



VALUATION TRIBUNAL FOR ENGLAND

Council tax valuation: Local Government Finance Act 1992; Council Tax (Situation and Valuation of Dwellings) Regulations 1992 [SI 1992 No 550]; Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2270]; Ladies Hosiery and Underwear Limited v West Middlesex Assessment Committee [1932] 2 KB 679; Domblides v Listing Officer [2008] EWHC 3271 (Admin); Wilson v Coll (Listing Officer) [2011] EWHC 2824 (Admin); Corkish (Listing Officer) v Berg [2019] EWHC 2521 (Admin); Bunyan (Listing Officer) v Patel [2022] EWHC 1143 (Admin); Appeal against Listing Officer Decision not to reduce valuation band; appeal dismissed.

APPEAL NUMBERS: M0810677

RE: 16 Friars Orchard, Leatherhead, Surrey, KT22 9RL
(the "subject dwelling")

| | | |
|----------|-----------------|------------|
| BETWEEN: | ML | Appellant |
| | and | |
| | Listing Officer | Respondent |

SITTING: *remotely via Microsoft Teams*

ON: Wednesday 26 October 2022

BEFORE: Mr MF Young (Vice President)

CLERK: Mr W Hamilton IRRV(Dip) A.Inst.Pa

APPEARANCES: *For the Appellant*
ML, the Appellant (by telephone)
Mr P Oakley of Counsel (by audio link)

For the Respondent
Ms D Sandell of the Valuation Office Agency (by audio/visual link)

DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeal is dismissed.
2. I am satisfied that –
 - (a) there is no restriction in law preventing the Respondent Listing Officer from ascribing to the subject dwelling a valuation band higher than band F;
 - (b) on the evidence before me, the subject dwelling would, on balance, have achieved a sale value, in accordance with the statutory assumptions, exceeding £160,000 but not more than £320,000; and accordingly
 - (c) the subject dwelling is correctly ascribed valuation band G in the council tax valuation list with effect from 18 November 2016.

Introduction

3. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings.

Background

4. This appeal relates to the entry in the council tax valuation list for the subject dwelling from 18 November 2016. It forms part of a series of appeals seeking to challenge the valuation bands ascribed to the subject dwelling by the Respondent Listing Officer.
5. On 24 December 2019, I issued my judgment on proceedings on another appeal (with appeal number 3620837081/589CAD) which I termed the “2016 restoration appeal”. In summary, in that judgment I considered that the Appellant had no right to appeal to this Tribunal where a proposal – in that case, seeking the deletion of the subject dwelling from the council tax valuation list – was determined as well-founded by the Respondent Listing Officer.
6. That left a further appeal (with appeal number M0810677) outstanding for determination by the Tribunal. I termed that appeal the “2016 valuation appeal”. In summary, that appeal challenges the valuation band ascribed to the subject dwelling following its re-entry into the council tax valuation list from 18 November 2016.
7. After my judgment on 24 December 2019, the Appellant made a further appeal to the Tribunal against the Respondent Listing Officer’s decision in respect of another proposal, which I termed the “1993 valuation appeal” (which has appeal number M0865392). In summary, the 1993 valuation appeal challenges the valuation band ascribed to the subject dwelling when it was first entered into the council tax valuation list on 1 April 1993 through to 31 January 2016.

8. I heard the 1993 valuation appeal and the 2016 valuation appeal (in that order) on Wednesday 26 October 2022, sitting remotely using Microsoft Teams in accordance with the Tribunal's current practice.
9. This decision relates to the 2016 valuation appeal. My decision in respect of the 1993 valuation appeal will be issued separately.

Relevant Law

Council tax

10. Part I of the Local Government Finance Act 1992 (the "Act") makes provision for the payment of council tax in respect of dwellings in England and Wales.
11. It is not necessary to set out all of the provisions in full but suffice it to say that a "dwelling" is defined in section 3 of the Act in such a way that what remains is a domestic hereditament.
12. The term "hereditament" is itself defined by section 115 of the General Rates Act 1967 as being "*property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list*".

Valuation

13. Section 5 of the Act sets out that the amount of council tax payable is dependent upon which of eight bands a dwelling falls within based upon its capital value. The bands relevant to this appeal are –

| | |
|--|--------|
| Values exceeding £120,000 but not exceeding £160,000 | Band F |
| Values exceeding £160,000 but not exceeding £320,000 | Band G |

14. Regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 [SI 1992 No 550] ("the Valuation Regulations") makes provision for determining a dwelling's capital value. It is not necessary to set out all the provisions but, in summary, the value of any dwelling is to be taken to be the amount which, subject to the statutory assumptions, the dwelling might reasonably have been expected to realise if it had been sold in the open market by a willing vendor on 1 April 1991 (the "antecedent valuation date").
15. One of the statutory assumptions, particularly relevant in this appeal, is found at paragraph (2)(d) of Regulation 6 of the Valuation Regulations. In short, it requires that I must have regard to the size, layout and character of the subject dwelling on the "relevant date". Again, it is not necessary to set out the provision in full, but paragraphs (5A)(b)(ii) and (5B)(e) of Regulation 6 of the Valuation Regulations, together with Regulation 11 of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2270] (the "ALA Regulations"), determines the applicable relevant date following the entry of a new dwelling into the list is the date that the dwelling came into existence.

