: regulation 5B of the 1992 Regulations confers a discretion on the local authority in relation to cases where the 70 rule is not met to treat them as if the 70 day rule were met. Where that discretion is exercised in favour of treating the property as having met the 70 day rule, that property would be included in the valuation roll.

[24] The only category into which this could conceivably fall is that of an arguable error of general law. However, it is futile to go very far with this for two reasons.

[25] First, it is reasonable to conclude that the First-tier Tribunal was referring only to the maintenance of the valuation roll itself; which is the responsibility of the assessor. The assessor has no discretion in relation to the 70 day rule or whether a property may or may not be included in the valuation roll. Regulation 5B does not explicitly mention the valuation roll.

[26] Secondly, even at its highest, any error of general law on the part of the First-tier Tribunal as to the existence of regulation 5B is irrelevant. It is not an arguable point of law which could have any bearing on this appeal. The appellant did not apply to the local authority to exercise its discretion under regulation 5B. The assessor was duty bound to proceed on the basis that, as the appellant accepts, the 70 day rule was not met. The assessor correctly carried out its duties under the relevant legislation.

[27] There is no arguable point of law identified. I refuse permission to appeal.

Other issues

[28] I would observe, for what it is worth, that had the existence of that separate avenue of discretion been exposed much earlier, the appellant may have been saved the effort of navigating the route to this Tribunal. Saying that, I am not entirely dismissive of the respondent's submissions that there are risks in terms of suggesting alternative routes of resolution for which they do not have responsibility.

[29] This Tribunal notes the submission of the respondent (at page 6 of their response to my Order of 11 August) that it remains open to the appellant to contact the local authority to ask for it to exercise its discretion under regulation 5B of the 1992 Regulations. I do not know if that is correct or how the local authority would treat those circumstances if it were able to consider them. I note it because the option was flagged.

[30] **There is no appeal against this decision or right of review: section 48 and 55(2) of the Tribunal (Scotland) Act 2014.**

Mr N S Taylor

Legal member of the Upper Tribunal for Scotland