



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2019] CSIH 39
XA97/18

Lord Brodie
Lord Drummond Young
Lord Malcolm

OPINION OF THE COURT

delivered by LORD BRODIE

in the Appeal under section 82(4) of the Local Government Finance Act 1992

of

RICHARD ANDERSON

Appellant

against

A decision of the Orkney and Shetland Joint Valuation Appeal Panel communicated
to the Appellant on 8 October 2018

Appellant: Party

Respondent: G Clarke QC; Gillespie MacAndrew LLP

16 July 2019

Valuation for the purpose of council tax

[1] Section 70(1) of the Local Government Finance Act 1992 (“the 1992 Act”), as amended, provides that in respect of the financial year 1993-94 and each subsequent financial year, each local authority in Scotland shall impose a tax which shall be known as the council tax of the council which set it, and shall be payable in respect of dwellings situated in that authority's area. The persons liable to pay council tax are identified in section 75 of the 1992 Act. The amount of council tax payable by the

person liable is dependent on the valuation band within which the dwelling house is listed, as provided by section 74 of the 1992 Act. The valuation bands are designated by letters of the alphabet from A to H (section 74(2) of the 1992 Act). The bands are relatively broad. The present appeal relates to a proposal for the alteration of the band within which a dwelling house is listed by substituting Band D for Band E. Valuation band D is for values exceeding £45,000 but not exceeding £58,000. Valuation band E is for values exceeding £58,000 but not exceeding £80,000.

[2] The responsibility for compiling and maintaining a valuation list of the dwelling houses in his area and allocating each dwelling its applicable valuation band is that of the assessor for the local authority (section 84 of the 1992 Act). In order to enable him to compile the list the assessor shall carry out a valuation of such of the dwellings in his area as he considers necessary or expedient, but where it appears to the assessor that a dwelling falls clearly within a particular valuation band, he need not carry out an individual valuation (section 86(1) and (3)). Any valuation shall be carried out by reference to 1st April 1991 and on such assumptions and in accordance with such principles as may be prescribed.

[3] Assumptions and principles for the valuation of dwellings are prescribed in regulation 2 of the Council Tax (Valuation of Dwellings) (Scotland) Regulations 1992 (SI 1992/1329 (S 126)) (“the 1992 Regulations”). Regulation 2, so far as relevant for present purposes, provides as follows:

“2. Valuation of dwellings

(1) For the purposes of valuations under section 86(2) of the Local Government Finance Act 1992 and valuations carried out in connection with proposals for the alteration of a valuation list, the value of any dwelling shall be taken to be the amount which the dwelling might reasonably have been expected to realise

if it had been sold in the open market by a willing seller on 1st April 1991, having applied the assumptions mentioned in paragraph (2) below ...

(2) The assumptions referred to in paragraph (1) above are—

(a) that the sale was with vacant possession;

(b) that the dwelling was sold free from any heritable security;

(c) that the size and layout of the dwelling, and the physical state of its locality, were the same as at the time when the valuation of the dwelling is made or, in the case of a valuation carried out in connection with a proposal for the alteration of a valuation list, as at the date from which that alteration would have effect;

(d) that the dwelling was in a state of reasonable repair; ...

(3) In determining what is 'reasonable repair' in relation to a dwelling for the purposes of paragraph (2) above, the age and character of the dwelling and its locality shall be taken into account."

[4] Section 87 of the 1992 Act empowers the assessor to alter the valuation list. The exercise of that power is governed by the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (SI 1993/355 (S 39)) ("the 1993 Regulations"). Among the circumstances in which the assessor may alter the valuation list is that "there has been a material reduction in the value of the dwelling" (regulation (4)(a)(ii) of the 1993 Regulations). "Material reduction in value" has however a restricted meaning in this context. In terms of section 87(10) of the 1992 Act "material reduction" in relation to the value of a dwelling is defined as meaning:

"any reduction which is caused (in whole or in part) by the demolition of any part of the dwelling, any change in the physical state of the dwelling's locality or any adaption of the dwelling to make it suitable for use by a physically disabled person."

[5] In terms of regulation 5(1)(c) of the 1993 Regulations, subject to paragraphs (2), (7), (8) and (10) of regulation 5, an interested person may, at any time after 1 April 1993, make a proposal for alteration of the list so as to change, with effect from a

particular date, a valuation band which is shown on the list in respect of a dwelling.