Restrictions on alterations of valuation bands

16. Regulation 3 of the ALA Regulations prohibits alterations to the valuation band ascribed to a dwelling in the council tax valuation list, unless one of the prescribed circumstances is satisfied. For the purposes of these proceedings, it is not necessary to set out the provision in full, but it is necessary to highlight one of the restrictions for reasons which will become apparent later in this statement of reasons. Regulation 3(1)(a)(i) of the ALA Regulations provides –

3 *Restrictions on alteration of valuation bands*

- (1) *No alteration shall be made of a valuation band shown in a 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 a relevant transaction has been subsequently carried out in relation to the whole or any part of it;...

17. Section 24 of the Act provides definitions for “material increase” and “relevant transaction”, however it is unnecessary to set these out here.

Proposal to alter the valuation list and right of appeal to this Tribunal

18. Regulation 4 of the ALA Regulations provides for the making of proposals – a legal challenge – to a dwelling being shown in the valuation list or the valuation band ascribed to it. For the purposes of this statement of reasons, it is not necessary to set out in full the provisions under which the proposal was made as there is no dispute that it was validly made in accordance with the ALA Regulations.
19. As in this case, where the Listing Officer does not consider the proposed alteration to be well-founded (and serves the appropriate decision notice under regulation 9 of the ALA Regulations), regulation 10 of the ALA Regulations affords the proposer the right to appeal to this Tribunal against the Listing Officer’s decision. So far as is relevant to these proceedings, Regulation 10 of the ALA Regulations provides –

10 *Disagreement as to proposed alteration*

- (1) *Where the [Listing Officer] has –*

(a) made a decision under regulation 9(1)(b)(iv); and

(b) served a decision notice under regulation 9(2),

the proposer ... may appeal to the [Valuation Tribunal for England] against the [Listing Officer’s] decision.

...

Discussion

The subject dwelling

20. As set out briefly at paragraphs 4 to 7, above, the subject dwelling was originally shown in the council tax valuation list from 1 April 1993 and was deleted with effect from 1 February 2016.
21. The deletion was brought about consequent to a proposal from the Appellant seeking such a deletion due to substantial building works being undertaken at the dwelling. The Respondent Listing Officer, in accepting the Appellant's proposal as well-founded, agreed that the dwelling was not capable of beneficial occupation as a dwelling during these works.
22. Prior to its deletion from the list, the subject dwelling was a 4-bedroom detached house, measuring 140m² in terms of reduced covered area ("RCA"). It consisted of the four-bedrooms, a study, a lounge, a dining room, a family bathroom, a shower room, and a separate downstairs toilet. It also benefited from a single garage (not included in the RCA).
23. On 18 November 2016, the subject dwelling was re-entered into the council tax valuation list. On that date, it consisted of 4 bedrooms, two bathrooms (one being an ensuite to one of the bedrooms), two living rooms, a study, a kitchen, a utility room and a cloakroom. It also benefits from a single garage (not included in the RCA). Following an inspection of the subject dwelling by Ms Sandell on 3 December 2019, it was agreed by the parties at the hearing that the subject dwelling now measured 222m² in terms of RCA.
24. RCA is the standard from the Royal Institution of Chartered Surveyors adopted by the Valuation Office Agency for the comparison of houses for council tax valuation purposes. In summary, it measures the external area of the building, less any areas of reduced head height (less than 1.5m) and garages or other outbuildings.

The restriction on increase in valuation band

25. On behalf of the Appellant, Mr Oakley contended that regulation 3(1)(a)(i) of the ALA Regulations prevented the Respondent Listing Officer from increasing the valuation band of the subject dwelling upon its re-entry into the council tax valuation list. In making this argument, Mr Oakley contended that the subject dwelling could not be ascribed a valuation band higher than valuation band F (being the valuation band ascribed to the subject dwelling from 1 April 1993 to 31 January 2016).
26. Mr Oakley rightly argued that, in my judgment of 24 December 2019 regarding the 2016 restoration appeal, I did not determine whether the subject dwelling ceased to be a hereditament on 1 February 2016, but solely that the Tribunal lacked the jurisdiction to entertain the Appellant's appeal (because there is no right of appeal to this Tribunal where a proposal is well-founded by the Respondent Listing Officer). In short, he contended that the subject dwelling never ceased to be a dwelling on 1

February 2016 and therefore the Respondent Listing Officer was prevented from increasing the valuation band on 18 November 2016.

