

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Valuation appeal; Detached House; Domblides v Listing Officer [2008] EWHC 3271 (Admin); Comparable Properties; Appeal dismissed.

RE: 2 Hadrian Way, Nuneaton CV11 6GS

APPEAL NUMBER: VT00006637

BETWEEN:	Ms K E R and Mr R F	Appellants
	and	
	Mr D Virk (Listing Officer)	Respondent

PANEL: Dr J Johnson (Senior Member)
Mr A Asante

CLERK: Mrs H Beresford

REMOTE
HEARING ON: 26 April 2022

APPEARANCES: Mr R F and Ms K E R (the Appellants)
Mr S Heidari (Listing Officer's Representative)

Summary of decision

1. The appeal was dismissed, and the council tax band was confirmed at band E with effect from 13 November 2020.

Introduction

2. This appeal has been brought in respect of the following: 2 Hadrian Way, Nuneaton CV11 6GS. A proposal was served on the Listing Officer by the appellants on 7 December 2020 in dispute of the band E assessment and sought a reduction to band C. The Listing Officer reviewed the band and on 29 January 2021 issued a decision notice confirming the property at band E with effect from 13 November 2020. On 28 April 2021, the appellants made an appeal to this Tribunal against the decision notice.
3. Under regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 (SI 1992 No. 550), each valuation band represents a value that a dwelling might reasonably have been expected to realise if it had sold in an 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 C – values exceeding than £52,000 but not exceeding £68,000;
Band D – values exceeding than £68,000 but not exceeding £88,000; and
Band E – values exceeding than £88,000 but not exceeding £120,000.
4. In this appeal, the relevant date for consideration of the physical state of the dwelling and its locality was 13 November 2020.
5. The appeal property is a detached house built in 2020 and is a 'Redrow Amberley' type. Within the 124m² reduced covered area (RCA), there are three bedrooms, two bathrooms/en suite, two reception rooms and a kitchen. The property also benefits from a detached single garage.
6. In accordance with the Tribunal's Consolidated Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link. During the call the appellants were temporarily disconnected from the hearing for approximately two minutes. Proceedings were halted whilst the connection was re-established. The panel is satisfied that this interruption had no material impact upon Ms R's ability to present the Appellants' case.
7. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

8. The issue in dispute was the appropriate council tax band to be ascribed to the appeal property.

Evidence and submissions

9. Mr Heidari provided a bundle of evidence containing submissions from both parties; location plans; photographs and details of the appeal dwelling; photographs and details of comparable properties to be relied upon; a copy of the proposal and appeal form; and

extracts from the relevant law and a copy of the High Court judgment *Domblides v Listing Officer* [2008] EWHC 3271 (Admin). Mr Heidari argued that properties must be valued at the amount they would have sold for in an open market as at the antecedent valuation date (AVD) 1 April 1991. He contended that, based on the sales evidence and the tone in the locality, band E was correct. He therefore requested a dismissal of the appeal

10. Ms R spoke on behalf of the appellants who had made a written statement in response to the Listing Officer's submission; she argued that the sales evidence for comparable properties referred to by the respondent was unreliable because they were situated some distance from the subject property, and the majority were four bedroom properties. Ms R contended that analysis based on house price indices suggested that the subject property should be in band D and the appellants had therefore altered their position and now sought band D rather than band C. The appellants also referred to several properties in band D which they argued supported their contention that the subject property was in the wrong band. She therefore asked the panel to reduce the appeal property's entry in the list to band D.

Decision and reasons

11. After careful consideration of all the evidence submitted by the parties, the panel decided to dismiss the appeal and confirm band E from 13 November 2020.
12. In considering the entry for the appeal property, the panel had to make a reasoned judgment based on the merits of the evidence submitted to establish how much the appeal property would have been likely to have realised if it was for sale on 1 April 1991.
13. The panel thought it would be helpful to first set out the legal framework on which it had to base its decision. Council tax had been introduced by the Local Government Finance Act 1992. This Act had been supplemented by a number of Statutory Instruments, in particular The Council Tax (Situation and Valuation of Dwellings) Regulations 1992, SI 1992/550 (as amended). These regulations set out a number of assumptions which the Listing Officer is required to make when determining a dwellings valuation band at the AVD. These assumptions (so far as they are relevant in this appeal) are summarised as follows:
 - the sale was with vacant possession;
 - the dwelling was sold free from any rent charge or other encumbrance;
 - the interest sold was the freehold – except flats where a 99-year lease at a nominal rent was assumed;
 - the size, layout and character of the dwelling and the physical state of its locality, was the same as at the relevant date;
 - the dwelling was in a reasonable state of repair.
14. Therefore, regardless of whether a property existed on 1 April 1991, or was purchased at a later date, in order to allow fairness and uniformity between all council tax valuations, all domestic property must be valued at the common date of 1 April 1991 and the level of value on that date, albeit within a range of values, had to be determined.
15. The best evidence on which to determine the band of a property was considered to be an open market sale of either the appeal property, or ones similar to it, on or close to the AVD.