We shall have occasion to return to the proviso “subject to paragraph[s] (2)”.

[6] Section 81(1) of the 1992 Act provides that a person may appeal to a valuation appeal committee if he is aggrieved by any decision of an authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; or by any calculation made by an authority of an amount which he is liable to pay in respect of council tax. The procedure in such appeals is governed by the provisions of part IV of the 1993 Regulations.

Shetland Islands Council: discharge of functions

[7] Functions in relation to council tax in respect of Orkney Islands Council and Shetland Islands Council, including the appointment of an assessor and depute assessor, are discharged jointly by the Orkney and Shetland Joint Valuation Board, as is provided for by section 27(7) of the Local Government (Scotland) Act 1994 (“the 1994 Act”). The valuation appeal panel, from which valuation appeal committees are selected, as provided by section 29 of the 1994 Act, is a joint panel.

The appellant’s proposal and his appeal to the Joint Valuation Appeal Committee

[8] The appellant is the person liable to pay council tax in respect of the dwelling house, known as “The Sea Chest”, East Voe, Scalloway, Shetland. He avers that he became the sole council tax payer in July 2014.

[9] On 16 March 2018 the appellant proposed to the assessor that the valuation list in respect of The Sea Chest should be altered by substituting Band D for Band E with effect from the date of the proposal. It was the appellant’s contention that The Sea

Chest has suffered damage and therefore a material reduction in value, by reason of surface water draining from uphill properties and through a roadside drain into the drains of The Sea Chest. Were the valuation list to be altered as sought by the appellant this would result in a reduction of his liability to pay council tax by some £300 per year.

[10] The assessor refused to alter the valuation list. He intimated his refusal by letter of 27 March 2018, headed "The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 Invalid Proposal", in which he stated his opinion that the appellant's proposal had not been validly made for the reason that it was "out with (sic) the time limits laid down in the Regulations". Appended to the letter were

Reasons for Invalid Proposal as follows:

"Under Regulation 5 of the above Regulations a person may make a proposal in relation to that dwelling within six months of becoming a taxpayer.

Under Regulation 5 it is not considered that there has been a material reduction in the value of the dwelling."

The appellant appealed against the assessor's decision to the Orkney and Shetland Joint Valuation Appeal Committee, in terms of section 81(1) of the 1992 Act.

[11] There was a hearing before the Valuation Appeal Committee on 2 October 2018.

By letter of 8 October 2018 the Valuation Appeal Committee intimated its decision refusing the appellant's appeal.

[12] The Valuation Appeal Committee recorded its ruling on the facts as follows:

"The property is a detached single storey building situated on the West side of and below the B9074 public road. This is a double carriageway several metres above the property and several houses have been constructed on the east side of this road. Surface water from all these houses drains into the roadside drains which pour into a culvert above the property and then into the domestic drains of the property and thereafter to the sea at East Voe, Scalloway. The Shetland Islands Council constructed the road under Section 31 of the Roads (Scotland) Act 1984. [The appellant] and [his] father before [him] have tried to force the

Shetland Islands Council to take responsibility for damage caused to the property by the excessive water draining through the property. Shetland Islands Council or Scottish Water ought to have constructed a drain direct to the sea rather than via the domestic drains of the property which are inadequate for the purpose. This has resulted in flooding and erosion to the northwest corner of the property undermining the foundations and causing subsidence. As a result it is difficult to obtain insurance at a competitive rate and it is feared that the property would be difficult to let or sell in its present condition.”

[13] The Valuation Appeal Committee recorded its decision as follows:

“Based on all the above facts and the applicable law, the Committee decided (a) that the appeal was invalid having been made after the six months had expired since the day on which you became the taxpayer and (b) that all the stated defects in the house were capable of being rectified albeit not by yourself.”

The present appeal

[14] The appellant has appealed the decision of the Orkney and Shetland Joint Valuation Appeal Committee’s decision of 8 October 2018. This is an appeal on a point of law under section 82(4) of the 1992 Act. The answers to the appeal bear to be on behalf of the Orkney and Shetland Joint Valuation Appeal Panel but, as we anticipated would be the case and as was explained by Mr Clarke QC for whom he appeared, the respondent to the appeal is the Assessor for the Orkney and Shetland Valuation Joint Board.

