

VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation list appeal; new taxpayer; comparable evidence; sales transactions; difference in value attributed to a local occupancy restriction at 33%; appeal allowed.

RE: 7 Vendace Court, Keswick, Cumbria CA12 4EU

APPEAL NUMBER: M0855369

BETWEEN:	Mr D Steels and Mr R Roberts (Listing Officer)	Appellant Respondent
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PANEL: Mr R Clark (Chairman)
Mr K Richardson

SITTING AT: Tullie House Museum and Art Gallery, Castle Street, Carlisle

ON: 7 February 2020

APPEARANCES: Mr D Steels (Appellant)
Mrs C Dobson (for the Listing Officer)

Summary of decision

1. Appeal allowed. The council tax band was reduced from band E to band D with effect from 12 April 2019.

Introduction

2. This appeal has been brought in respect of the following: 7 Vendace Court, Keswick, Cumbria (the “appeal property”). It was entered in the valuation list at band E with effect from 12 April 2019. The appeal to the Tribunal sought a reduction to band D and arose from the Listing Officer’s decision not to alter

the valuation list following a proposal made by Mr Steels in his capacity as a new taxpayer of the appeal property.

3. Under regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992, each valuation band must represent a value that the dwelling might reasonably have been expected to realise if it had sold in the open market by a willing vendor on 1 April 1991. The bands were set out in section 5(2) of the Local Government Finance Act 1992, with the relevant bands in relation to this appeal being:
 - Band D – values greater than £68,000 but no more than £88,000; and,
 - Band E – values greater than £88,000 but no more than £120,000.
4. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Preliminary matter

5. The clerk informed the panel that the Listing Officer had partially failed to comply with the Tribunal's directions. The Listing Officer had sent the evidence pack to the Tribunal on 3 February 2020, but the directions required it to be sent at least two weeks before the hearing.
6. In considering whether to allow the Listing Officer to take part in the proceedings or present evidence, the panel had regard to the three stage *Denton* test¹ followed in the *Simpsons Malt*² judgment. This required the panel to consider the breach of this Tribunal's directions before making any decision to either admit or exclude the respondent's evidence. The breach in question was the delay in sending the evidence pack to the Tribunal.
7. Firstly, the panel decided that it was a minor breach of the directions because Mr Steels had not been prejudiced by the respondent's failure.
8. Secondly, the panel considered the respondent's reasons for the partial breach of the directions. It was noted that the delay had been caused by a simple mix up over which caseworker was responsible to send it. The caseworker who had compiled the pack was on leave on the hearing date.
9. Thirdly, the overall circumstances of the case were considered. The panel was mindful that there was a need to enforce compliance with the Tribunal's directions, and also that there was a need for litigation to be conducted

¹ Three stage test in *Denton v TH White Ltd* [2014] 1 WLR 3926 as reaffirmed by the Supreme Court in *BPP Holdings v Commissioners for Her Majesty's Revenue and Customs* [2017] 1 WLR 2945; [2017] UKSC 55

² *Simpsons Malt and Others v Jones and Others (Valuation Officers)* [2017] UKUT 460 (LC)

efficiently and at proportionate cost while ensuring that the overall interests of justice were considered. While the Listing Officer should have taken greater care to serve the documentation on the Tribunal, ultimately the failure had not caused any disadvantage on this occasion.

10. In view of the foregoing, the panel allowed the evidence pack to be admitted and for the Listing Officer to present a case in support of band E.

Issues

11. The panel was required to determine the correct council tax band for the appeal property, based upon the amount it might reasonably have achieved if sold by a willing vendor on the open market at 1 April 1991. The appellant sought a reduction to band D, but the Listing Officer maintained that band E was correct.
12. In considering the value which would have been achieved at 1 April 1991, the panel must have regard to the physical state of the locality and the size, layout and character of the dwelling on 12 April 2019, the dwelling's effective date of entry into the valuation list.

Evidence and submissions

13. The Listing Officer provided an evidence bundle which included contributions from both parties to the appeal. It included plans, photographs, details of comparable dwellings, sales transactions, the originating proposal form, Listing Officer's decision, appeal form, correspondence between the parties, extracts from legislation, planning permission applicable to the appeal property and a Valuation Tribunal decision in respect of Brook Cottage, Ambleside Road, Keswick [Cumbria Valuation Tribunal, 0905309276/124C, 21 April 2004].

Decision and reasons

14. The appeal property, a detached house built in 2019, had a gross external area (GEA) of 142m². The accommodation comprised living room, kitchen, utility, four bedrooms and three shower/bathrooms. There was driveway parking.
15. The panel was, in essence, required to consider the open market value of the property as at 1 April 1991 and considered that the best evidence was to be found in the sales of similar properties in the locality close to the valuation date. The base line date is established by legislation and is applicable to all properties, including those that have been built after that date. The sales of comparable properties close to the valuation date are used to establish the levels of value that pertained at that time and the closer the properties were in terms of size, location and accommodation, the better the evidence.
16. The appeal property had an occupancy restriction imposed by planning permission granted by the Lake District National Park Authority. It could only

be occupied by a “person with a local connection” as his or her “only or principal home”. Such a person had to satisfy one of four conditions. To summarise:

