

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax appeal; Invalidity; Material reduction; Regulations 4 and 7 of The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 SI No 2009/2270; proposal held invalid.

RE: 42 Grovelands Close, Harrow HA2 8PA

APPEAL NUMBER: VT00006057

BETWEEN: Mr Z Shanan Appellant
and
Mrs D Bunyan Respondent
(Listing Officer)

BEFORE: Miss S Ballentine (Senior Member) and Ms M Fagborun Bennett

CLERK: Mrs R James

REMOTE
HEARING 3 ON: Tuesday 15 February 2022

APPEARANCES: Mr Z Shanan (Appellant)
Mr L Dalli (Respondent's representative)

Summary of decision

1. Appeal dismissed; the proposal submitted by Mr Z Shanan had not been validly made.

Introduction

2. This appeal was brought in respect of the following: A proposal was served on the Listing Officer dated 2 December 2020, by Mr Z Shanan on the grounds that there had been a material reduction in the value of the dwelling. Mr Shanan sought a one band reduction to the appeal property's entry from band C to band B. The material reduction quoted was 'the property is half the listed size'. The Listing Officer determined that the proposal was not well founded and issued a decision notice to that effect on 29 January 2021. Within the decision notice, it was explained that it was now the Listing Officer's opinion that the proposal had been invalidly made as the layout of the property had not altered since the property had been built. On 16 March 2021, Mr Shanan appealed that decision notice to this tribunal.

3. 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.
4. 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.
5. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. Both parties accessed the hearing via Teams.
6. 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 Issue

7. Mr Dalli challenged the validity of the proposal. He considered that the proposal was invalid for three reasons:
 - i) The layout of the appeal property had not altered since it had been built in 1986. Therefore, the material reduction quoted on the proposal form had not taken place.
 - ii) More than six months had expired since Mr Shanana had become the taxpayer in respect of the appeal property.
 - iii) More than six months had expired since the Valuation List had been altered; the appeal property’s assessment was reduced from band D to band C in 1994, which was backdated to 1 April 1993.
8. Mr Shanana contended that the proposal should be held valid. He highlighted that the Listing Officer had not followed due process and had failed to issue an invalidity notice. He believed that due to the failure to serve an invalidity notice, the six months’ time period allowed to lodge a valid proposal should be extended.

Evidence and submissions

9. The panel had been provided with a bundle of evidence which comprised a copy of the appellant’s proposal and appeal form, together with a copy of the Listing Officer’s Decision Notice. The bundle also comprised a copy of the Listing Officer’s written submission, photographs, survey details and floor layout plans in respect of both the appeal property and 43 Grovelands Close, location plans, information on Reduce Covered Area (RCA) and a copy of The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2270), together with the Listing Officer’s rebuttal.

Decision and reasons

10. According to the Valuation Office Agency’s (VOA’s) records, the appeal property was a cluster house that had been constructed in 1986. It measured 48 m² and comprised one

living room, a kitchen, one bedroom and a bathroom. The appeal property also benefitted from one parking space.

11. The appeal property had been described as a cluster house, which had no rear garden and was directly attached to 43 Grovelands Close at the rear and 45 Grovelands Close to the side.
12. Mr Shanan had become the taxpayer in respect of the appeal property on 16 April 2004.
13. In deciding on the preliminary issue, the panel had regard to The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No.2270). Turning to these regulations, the panel noted the circumstances and time periods when proposals could be made, which were broadly as follows:
 - i) A proposal could be made within six months of a person becoming the new taxpayer, provided that the property's banding had not previously been considered by the Valuation Tribunal.
 - ii) A proposal could be made within six months of a relevant Valuation Tribunal or High Court decision.
 - iii) A proposal could be made within six months of a Listing Officer's notice being served.
 - iv) If a new dwelling had not been shown in the Valuation List, a proposal to include it could be made at any time.
 - v) If a dwelling had been demolished or there had been a change in its use, again a proposal could be made at any time.
 - vi) If there had been a material reduction in the value of a dwelling caused in whole or in part by the demolition of any part of the property or there had been a change in the physical state of the locality, for example the construction of a new motorway, again a proposal could be made at any time.
14. In this appeal, the proposal dated 2 December 2020, had originally been accepted as valid on the basis that there had been a material reduction to the appeal dwelling. As such an invalidity notice was not served within four weeks of receipt of the proposal. After considering the matter, the Listing Officer was of the opinion that the proposal had not been validly made as the cited material reduction had not taken place. The Listing Officer's decision notice dated 29 January 2021, explained the Listing Officer's reasoning for considering the proposal had been invalidly made.
15. Having specific regard to Regulation 4, which set out the circumstances and periods in which a proposal may be made. The panel noted Regulation 4(1)(d), which stated:

'(d) since the valuation band was first shown in the list as applicable to the dwelling, one (or more) of the events mentioned in regulation 3(1)(a) has occurred.'