[15] The appellant has lodged a form of appeal in terms of RCS 41.25 which includes 13 numbered paragraphs under the heading Grounds of Appeal and a question of law for the opinion of the court (as is envisaged by form 41.25). The only paragraph which includes any reference to a point of law is number 13 which states: “The Panel erred in law in holding that ‘all the stated defects in the house were capable of being rectified albeit not by yourself’”. The appellant has, however, supplemented his form of appeal by lodging Amended Grounds of Appeal (to be added at end of Grounds of Appeal

already lodged in Form 41.25 on 22 March 2019). These extend to 16 paragraphs, the first 13 of which relate to the nature of the damage to the Sea Chest, information which the appellant asserts, at paragraph 14, was presented by him to the Valuation Appeal Committee. Paragraph 15 of the Amended Grounds of Appeal includes this:

“The Grounds of Appeal are that the legislative provision to which the Panel impliedly makes reference is a ‘relieving provision’ for new Council Tax Payers and is not intended by Parliament to be a bar against an application to an alteration in council tax banding where the material change has arisen after that date.”

Paragraph 16 of the Amended Grounds of Appeal includes this:

“The Grounds of Appeal are that it would be economically pointless for the occupant to seek to repair subsidence caused by surface water run-off without first addressing the cause of said subsidence. ...The law and practice of council tax banding in England & Wales and Scotland is that where a change in the physical state of the locality takes place outwith the curtilage of the dwelling concerned and so is not directly remediable by the Taxpayer, then where the physical change in locality results in a material reduction in value, a change in banding is appropriate.”

[16] The question of law included in the original form of appeal is as follows:

“Where physical changes and a material deterioration in condition and value take place in relation to the property due to a cause arising outside the curtilage of the property which cannot be remedied by the occupants of that property, does that amount to a material change of circumstances which carries an entitlement to a reduction in Council Tax Banding (in this instance from Band E to Band D)?”

The Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993

[17] We have already made reference to the 1993 Regulations. For present purposes the following provisions within regulations 4 and 5 are of particular relevance:

“4.— Restrictions on alteration of valuation bands

(1) No alteration shall be made of a valuation band shown in the list as applicable to any dwelling unless—

(a) since the valuation band was first shown in the list as applicable to the dwelling—

(i) there has been a material increase in the value of the dwelling and it, or any part of it, has subsequently been sold; or

(ii) subject to paragraph (2), there has been a material reduction in the value of the dwelling;

(b) the local assessor is satisfied that—

(i) a different valuation band should have been determined by him as applicable to the dwelling; or

(ii) the valuation band shown in the list is not that determined by him as so applicable;

...

(d) there has been a successful appeal under the Act against the valuation band shown in the list.

...

5.— Circumstances and periods in which proposals may be made

(1) Subject to paragraphs (2), (7), (8) and (10), an interested person may at any time on or after 1st April 1993 make a proposal for alteration of the list so as to—

(a) show with effect from a particular date a dwelling which is not or was not shown on the list;

(b) delete with effect from a particular date a dwelling which is or was shown on the list; or

(c) change with effect from a particular date a valuation band which is or was shown on the list in respect of a dwelling.

(2) Where a dwelling is shown on the list as compiled, no proposal for alteration of the valuation band first shown in respect of the dwelling on the grounds that it is not the band which should have been so shown may be made after 30th November 1993 unless it is such a proposal as is described in paragraph (3), (4), (5) or (6).

...

(5) Where a person first becomes a taxpayer in respect of a dwelling after 31st May 1993, that person may, unless any of the circumstances specified in paragraph (9) apply, make a proposal in relation to that dwelling within 6 months of becoming a taxpayer.

...

(8) Where the valuation band shown in respect of a dwelling on the list is altered, no proposal for a further alteration of that band (whether involving a restoration to the original band or otherwise) may be made unless—

(a) the proposal is made before 1st December 1993;

...

(c) the proposal is made by a person who has within the last 6 months first become a taxpayer in respect of the dwelling and none of the circumstances specified in paragraph (9) apply;

(d) the proposal is made within 6 months of an appeal decision which is a relevant decision in respect of the dwelling; or

(e) the grounds of the proposal are that, since the effective date of the alteration–

(i) there has been a material increase in the value of the dwelling and it, or any part of it, has subsequently been sold;

(ii) there has been a material reduction in the value of the dwelling; or

...