27. Mr Oakley relied upon the High Court's recent judgment in *Bunyan (Listing Officer) v Patel* [2022] EWHC 1143 (Admin) and contended that the Respondent Listing Officer had taken a wrongful approach in removing the subject dwelling from the council tax valuation list and then re-entering it at a higher valuation band. He stated that the subject dwelling was always in existence as a dwelling and was never incapable of beneficial occupation as a dwelling, nor "truly derelict", referring to the High Court's judgment in *Wilson v Coll (Listing Officer)* [2011] EWHC 2824 (Admin).
28. For the Respondent Listing Officer, Ms Sandell contended in short, that upon the subject dwelling's re-entry into the council tax valuation list, it was necessary to take account of the physical changes. She referred me to the High Court's judgment in *Corkish (Listing Officer) v Berg* [2019] EWHC 2521 (Admin) as indicative that a revaluation occurs upon the creation of a new hereditament.
29. Mr Oakley countered that the High Court's judgment in *Corkish* supports his case. This was on the basis that it refers to the difference between an extension to a dwelling (representing a material increase in the dwelling's value), which is caught by the restriction at Regulation 3(1)(a)(i) of the ALA Regulations, and the creation of two entirely new hereditaments from the demise of one, which is not caught by that restriction. But it is not the Respondent Listing Officer's case in this appeal that the original dwelling has been replaced with two hereditaments: it is that the subject dwelling was a new hereditament at the point it was re-entered into the council tax valuation list.
30. I do have some sympathy with the Appellant's position. However, it seems to me that, despite the attempts to resile from the position, the Appellant's well-founded proposal to delete the subject dwelling from the council tax valuation list is evidence of the party's acceptance of the position that, at the time, the subject dwelling was incapable of beneficial occupation as a dwelling and therefore not a hereditament. That was why the Appellant asked for it to be removed from the council tax valuation list and why the Respondent Listing Officer removed it.
31. I do not consider, on this appeal, that the Appellant can contend that the deletion of the subject dwelling from the council tax valuation list was wrong. Indeed, that was exactly what I dismissed as being outside of the Tribunal's jurisdiction in the 2016 restoration appeal.
32. Following the completion of the works to the subject dwelling it became capable of beneficial occupation again. The subject dwelling must therefore be entered into the council tax valuation list. There is no mechanism to restore the original entry: upon the demise of the hereditament, it was removed. The only thing for the Respondent Listing Officer to do is enter a new hereditament. Indeed, whilst the frame of the original building may remain, it is a new hereditament. This is evident from the plans and photographs of the works supplied with the appeal papers. The dwelling underwent significant and substantial alterations which have completely transformed its size, layout and character. It is no longer the same dwelling it was at the point it was removed from the council tax valuation list.

33. The restriction upon the Respondent Listing Officer imposed by Regulation 3(1)(a)(i) of the ALA Regulations simply does not bite when entering a new hereditament. It solely prevents the Respondent Listing Officer from increasing the valuation band ascribed to an existing dwelling to reflect material improvements until there has been a relevant transaction.
34. It therefore follows that I am not persuaded that the subject dwelling's entry in the council tax valuation list is restricted to valuation band F.

Valuing the subject dwelling

35. Firstly, as is summarised at paragraph 14, above, the date at which I must consider the size, layout and character of the subject dwelling is the date on which it came into existence: 18 November 2016.
36. For the Appellant, Mr Oakley contended that the Respondent Listing Officer had failed to properly undertake an exercise of valuing the subject dwelling. In particular, he contended that the Respondent Listing Officer had failed to properly consider the impact of the "tone of the list" in following the High Court's judgment in *Domblides v Listing Officer* [2008] EWHC 3271 (Admin). Mr Oakley's view was that the Respondent Listing Officer had failed to account for the tone of Friars Orchard. He argued that the other dwellings located on Friars Orchard were all ascribed valuation bands lower than valuation band G and that the subject dwelling, being placed in valuation band G, was out of kilter with the tone of the list.
37. For the Respondent Listing Officer, Ms Sandell set out that the highest weight of evidence, following *Domblides*, is sales evidence. She presented sales evidence in respect of three nearby dwellings, confirming in response to Mr Oakley's question, that these are the only sales available to the Respondent Listing Officer in the immediate area around 1991. Those are –

(1) *21 Friars Orchard, Leatherhead, Surrey, KT22 9LJ*

A four-bedroom detached house constructed between 1955-1964. It measures 160m² in terms of RCA, consisting of the four bedrooms, two living rooms, a kitchen and a bath/shower room, and has a single garage (not included in the RCA). The Respondent reported a single sale in respect of this dwelling: 7 September 1990 for £150,000. The dwelling is shown in the council tax valuation list at valuation band F.