- (a) They had to have had continuous employment in the “locality” for at least nine months; or,
 - (b) They needed to receive/provide substantial care from/to a relative in the “locality”; or
 - (c) They needed to have been continuously resident in the “locality” for three years; or
 - (d) They satisfied one of the conditions applicable to those serving or ceasing to serve in the armed forces.
17. The “locality” included the parishes of Above Derwent; Bassenthwaite; Bewaldeth and Snittlegarth; Blindbotheil; Borrowdale; Buttermere and Brackenthwaite; Caldbeck; Embleton; Keswick; Lorton; St Johns, Castlerigg and Wythburn; Setmurthy; Threlkeld; Underskiddaw; Wythop; and those parts of the parishes of Blindcrake; Ireby and Uldale; and Loweswater which lie in the Lake District National Park.
18. “Only or principal home” meant occupation for a minimum period of six months in every 12 months. The planning permission specifically stated that the dwelling shall not be occupied as a second home or for holiday letting accommodation.
19. The Listing Officer accepted that the occupancy restriction needed to be taken into account in ascribing a council tax band. This was explained by reference to the Valuation Office Agency’s Council Tax Manual (Practice Note 1) and to *Coll (LO) v Walters and Walters* [2016] EWHC (Admin) 831. Essentially, occupancy restrictions fall outside the statutory valuation assumption for council tax that the dwelling is sold free from any such incumbrances. Therefore, the occupancy restriction could be reflected in the valuation band.
20. The panel appreciated that houses with local occupancy restrictions sold for less in the open market so will generally be in lower bands than those without restrictions. This was because there were fewer potential buyers for such properties. Mr Steels said that without such a restriction, local house prices would be beyond his reach.
21. In considering the difference in value between a house with and without a local occupancy restriction, the panel did not need to look further than Vendace Court. The appellant paid £365,000 for the appeal property in 2019, but the same type of house without an occupancy restriction sold for £545,995 in 2019. This meant that the appeal property was approximately a third less valuable, say 33%. The Listing Officer also suggested a 30% discount might be appropriate to reflect the local occupancy restriction.

22. The Listing Officer believed that band E was supported by the comparable property evidence. However, the panel noted that except for 8 Vendace Court (also built in 2019), there was only one comparable property with a local occupancy restriction. This was in respect of Garden House, 38 Southey Street, Keswick, a two-bedroom detached house with a GEA of 128m². It had been placed in band D.
23. The panel noted that 8 Vendace Court had a local occupancy clause. It was also built in 2019 and was in band E. It had three bedrooms and a GEA of 123m². It sold for £345,000 in 2019; £20,000 less than the appeal property.
24. The other eight comparable properties were detached houses between 99m² and 160m² in bands E or F. The panel found that none of the comparable properties were truly alike with the appeal property and, as mentioned, none had local occupancy restrictions.
25. However, the panel considered that the best comparable property was 44 Lakeland Park which sold for £107,000 in November 1990, very close to the valuation date. It had a GEA of 140m². The accommodation was very similar to the appeal property as it had four bedrooms, two shower/bathrooms and a further toilet. At the time of the 1990 sale the property was 14 years old, so it would be considered a modern house. The price realised was in the middle to upper part of band E. Discounting that sale price by 30% to reflect the occupancy restriction would result in a value of £74,900 placing the appeal property in the lower part of band D. The panel found that this was the strongest evidence and it supported the appellant's case for a reduction to band D.
26. The panel had regard to the other comparable properties but found them all less comparable. In terms of comparability to size or GEA, the closest properties were Hazelslack, Manor Brow and 16 Manor Park; both of which were in band F. Hazelslack was slightly smaller than the appeal property and 16 Manor Park was slightly larger. The panel considered that these provided limited assistance as comparable properties because there were a number of physical differences. They were older detached houses situated on larger plots than the appeal property. They both benefitted from garages.
27. Nonetheless, examining the evidence the panel noted that Hazelslack sold for £130,000 in February 1991 and 16 Manor Park achieved £130,000 in October 1990. Applying the Listing Officer's suggested 30% discount resulted in £91,000 (lower part of band E). However, applying 33% (the difference in value for houses with and without occupancy restrictions at Vendace Court) resulted in £87,100 (close to the top of band D).
28. Overall, the panel was satisfied from the 1990/91 sales of comparable properties that a reduction to band D in respect of the appeal property could be justified. Particularly the sale for 44 Lakeland Park, a house which physically had the most in common with the appeal property, and which was a band E dwelling without any occupancy restriction.

29. Further, the panel was mindful that excluding Vendace Court, the Listing Officer provided no evidence of detached houses with local occupancy restrictions above band D.

30. In conclusion, after considering the local occupancy restriction, the panel was satisfied that the appeal property should be in band D.

Order

31. Under the provisions of regulation 38(2) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Listing Officer to reduce the entry in respect of 7 Vendace Court, Keswick, Cumbria from band E to band D with effect from 12 April 2019.

32. Under regulation 38(9), the Listing Officer must comply with this order within two weeks of the date of its making.

Date: 21 February 2020

Appeal number: M0855369

Mr D Mulgrew IRRV (Hons), Tribunal Officer