(9) The circumstances referred to in paragraphs (5), (7)(c) and (8)(c) are that–

(a) a proposal to alter the list in relation to the same dwelling and arising from the same facts has been considered and determined by a valuation appeal committee or on appeal from such a committee;

(b) the new taxpayer is a company which is a subsidiary of the immediately preceding taxpayer;

(c) the immediately preceding taxpayer was a company which is a subsidiary of the new taxpayer;

(d) both the new and immediately preceding taxpayers are companies which are subsidiaries of the same company; or

(e) both the new and immediately preceding taxpayers are partnerships and at least one member of the partnership which is the new taxpayer was a member of the other partnership.

...”

Analysis of issues and decision on the appeal

[18] We are of opinion that the appeal must be refused, albeit by reason of a consideration that arose only in the course of oral submissions and not any point taken

explicitly by the respondent in the Answers, the Supplementary Answers or either of the respondent's two notes of argument.

[19] The Valuation Appeal Committee refused the appellant's appeal on two grounds: (1) that the appeal was invalid having been made after the six months had expired since the day on which the appellant became the taxpayer; and (2) that all the stated defects in the house were capable of being rectified, albeit not by himself. In our respectful opinion the first ground was wrong and the second irrelevant to any issue before the Committee.

[20] In order to understand our opinion on the Valuation Appeal Committee's first ground for refusing the appeal (a ground which had also been relied on by the Assessor) it is necessary to return to the proviso to regulation 5(1) of the 1993 Regulations, but first it is convenient to reiterate the basis upon which an alteration to a valuation band may be made. Regulation 4 (1) of the 1993 Regulations provides that no alteration shall be made of a valuation band unless certain circumstance apply. These circumstances are set out in sub-paragraphs (a) to (d) of paragraph (1). Among these circumstances (as appears from the excerpt from regulation 4 quoted above, but there are others) is that described in regulation 4(1)(a)(ii): "there has been a material reduction in the value of the dwelling". As we have already indicated, in this context "material reduction in value" has a restricted meaning. In terms of section 87(10) of the 1992 Act "material reduction" in relation to the value of a dwelling means:

"any reduction which is caused (in whole or in part) by the demolition of any part of the dwelling, any change in the physical state of the dwelling's locality or any adaption of the dwelling to make it suitable for use by a physically disabled person."

Thus, the assessor can alter the valuation band if there has been a material reduction in value *and* the cause of that reduction is one or other of three events: (1) partial demolition of the dwelling; (2) change in the physical state of the dwelling's locality; or; (3) adaption of the dwelling for use by a disabled person. It follows that the issues for the assessor when considering whether he has power to alter a valuation band are, first, has there been a material reduction in value? and second, has it been caused by a relevant event? The only one of these events which could be relevant to the appellant's circumstances is (2), change in the physical state of the dwelling's locality. The physical condition of the appellant's dwelling was only incidentally of relevance. It is not clear from the material available to us that either of the parties gave appropriate emphasis to this in their respective presentations before the Valuation Appeal Committee.

[21] We return to regulation 5. As its heading explains, it is concerned with setting out the circumstances in which an interested party may make a proposal to the assessor to alter the list. As the appellant emphasises in his amended note of argument, regulation 5(1) permits an interested person (and as taxpayer the appellant is clearly an interested person) "to make a proposal for alteration of the list *at any time on or after 1 April 1993* (the appellant's emphasis)". The date there referred to was the commencement date of the 1993 Regulations and the new taxation regime introduced by the 1992 Act. Thus, far from imposing a general limit on the time within which a proposal to alter the list can be made, as the Assessor's decision letter of 27 March 2018 would suggest, as a matter of generality regulation 5(1) allows for proposals for an alteration on any of the grounds identified in regulation 4, "at any time". The generality of regulation 5(1) is admittedly limited by the proviso that it is "subject to

paragraphs (2), (7), (8) and (10)" of the regulation. We pause to note that the "at any time" generality stated in in regulation 5(1) is not made subject to regulation 5(5), a time-limited provision which was relied on by Mr Clarke in his defence of the Valuation Appeal Committee's decision that the appellant's appeal to it was invalid. We shall have more to say about regulation 5(5) in what follows.

[22] For present purposes the relevant paragraph in the proviso to regulation 5(1) "subject to paragraphs (2), (7), (8) and (10)", is paragraph (2), which provides:

"(2) Where a dwelling is shown on the list as compiled, no proposal for alteration of the valuation band first shown in respect of the dwelling on the grounds that it is not the band which should have been so shown may be made after 30th November 1993 unless it is such a proposal as is described in paragraph (3), (4), (5) or (6)."

