

existing band F entry in the valuation list as the proposal is considered invalid. The Appellant subsequently appealed against the LO's decision to this tribunal.

4. The President of the 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.
5. 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.
6. Although the panel in reaching its decision had regard to all of the evidence given and submissions made by the parties, their respective cases are not fully restated in this brief decision document.
7. With the agreement of the parties the panel varied the procedure outlined in the Consolidated Practice Statement PS8- Model Procedure and requested the respondent to present his evidence first.
8. The appeal dwelling is a detached bungalow built between 1973 and 1982. According to the LO's measurements, it has an area of 152m² and consists of two living rooms, a kitchen, four bedrooms and two bathrooms. It also benefits from a double garage.

Issues

9. The panel was required to consider a preliminary matter concerning the validity of Mr Francis' proposal.

Evidence and Submissions

10. Mr Wakley, for the LO, provided the panel with his evidence bundle setting out the basis of valuation for council tax purposes and containing his case, a copy of the proposal and appeal, together with details, photographs and a location map of the appeal dwelling.
11. Mr Wakley provided a history of the banding of the subject property, which had originally been entered in the List at band E from 1 April 1993. Following a review of the band of a neighbouring property, the band of the appeal dwelling was increased to F with effect from 28 April 2014. An appeal against this increase was made to the Valuation Tribunal for England (VTE) and at a hearing on 15 May 2015 a panel confirmed that band F was correct for the appeal dwelling. A copy of this decision was also included in the evidence bundle.
12. Mr Wakley argued that the basis of the proposal was that there had been a material reduction in the value of the appeal dwelling due to movement caused by subsidence, but this was apparent at the previous hearing. No specific effective date for the change had been provided in the proposal except for the date in 2014 when the band of the appeal dwelling had been

increased. He therefore requested that tribunal deems the proposal invalid. In the event that the tribunal considered the proposal to be valid, Mr Wakley had provided details of sales of a number of properties which he considered to be comparable to the appeal dwelling and requested that the tribunal uphold its previous decision that band F is correct.

13. Mr Francis considered that the current entry for the appeal dwelling was inaccurate as the effects of subsidence have continued to manifest since the previous hearing, the effects of which he considered would more than offset any advantages or additional value attributed to the appeal dwelling by the previous panel. He had suggested to the LO on many occasions that he visit to the appeal dwelling to ascertain for himself the extent of the damage caused by movement and subsidence. As the LO had declined all his invitations, Mr Francis had supplied video footage to supplement photographs highlighting the issues and damage caused by subsidence which he had submitted with his proposal.
14. Although this video evidence had been submitted after the four-week deadline for the Appellant to provide his case, Mr Wakley did not object to its inclusion and the panel considered it was in the interests of justice to allow it.
15. The photographs and video footage provided by Mr Francis depicted the following issues at the subject property:
 - Tops of three door frames not plumb as shown by a spirit level.
 - Wooden flooring on a slope as shown by a spirit level, and a rolling marble on the video footage.
 - Cracks in wall above two door frames.
 - Cracking and sloping architrave at ceiling level.
 - Wall tiles coming away from a wall.
 - Grout cracked and broken grout between floor tiles.
16. Mr Francis accepted that some damage due to subsidence had been considered by the previous panel in its decision but stated that this had got worse since that hearing. He stated that he was no longer able to insure the subject property against subsidence and this factor would be detrimental in terms of its value now compared with its value at the time of the previous hearing.

Decision and Reasons

17. Mr Francis's appeal had been made to the Tribunal under regulation 10 of the CT Regulations. Mr Francis was concerned that the Listing Officer was now contending his proposal was invalid.
18. The panel noted that regulation 7(10) of the CT Regulations allowed the Listing Officer to contend that proposals were invalid even though no invalidity notice had been served within four weeks.
19. However, in such cases the panel had to examine whether the Listing Officer had lawfully exercised his discretion to treat the proposal as invalid. In *Imperial Tobacco*, this Tribunal's former President, Professor G Zelic, QC, had fully considered the case law concerning this matter and had identified four potential categories:

- (a) Clerical errors or omissions in proposal forms which were trivial or insignificant. These should be ignored.
- (b) Errors or omissions of substance, but which were not the result of a deliberate attempt to mislead, which did not impair the Valuation Officer's ability to consider the case. Again these would be ignored.
- (c) Errors or omissions of a kind that misrepresented the appellant's case or misled the Valuation Officer into considering the matter on its merits. The Valuation Officer could not treat such proposals as invalid if he had, in the exercise of his discretion, chosen to disregard the error or omission.
- (d) Fundamental errors or omissions which meant that the proposal cannot in any circumstances be treated as valid. Two examples were referred to by Professor Zellick; one where the proposal gave the wrong property address and the other where the proposer had no right to make a proposal. In such cases, the Tribunal would have to uphold the invalidity notice or strike out the appeal on the basis that the Tribunal had no jurisdiction to entertain it.

