

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation appeal; proposal to delete subject property from the council tax valuation list; the appellant disputed that the property was a section 3(2) dwelling; identical proposal to delete previously heard and determined by the Valuation Tribunal, res judicata; the arguments advanced by the Appellant have been considered by the High Court in the case Doyle & others v Roberts [2020] EWHC 659 (Admin); Local Government Finance Act 1992; regulation 10(3)(c) of the VTE (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269]. Decision: Appeal struck out.

RE: 59 Telford Crescent, Leigh, Lancs, WN7 5LY

APPEAL NUMBER: M0858961

BETWEEN:	Mr J Andrews	Appellant
And	Mr R Roberts (Listing Officer)	Respondent

PANEL: Miss L Sharkey (Senior Member)
Mrs A Taylor

CLERK: Mr D Jefferies

REMOTE
HEARING ON: 2 November 2021

APPEARANCES: Mr J Andrews (Appellant)
Mr C Smith for the Listing Officer

Summary of decision

1. The appeal was struck out under the provisions of Regulation 10(3)(c) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269], as the panel was satisfied that the appeal has no reasonable prospect of succeeding.

Introduction

2. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with the Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
3. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. There were no technical problems arising on the day regarding the internet connection for any of the participants. The Appellant connected to the hearing via telephone link.
4. This appeal sought deletion of the band C valuation list entry for 59 Telford Crescent, Leigh, Lancs, WN7 5LY, with effect from 1 April 1993.
5. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties’ evidence. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

Preliminary issue

6. Before the appeal could be heard, the panel was required to address a preliminary issue on service of the evidence bundle. The clerk advised the panel that, under the Tribunal’s standard directions, the evidence bundle containing all submissions from both parties was due to be served by the respondent on the Tribunal and the Appellant no later than 5pm on 19 October 2021, i.e., two weeks before the hearing. However, the evidence bundle did not contain a copy of the Appellant’s proposal form, which was only received by the Tribunal on 1 November 2021, at the request of the clerk.
7. Mr Smith, for the LO, apologised to the panel and the Appellant for this oversight, stating that it was purely a mistake on his part as when he sent his six-week evidence pack to the Appellant he did not include a copy of the proposal as the Appellant already had it. Mr Smith said that he simply forgot to include a copy of the proposal at the two-week stage. In answer to questioning, Mr Andrews made no substantive comment on this matter.
8. In considering a breach of the Tribunal’s directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. In this case, it was clear there had been a minor breach as the LO had not included a copy of the proposal with the two-week evidence bundle. The panel considered the reasons for the late submission of the proposal form and found that in this case, mitigating circumstances had been demonstrated. The panel determined that the breach was not significant and concluded that no sanctions should be applied as the Appellant had not been disadvantaged by this, therefore, the Appellant’s proposal form, received by the LO on 8 August 2019 was admitted. The hearing thus proceeded on that basis.

Evidence and submissions

9. The LO had produced the combined hearing bundle which contained both parties' arguments and factual evidence.

Issue in dispute

10. The appeal before the panel was whether the subject property should be deleted from the council tax valuation list with effect from 1 April 1993, i.e., the introduction of council tax and the date when the subject property was first shown as a dwelling in the list. In his proposal, Mr Andrews had sought an earlier effective date for deletion of 8 April 1983, which from his proposal form was the date he became the taxpayer in respect of 59 Telford Crescent.
11. It was the LO's contention that the appeal should be dismissed as the arguments mounted by the Appellant have already been heard and determined by a previous Valuation Tribunal hearing on 6 March 2019, in respect of four properties – 100 Dacy Road, Liverpool, L5 6SB; 111 Oxford Street, Leigh, Lancs, WN7 1NJ; 59 Telford Crescent, Leigh, WN7 5LY and 110 Hope Street, Leigh, Lancs, WN7 1NP [appeal numbers: 4310831961/285CAD, 43250831286/285CAD, 43250831589/285CAD and 43250831689/285CAD], which dismissed the appeals and confirmed that the properties should remain in the list.
12. Moreover, the LO contends that the appeal should be dismissed as the Appellant, along with others, had challenged the previous VTE decision to the High Court in the case of *Doyle & others v Roberts* [2020] EWHC 659 (Admin).