Thus, although in terms of regulation 5(1) an interested person may make a proposal, and make it "at any time", no proposal to which regulation 5(2) relates may be made unless either it is made before 30 November 1993, or it is a proposal "as is described in paragraph (3), (4), (5) or (6) of the regulation". We stress, however, that the prohibition imposed by regulation 5(2) on making a proposal after 30 November 1993 relates only to one of the available grounds for making a proposal, and that is that the valuation band in the list compiled by the assessor "is not the band which should have been so shown", a ground for alteration provided for by regulation 4(1)(b). The appellant does not found on regulation 4(1) (b); he founds on regulation 4(1) (a) (ii). His proposal is therefore not caught by the requirement that it be made before 30 November 1993 or that it is "as is described in paragraph (3), (4), (5) or (6) of the regulation". To put it another way, a function of paragraphs (3), (4), (5) and (6) is to exclude proposals which meet the relevant criteria, from the prohibition imposed by regulation 5(2) that the proposal be made before 30 November 1993, but what must not be lost sight of is that

the regulation 5(2) restriction applies only to one ground of alteration: that the band “is not the band which should have been so shown”. As the regulation 5(2) restriction does not apply to the “material reduction to the value” ground, there is therefore no need to rely on paragraphs (3), (4), (5) or (6) to take a proposal based on that ground out of the scope of the prohibition. In our opinion regulation 5(5) simply has no relevance to a proposal to alter the valuation list on the ground of material reduction to the value such as was made by the appellant. However, the Valuation Appeal Committee would appear to have taken a different view and Mr Clarke, drawing he said on his considerable experience of the practice of assessors and valuation appeal committees, said that the Valuation Appeal Committee was right to do so. We must therefore say something more.

[23] We have already set out the terms of regulation 5(5) but we shall repeat them:

“Where a person first became a taxpayer in respect of a dwelling after 31st May 1993, that person may, unless any of the circumstances specified in paragraph (9) apply, make a proposal in relation to that dwelling within 6 months of becoming a taxpayer.”

As we have explained, a function or at least an effect of this paragraph is to exempt a proposal to which it relates, one made within 6 months of the person becoming a taxpayer, from the prohibition, imposed by regulation 5(2), on making a proposal after 30 November 1993 for alteration of the valuation band on the grounds that it is not the band which should originally have been shown. The provision makes sense. A person who was a taxpayer as at 1 April 1993 had until 30 November 1993 to propose an alteration of the valuation band of his dwelling on the grounds that it was not the band which should have been shown. If he did not do so then he lost the option of making such a proposal. However, as subsequent persons became taxpayers they might come to

the view that the relevant dwelling house in which they had only recently acquired an interest was not in the valuation band to which it should originally have been allocated. Regulation 5(5) gives the new taxpayer the option of proposing an alteration, but one which is time-limited in that it must be exercised within 6 months of him becoming a taxpayer. An alternative which did not allow a taxpayer to challenge the basis upon which he had come under the personal obligation to pay tax might be thought to be unfair in that the dilatory conduct of a previous taxpayer would be being held against the new taxpayer. The exclusion of a case to which any of the circumstances specified in paragraph (9) also makes obvious sense in that it excludes from the benefit of regulation 5(5), first, proposals which have already been considered and determined by a valuation appeal committee and, second, situations where technically there might be a new taxpayer but in reality the new taxpayer is closely linked to the immediately preceding taxpayer.

[24] Mr Clarke did not accept that regulation 5(5) had only the limited function described in the previous paragraph of this opinion. He submitted that it had an entirely general effect or at least an effect sufficient to mean that a proposal in terms of regulation 5(1)(c) to change a valuation band on the regulation 4(1)(a)(ii) grounds that there had been a material reduction in value had to be brought within 6 months of the person making the proposal having become a taxpayer.

[25] We accept that if one entirely ignores the preceding paragraphs of regulation 5 and treats regulation 5(5) as a stand-alone provision, Mr Clarke's submission is just about tenable as a matter of language. It does not however survive scrutiny. In that there is nothing in regulation 5(5) to distinguish a proposal founding on regulation 4(1)(a)(ii) from other proposals for a first alteration of valuation band, we

must presume that on the construction that Mr Clarke advanced on behalf of the Assessor all proposals are subject to the supposed requirement that the proposal is made within 6 months of the person making the proposal becoming the taxpayer. On that view, the results of the Assessor's proposed construction being correct are so bizarre that we consider that it must be rejected in favour of the construction which we have outlined above.