20. Having carefully considered Mr Francis's proposal, the panel was of the view that, for the reasons set out below, no grounds had been identified that would enable a valid proposal to be made. The panel was therefore satisfied that Mr Francis's proposal was invalid under paragraph 15 (d) above.

21. Regulation 4(5) of the CT Regulations stated that (except in certain specific circumstances):

“no proposal may be made where ... six months has expired since the day on which the person first became the taxpayer.”

22. As Mr Francis had been the taxpayer for more than six months, he had no right to make a proposal unless he was relying on one of the grounds in regulation 4 of the CT Regulations. In summary, they included the following circumstances or examples:

- (a) A proposal could be made within six months of a person becoming the new taxpayer, provided the dwelling's banding had not previously been considered by the Valuation Tribunal.
- (b) A proposal could be made within six months of a Listing Officer serving a notice changing a council tax band.
- (c) If a new dwelling was not shown in the valuation list, a proposal to include it could be made at any time.
- (d) If a dwelling had been demolished or there had been a change in its use to non-domestic, again a proposal could be made at any time.
- (e) A proposal could be made within six months of a relevant Valuation Tribunal or High Court decision.
- (f) If there had been a “material reduction” in the dwelling's value again a proposal could be made at any time.

23. Section 24(10) of the Local Government Finance Act 1992 stated that:

“... ‘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 adaptation of the dwelling to make it suitable for use by a physically disabled person”.

24. Essentially, the definition of material reduction referred only to physical changes. In order to determine the validity of the proposal, the panel was required to identify if there had been a physical change in the appeal dwelling since the previous hearing at the VTE.

25. The panel considered the submissions made to the previous panel as outlined in paragraph 12 of its decision of the May 2015 hearing:

‘Mr Francis also explained to the Panel that about a year after his purchase he noticed cracks appearing in the property. An ash tree situated at the boundary of numbers 12 and 10 Walnut Close was implicated in the subsidence problems, although he said no underpinning of the property was necessary. The tree has since been felled and Mr Francis hoped that there will be no further movement of his property, but that is not definite and he felt that this has drastically reduced the value of his home. Mr Francis provided a letter from estate agent’s Davies & Davies, who had valued his property in August 2014 at £385,000 to £395,000. The Panel noted that in this valuation report it was stated by the estate agent that – ‘As we discussed at the time, I feel confident that the works that have been undertaken are of a “minor” nature, involved no underpinning and have resulted in you being provided with a Certificate of Structural Adequacy which should satisfy a prospective buyers need to be reassured in the circumstances’...

26. Having considered the photographs and video footage submitted by Mr Francis, the panel was unable to conclude that there was any worsening of the effects of the subsidence evident at the appeal dwelling. The cracks appeared to be of a superficial nature, and there was no indication that they ran any deeper than the plaster coat or were of a structural nature and this was supported by the issue of a Certificate of Structural Integrity. The cracks were said to have begun appearing in 2011, a year after Mr Francis’ purchase, and a valuation carried out by an estate agent in 2014 had not concluded that there had been a reduction in the value of the subject property due to these cracks.

27. Whilst it understood Mr Francis’ frustration that the LO representative had not visited the appeal dwelling to survey the damage, the LO representative is not a structural engineer and the panel is satisfied that he would not have the expertise to determine the extent or seriousness of any damage. Unfortunately Mr Francis had not been able to instruct a structural engineer to report on the damage and whether or not it is likely to have worsened over the years since the previous hearing or to have any long-term effects. He had also not provided any documentary evidence that he had been refused insurance for damage caused by subsidence at the appeal dwelling.

28. The panel therefore concluded that there was no evidence before it that there had been a material reduction in the property’s value as a result of subsidence and as no other grounds had been identified that would enable a valid proposal to be made, the panel decided the proposal was invalid and dismissed Mr Francis’s appeal.

Date: 1 July 2021

Appeal number: VT00003779