(2) *23 Friars Orchard, Leatherhead, Surrey, KT22 9LJ*

A three-bedroom semi-detached house constructed before 1900. It measures 118m² in terms of RCA, consisting of the three bedrooms, a living room, a kitchen and a bath/shower room, and has a single garage (not included in the RCA). The Respondent reported two sales in respect of this dwelling: 7 Sept 1990 at £117,000; and 20 June 1993 at £105,000. The dwelling is shown in the council tax valuation list at valuation band E.

(3) *25 Cannon Way, Leatherhead, Surrey, KT22 9LJ*

A four-bedroom detached house constructed between 1955-1964. It measures 157m² in terms of RCA, consisting of the four bedrooms, two living rooms, a kitchen and a bath/shower room, and has a single garage (not

included in the RCA). The Respondent reported a single sale in respect of this dwelling: 14 August 1991 at £155,000. The dwelling is shown in the council tax valuation list at valuation band F.

38. Ms Sandell contended that the sales on 21 Friars Orchard and 25 Cannon Way indicated that four-bedroom dwellings around 160m² were achieving sales prices close to the antecedent valuation date at the very top end of the valuation band F range. Accordingly, she contended that it is reasonable to consider that a dwelling, such as the subject dwelling, which is significantly larger would have likely achieved a higher sales price, tipping it into the valuation band G range.
39. In considering tone of the list, Ms Sandell stated that on a search of the KT22 9** postal code area, 132 dwellings were returned with an RCA between 210m² to 210m² (being the size range the Respondent Listing Officer had believed the subject dwelling fell within prior to inspection on 3 December 2019). Of these 132 dwellings, there was only one dwelling that has been ascribed valuation band H, two dwellings ascribed valuation band F and 129 ascribed valuation band G. Ms Sandell contended that this overwhelmingly supported the picture presented by the sales evidence, suggesting that valuation band G was correct for the subject dwelling.
40. In questioning, the Appellant sought to highlight that several of the other dwellings on Friars Orchard have been extended but have not been revalued by the Respondent Listing Officer. But Ms Sandell referred to the restriction at Regulation 3(1)(a)(i) of the ALA Regulations and that those improvements cannot be considered until there has been a relevant transaction. Ms Sandell also confirmed the Respondent Listing Officer is somewhat dependant upon billing authorities to advise them of material improvements to dwellings. But in any event, she confirmed that the Respondent Listing Officer cannot compound errors in the list, following the Court of Appeal's judgment in *Ladies Hosiery and Underwear Limited v West Middlesex Assessment Committee* [1932] 2 KB 679.
41. Simply put, the question for me in determining this appeal is whether, having considered the basket of evidence before me, I consider that the subject dwelling, in its size, layout and character on 18 November 2019, would have achieved more than £160,000 had it sold (in accordance with the other statutory assumptions) on the antecedent valuation date of 1 April 1991.
42. In considering that question, I note that the Respondent Listing Officer has provided a persuasive body of sales evidence around the antecedent valuation date for smaller sized dwellings in the immediate locality. These sales comfortably place a house with a size around 160m² in terms of RCA at the high end of the valuation band F range of values. This evidence must, and does, attract weight. I agree with Ms Sandell's view that it is inconceivable to believe that the subject dwelling, being 62m² larger than its nearest comparable, 21 Friars Orchard, would not because of its significantly larger size, attract a greater sales value.
43. Despite Mr Oakley's suggestion to the contrary, I do also agree that the tone of the list further supports this sales evidence. The reality is that the subject dwelling is significantly larger than its nearest neighbours on Friars Orchard and is not, at least in terms of size, comparable to those. If anything, I consider that the tone on Friars

Orchard itself supports that the subject dwelling would be more valuable and likely to exceed the valuation band F range.

44. Overall, I consider that there is simply no evidence before me that would support the Appellants' case that the subject dwelling would have achieved less than £160,000 at the antecedent valuation date.

Disposal

45. In view of my above findings and reasons, the Appellant's appeal is ultimately unsuccessful.
46. I am satisfied that there is no restriction upon the Respondent Listing Officer which would prevent the valuation band ascribed to the subject dwelling exceeding valuation band F.
47. Weighing the evidence available in the basket before me, I am satisfied that, on balance, the subject dwelling would have achieved a sale price exceeding £160,000, in accordance with the statutory assumptions. Consequently, the subject dwelling is correctly shown in the council tax valuation list as valuation band G.
48. I dismiss the Appellant's appeal accordingly.

Appeal Number: M0810677

Issued: 14 November 2022

Right of further appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.