[26] Before considering some of these results, we would observe that even on purely linguistic grounds, the Assessor's proposed construction is odd. The language is permissive: the new taxpayer *may* make a proposal within 6 months. That suggests the giving of permission to make a proposal notwithstanding there otherwise being something to prevent a proposal being made. We would see that as supporting our preferred construction: regulation 5(5) allows a proposal to be made notwithstanding the prohibition in regulation 5(2) of making a proposal after 30 November 1993. On the other hand, on the Assessor's construction regulation 5(5) is restrictive in effect, in other words it is a limitation on the right to make a proposal. If that were the function of regulation 5(5) one might have expected that it would be couched in restrictive language. Moreover, to give regulation 5(5) the Assessor's construction would render inexplicable the introductory words of regulation 5(1) "an interested person may at any time on or after 1 April 1993 make a proposal". A person cannot make a proposal "at any time" if the proposal must be made within 6 months of that person becoming a taxpayer. True, these introductory words are subject to a proviso but the proviso is "subject to paragraphs (2), (7), (8) and (10)". Were the Assessor correct one might expect that the provision that "an interested person may at any time on or after 1 April 1993 make a proposal" would be made subject, perhaps *inter alia*, to paragraph (5).

[27] However, the objections to the Assessor's construction go beyond the wording of paragraphs (1) and (5) of regulation 5. Among the grounds upon which the list may be altered are events which may have occurred long after 30 November 1993 and long after the expiry of 6 months from the current taxpayer having first become a taxpayer. An extreme example is the complete demolition of a dwelling. In terms of regulation 5(1)(b) an interested person may make a proposal to alter the list so as to delete with effect from a particular date a dwelling which is shown on the list. This would be an appropriate proposal if the dwelling had been completely (as opposed to partially) demolished as there would no longer be a dwelling to be included in the list. According to the Assessor that is only possible if the interested person became a taxpayer within the previous 6 months. The same point may be made in relation to proposals to change a valuation band in terms of regulation 5(1)(c) on the grounds provided by regulation 4(1)(a)(i) or (ii): that there has been either a material increase or a material reduction in the value of the dwelling. As we have already discussed, regulation 4(1)(a)(ii) allows an alteration of the valuation band if there has been a material reduction in the value of the dwelling. That expression is not defined in the Regulations, but it is defined in section 87(10) of the 1992 Act as a reduction which is caused by one or other of three sorts of event: demolition of any part of the dwelling, any change in the physical state of the dwelling's locality or any adaption of the dwelling to make it suitable for use by a physically disabled person. If the Assessor were correct in his interpretation of the Regulations that would mean that if one of these sorts of events occurred more than 6 months after someone became a taxpayer in respect of a dwelling house (if for example the taxpayer adapted the dwelling to make it suitable for use by a physically disabled person) and if that had resulted in a material reduction in value of the dwelling, he could never

propose that the valuation band should be altered to reflect that reduction in value. This cannot have been the intention of the Secretary of State when he made the 1993 Regulations. It does not, however, stop there. Whereas earlier paragraphs of regulation 5, including paragraph (5), address first proposals to alter the valuation list, paragraph (8) is directed at proposals for further alterations, in other words proposals to alter the band where it has previously been altered. One sees mirrored in paragraph (8) provisions which occur elsewhere in regulation 5, although their structure is slightly different. The structure of paragraph (8) is to begin with a restriction: no proposal for a further alteration of a band may be made but the restriction is subject to an introductory “unless” which opens up the possibility of a proposal for a further alteration in the circumstances set out in following five sub-paragraphs, (a) to (e). Sub-paragraph (c) allows a proposal to be made:

“...by a person who has within the last 6 months first become a taxpayer in respect of the dwelling and none of the circumstances specified in paragraph (9) apply”.

That is differently worded than regulation 5(5) but, again, it is permissively worded albeit that it is subject to a time-limit. However, the point we would stress is that the list of circumstances as described in the five sub-paragraphs, (a) to (e) of paragraph (8) includes a disjunctive “or” between the end of sub-paragraph (d) and the beginning of sub-paragraph (e). Thus, the effect of paragraph (8) is to allow a proposal for a further alteration in any of the discrete circumstances described in the five sub-paragraphs.