Decision and reasons

13. Firstly, the panel considered the LO's contention that as the Appellant's arguments, contained within his proposal and appeal have already been fully considered by the Valuation Tribunal at the hearing on 6 March 2019, the appeal should be dismissed under the doctrine of "res judicata" with no reasonable prospect of success.
14. In this case, the panel had regard to the Appellant's proposal which summarily argues that the subject property is not a dwelling as properties used wholly for living accommodation are not dwellings. This same argument was progressed by Mr Andrews, on the subject property at the Tribunal hearing on 6 March 2019. The appeal was heard along with three others (Mr J Doyle, Mr D Lucas, Mr J Andrews and Mr P Webster (Appellants) v Mr R Roberts, (Listing Officer)). A copy of the previous Tribunal decision was before this panel. The earlier appeals were all dismissed.
15. The four Appellants (Mr J Doyle, Mr D Lucas, Mr J Andrews and Mr P Webster) appealed to the High Court with the case being heard by Mr Justice Fordham on 5 March 2021.
16. Mr Justice Fordham dismissed these appeals on all grounds concluding at para 24 -

"It follows, for all these reasons, that the Valuation Tribunal was correct in law when it said, in its concluding paragraph: "The panel is satisfied that section 3 (2) of the 1992 Act is applicable, as each of the appeal properties would have been a hereditament for the purposes of the General Rate Act 1967, are not non-domestic properties required to be shown in a local or central non-domestic waiting list, and they are not exempt from local non-domestic rating". The Respondent was correct in law in the approach to "dwelling" in section 3 of the 1992 Act, when refusing the proposals to delete the Appellants' properties from the council tax list. Council tax is applicable to a unit of property such as a house or flat which, without a 'business'

element, is domestic property used wholly for the purposes of living accommodation. The arguments of the Appellants to the contrary fail, as do their appeals.”

17. Leave to appeal to the Court of Appeal (CoA) was sought by Mr Doyle & Others direct to the CoA. The application was refused by the CoA on 23 June 2021.
18. Mr Smith, for the LO, explained to the panel that under “res judicata” (a Latin term, literally meaning “a thing having been adjudicated”) a matter which has been adjudicated on by a competent court cannot be re-litigated between the parties. The panel was aware that res judicata requires a decision by a court or tribunal which finally disposes of an issue. In this appeal, the panel agreed with the LO’s contention and was entirely satisfied that as an appeal on the same arguments, by the same Appellant for the same property has already been decided by the Valuation Tribunal following a full hearing, this cannot be re-litigated at this hearing and the appeal should be struck out under the doctrine of res judicata with no reasonable prospect of success.
19. At the hearing, Mr Andrews’ arguments were based on his belief that Mr Justice Fordham’s High Court decision was flawed and was a breach of Articles 4 and 8 of the European Convention on Human Rights, established in domestic law by the Human Rights Act 1998. However, the Tribunal panel was satisfied that it was not open to a party, unsuccessful in an appeal to a superior court, to attempt to re-litigate the same matter arguing an alleged error in law in the superior court’s decision. The appropriate route is to appeal, which as is set out above, was also unsuccessful.
20. The panel, in its opinion, did not hear any new evidence which had come to light to justify hearing the appeal in respect of 59 Telford Crescent afresh. The panel felt that the crux of Mr Andrews’ case was that the High Court judgment was the “new evidence” and that the appeal currently under consideration had been made on the basis of the Appellant’s belief that that binding decision was somehow flawed. Mr Andrews now sought a determination from this Tribunal panel on the same issue of fact without any new evidence that supported his case, but the panel finds as a matter of law that it is estopped from doing so in the circumstances. Even if the panel had determined that the appeal should not be struck out under the doctrine of res judicata, it would have dismissed the appeal in the light of the binding High Court judgment of *Doyle & others v Roberts* [2020] EWHC 659 (Admin).
21. In view of the foregoing, as the basis of the Appellant’s appeal had already been determined by the Valuation Tribunal, the appeal was struck out under regulation 10(3)(c) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269], as having no reasonable prospect of success.

22. Accordingly, the appeal is struck out.

Date: 25 November 2021

Appeal number: M0858961