Regulation 3(1)(a)(ii) stated:

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

16. The panel had regard to the definition of a “material reduction”, which was found in s.24 (10) of the Local Government Finance Act 1992, namely:

“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;’

17. In this appeal, it was submitted that there had been a physical change to the appeal dwelling, it being half the recorded size held by the VOA. Mr Shanahan contended that the original property had been subdivided, with the appeal property now measuring 22.36 m². In support of his measurement, Mr Shanahan had provided the Listing Officer with a sketch of the ground floor of the appeal property.

18. Mr Dalli explained that for council tax purposes, all houses and bungalows were measured to RCA. In brief, this was the area of a building measured externally at each floor level and included perimeter wall thickness, external projections (such as a bay), and areas occupied by internal walls, partitions and stairwells. Measurements were done in this way to give uniformity and fairness and facilitated easy comparison between dwellings.

19. Mr Dalli explained that according to the VOA’s records, the appeal property had been constructed in 1986. Furthermore, the appeal property and 43 Grovelands Close, were regarded as cluster houses and there had been no changes to the layout or size of the two properties since they were first constructed. In support of his contention, Mr Dalli referred to the original survey details for both the appeal property and 43 Grovelands Close. Mr Dalli explained that Mr Shanahan’s layout plan had not included the first floor, which accounted for the difference in the measurements.

20. During the hearing, Mr Shanahan accepted that there had been no changes to the layout of the appeal property. However, he reiterated that the proposal should be held valid as he contended the Listing Officer had not followed the correct procedure due to the failure to serve an invalidity notice.

21. After having regard to the above, the panel determined that the proposal dated 2 December 2020 had been invalidly made as the material reduction quoted on the proposal form had not taken place. The panel found that no physical alterations had been made to the appeal property’s layout since it had been constructed in 1986.

22. Mr Shanahan had contended that his proposal should be held as having been validly made as the Listing Officer had failed to serve an invalidity notice. On addressing this point, the panel had regard to Regulation 7, the relevant parts of which stated:

Proposals treated as invalid

7(1) Where the LO is of the opinion that a proposal has not been validly made, the LO may within four weeks of its service, serve notice (an “invalidity notice”) on the proposer that the LO is of that opinion, and stating –

- (a) the LO’s reasons for that opinion, and
- (b) the effect of paragraphs (3) to (6)

7(10) Nothing done under this regulation shall be construed as preventing any party to an appeal under regulation 10 from contending for the purposes of that appeal that the proposal to which the appeal relates was not validly made.

Regulation 10 stated:

10 Disagreement as to proposed alteration

- (1) Where the LO has—
(a) made a decision under regulation 9(1)(b)(iv); and
(b) served a decision notice on the proposer in accordance with regulation 9(2),

the proposer or any competent person may appeal to the VTE against the LO's decision.

(2) Subject to paragraph (3), an appeal under paragraph (1) shall be made within the period of three months beginning on the date on which the decision notice was served on the proposer.

- (3) Where—
(a) an appeal made under paragraph (1) is made after the end of the period referred to in paragraph (2); and
(b) the VTE President is satisfied that the failure to initiate the appeal within that period has arisen by reason of circumstances beyond the control of the proposer or a competent person (as the case may be),
the VTE President may authorise the appeal and shall notify the appellant as soon as reasonably practicable of the authorisation.

...

23. Therefore, in accordance with Regulation 7(1) the panel acknowledged that if the Listing Officer was of the opinion that a proposal was invalid, he **may** within four weeks issue an invalidity notice. There was no requirement to serve an invalidity notice. Furthermore, in accordance with Regulation 7(10), should an invalidity notice not be served, this did not prevent any party from contending that the proposal was invalid at a later stage once an appeal had been lodged.
24. Mr Shanan had contended that due to the failure to serve an invalidity notice, the six months in which a new taxpayer had to lodge a valid proposal should be extended. However, the panel had to arrive at its decision having regard to the relevant regulations and had no jurisdiction to extend the time limits provided for lodging a proposal.
25. Having regard to the above conclusions, the panel found that the proposal had been invalidly made on the grounds of a material reduction, with the material reduction quoted not having taken place. Furthermore, none of the circumstances which allowed a valid proposal to be lodged were relevant in the proposal before it.
26. Accordingly, the panel dismissed the appeal.

Date: 7 March 2022

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