There is no question of the time-limit in sub-paragraph (c) applying to the circumstances set out in other sub-paragraphs. At sub-paragraph (e) as one of the circumstances in which a proposal for a further alteration may be made one finds:

“ the grounds of the proposal are that, since the effective date of the alteration-

...

(ii) there has been a material reduction in the value of the dwelling”.

Thus, because of the disjunctive “or”, it is clear that a proposal for a further alteration of valuation band can be made on the ground of material reduction in the value, irrespective of whether the interested person making the proposal has been a taxpayer for in excess of 6 months. It would be curious if the Regulations had to be read in such a way that a proposal for a first alteration could only be made within 6 months of becoming a taxpayer but a subsequent proposal for a further alteration could be made at any time.

[28] Of course one only arrives at these absurd results if regulation 5(5) does apply to a proposal to alter a valuation band on the ground that there has been a material reduction in value of the dwelling since the valuation list was compiled. We would suggest that it does not. Rather, as regulation 5(2) states in terms, it relates to a different ground on which the list may be altered: an “alteration of the valuation band first shown in respect of the dwelling on the grounds that it is not the band which should have been so shown”. That is not the basis upon which the appellant proposes that the valuation list should be altered. He is not challenging the valuation band first shown on the list. What he proposes is that the valuation band first shown should be altered because of what has happened since. The passage of time does not prevent him doing that.

[29] In order to understand the Valuation Appeal Committee’s second ground for refusing the appellant’s appeal it is necessary to have regard to the valuation assumption made by regulation 2(2)(d) of the 1992 Regulations that any dwelling is in a state of reasonable repair, and the decision of the First Division in *Assessor for*

Lanarkshire Valuation Joint Board v Valuation Appeal Committee 2003 SC 249. Put short, that decision is to the effect that if a structural defect in a dwelling is capable of being dealt with, even if that necessitates quite substantial work, then, as a matter of fact, it is to be regarded as not being in a reasonable state of repair (as opposed to being in such a state of dereliction that it cannot properly be regarded as a dwelling house at all).

That, for valuation purposes is irrelevant because, irrespective of the facts, in terms of regulation 2 of the 1992 Regulations it is to be assumed that any dwelling is in a state of reasonable repair. As Lord President Cullen, delivering the opinion of the court put it at paragraph [7]:

“The fact that a substantial or unusually large amount of work would be required for that purpose does not take away from the fact that it is necessary in order to arrive at the state of affairs which is to be assumed.”

[30] We take the Valuation Appeal Committee’s attaching significance to the damage to The Sea Chest being “capable of being rectified” to be based on *Assessor for Lanarkshire Valuation Joint Board*. With his question of law the appellant puts in issue the applicability of the Valuation Appeal Committee’s capable-of-being-rectified point to a situation where the cause of the damaged condition of the dwelling is situated beyond its curtilage and accordingly beyond his power to remedy.

[31] This is not a question that needs to be entered into. The appellant’s proposal is made on the basis that the circumstance described in regulation 4 (a)(ii) of the 1993 Regulations applies, namely that: “there has been a material reduction in the value of the dwelling”. As we have already indicated, “material reduction in value” has a restricted meaning in this context. In terms of section 87(10) of the 1992 Act “material reduction” in relation to the value of a dwelling is defined as meaning:

“any reduction which is caused (in whole or in part) by the demolition of any part of the dwelling, any change in the physical state of the dwelling’s locality or any adaption of the dwelling to make it suitable for use by a physically disabled person.”

Whether there has been a material reduction in the value of The Sea Chest caused by a relevant event is a question of fact which it was for the Valuation Appeal Committee to determine. The only relevant event which would seem to be in contention is a change in the physical state of the dwelling’s locality. Thus, in order to have succeeded in his appeal the appellant had to establish (1) that there had been a reduction in the value of The Sea Chest; (2) that it was material, by which in the context of this case must mean sufficient to justify substituting valuation Band D for valuation Band E; and (3) that it was caused by a change in the physical state of The Sea Chest’s locality. None of these three elements is subject to an explicit finding of fact by the Valuation Appeal Committee. We understood the appellant to argue that they could be implied from what the Committee did find. We disagree. The appellant may or may not have a case for alteration of the valuation band of The Sea Chest but the Committee, whose jurisdiction it was, did not find such a case to have been established on the facts. That may be because parties diverted their attention elsewhere but a deficiency in finding of necessary facts is not something that this court can remedy.

[32] The appeal will be refused. We reserve all questions of expenses.