However, it could also be determined by a tone, should one be found to have been established in the locality. A tone of value/band was established when a number of properties, similar in size, character, quality, detachment and location were attributed the same level of assessment/band which, over time, had not been challenged. Assessments that had been challenged and subsequently agreed by parties or determined by a Tribunal panel were also instrumental in establishing a tone.

16. In support of band E, Mr Heidari had provided sales evidence for nine comparable properties. He explained that as the appeal property and others on the same estate did not exist in 1991, he had provided details of properties similar to the subject property which were in band E, they had achieved sales close to the AVD which he believed supported band E for the subject property.
17. In particular the panel noted that: 5, Dorchester Way, Nuneaton, a three bedroom detached house in band E which was slightly smaller at 111m², had sold for £93,000 on 9 December 1994; and 2, Gloucester Close, Nuneaton, a smaller three bedroom detached house, at 108m², had sold for £89,000 on 19 August 1994, these were sales within the band E range of values. Mr Heidari had stated that it is widely accepted property values were falling at the April 1991 valuation date and the fall continued into 1994 after which the market started to rise and returned to April 1991 values in late 1996 or early 1997. The panel attached significant weight to this evidence and found that these sales supported band E for the subject property.
18. Whilst the other properties offered in evidence by the Listing Officer were four bedroom properties the panel noted that they were similar in size to the subject property and with the exception of 19, Gloucester Close, had sold for a value within the band E range. As these were four bedroom properties the panel attached only moderate weight to this evidence.
19. On balance, the panel found the comparable properties cited by the Listing Officer to be persuasive evidence which supported band E for the subject property, a three bedroom detached house with two bathrooms, and which measured 124m². The panel determined that had the appeal property been for sale in an open market on 1 April 1991, it would have achieved a sales value in excess of the lower band E threshold of £88,000.
20. The appellants had referred to 166 Higham Lane which was a four bedroom detached house, no details had been provided with regard to its size, but the property had sold for £440,000 in 2019 and £110,000 in 1998 as compared to the subject property which had sold for £315,995 in November 2020, this property was in band D. Mr Heidari had stated that this property would be reviewed to check that the banding was correct. The panel was aware that the Listing Officer was under a statutory duty to maintain a fair and correct valuation list, and therefore the panel expected that any errors identified as a result of this appeal would be corrected.
21. The panel also noted that a similar three bedroom detached property known as 'The Warwick' was in band D, the panel noted that this property was slightly smaller than the subject property and determined that whilst the subject property fell into the very bottom of the band E range of values this property would be likely to sit at the very top of the band D range.

22. Ms R stated that the appellants were dissatisfied with the service that they had received from the Valuation Office, however, this was beyond the jurisdiction of the panel.
23. The panel noted that the appellants had provided a wealth of house price analysis based on the Nationwide House Price Index. Unfortunately for the appellants the panel was not persuaded by house price indices or other statistics. Mr Heidari had referred to the findings in the High Court judgement of *Domblides v Listing Officer* and, having regard to this authority, the panel viewed these calculations with caution as it was aware that house price calculators and indices are by their very nature unreliable for council tax purposes and, therefore, of little assistance, as they covered a wide geographic area, which contained great variation between different localities and included different types of properties. For the purposes of this particular appeal, the panel was solely concerned with detached houses in the immediate vicinity and house price calculators/indices did not provide the level of detail required. The panel, therefore, attached little weight to this evidence.
24. Band E represents properties with a range of values between £88,000 and £120,000 on 1 April 1991; therefore, for the appeal to be successful and the band to be reduced it must be shown that the appeal property would have sold for below £88,000 on 1 April 1991. The appellants had made some comparisons on the basis of recent sales of comparable properties. The panel was unable to attach any significant weight to this evidence as it found that evidence of sales which occur after the valuation date reflect changes in the open market and also changes in the popularity of different property styles, making such later information less reliable than sales which took place closer to 1991.
25. In appeals of this nature, the legal burden of proof rests on the appellant to show that the current band is incorrect. Considering the evidence before it and the parties' respective evidential burdens in the appeal before it, the panel held that insufficient evidence had been provided to demonstrate that the band E assessment was excessive or to support band D.
26. Accordingly, having regard to the above conclusions, the panel confirmed the Listing Officer's determination of band E with effect from 13 November 2020 and it dismissed this appeal.

Date: 10 May 2022

Appeal Number: VT00006637