

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation list appeal; accuracy of the band; new taxpayer; tonal evidence; detached house; Council Tax (Situation and Valuation of Dwellings) Regulations 1992 (SI 550), as amended; appeal dismissed.

Re: West Lodge, Prince of Wales Gate, Hyde Park, London SW7 1NR

APPEAL NUMBER: VT00012553

BETWEEN :	H S	Appellant
	and	
	Ms D Bunyan	Respondent
	(Listing Officer)	

PANEL: Ms N Patel (Presiding Senior Member) and Ms M Cole

CLERK: Ms J Routledge

REMOTE HEARING 3: 24 March 2023

PARTIES PRESENT: The Appellant

Ms S Moore – Listing Officer's representative

Summary of decision

1. The appeal was dismissed. The appeal property assessment remained unaltered at band H, with effect from 1 April 1993.

Introduction

2. The appeal before the panel was made by the appellant on 18 August 2022, against the Listing Officer's decision of 7 July 2022 not to reduce the existing band H entry for West Lodge, Prince of Wales Gate, Hyde Park, London SW7 1NR (the 'appeal property') with effect from 1 April 1993.
3. The appellant had made his proposal on 8 April 2022 after he became the new taxpayer of the appeal property. He challenged the band entry on the grounds that it was a very small property and the rent compared with other properties suggested it should be in a lower band. He believed that band B or C was more appropriate for the appeal property.
4. The appeal property is a grade II listed one bedroom detached property belonging to the Crown Estate. Originally built pre 1900 for the gatekeeper in

Hyde Park. The property measures 28m² reduced covered area (RCA) and the accommodation comprises of a kitchen/ living room, bedroom and bathroom. It entered the council tax list as band H on 1 April 1993 and had remained unchallenged until now.

5. For council tax purposes, the Listing Officer measures all houses and bungalows by a measurement scheme known as RCA. RCA includes all the area covered within the walls of a property, measured externally. This excludes space such as unconverted loft areas, integral garages, outbuildings, open balconies, internal areas with a head height of below 1.5m and others.
6. Under regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 (SI 1992 No. 550), each valuation band represented a value that the dwelling might reasonably have been expected to realise if it had been sold in the open market by a willing vendor on 1 April 1991, the antecedent valuation date (AVD). 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 A – values up to £40,000

Band B – values exceeding £40,000 but not exceeding £52,000

Band C – values exceeding £52,000 but not exceeding £68,000

Band D – values exceeding £68,000 but not exceeding £88,000

Band E – values exceeding £88,000 but not exceeding £120,000

Band F – values exceeding £120,000 but not exceeding £160,000,

Band G – values exceeding £160,000 but not exceeding £320,000.

Band H – values exceeding £320,000

7. The appellant joined the hearing by telephone due to issues with his internet. The panel was satisfied he was able to hear all parties and fully participate in the hearing.
8. In order to assist the appellant (who was not professionally represented) and with the agreement of the parties, the tribunal panel varied its model procedure and invited the BA representative to present his evidence first.
9. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

10. The issue in dispute was the correct valuation band for the appeal property.

Evidence and submissions

11. On behalf of the Listing Officer, Ms Moore presented a bundle which included a copy of the appellant's proposal and appeal form, location and floor plans; photographs, details of the appeal property, comparable properties, and extracts of relevant council tax legislation, the appellant's comparable

properties and submission and the Listing Officer's rebuttal. A copy of the High Court judgment in *Domblides v Listing Officer* [2008] EWHC 3271 (Admin) was also provided to the appellant prior to the hearing.

12. In consideration of the evidence of tonal comparable properties within Hyde Park and Regents Park, Ms Moore, the Listing Officer's representative contended that the appeal property would have achieved a sale price in excess of £320,000 if it had sold on 1 April 1991.
13. The appellant had identified a number of properties locally in lower bands which were much larger. He also argued that rental prices should be an indicator of band. He was now seeking band A or B for the appeal property.

Decision and reasons

14. When arriving at its decision, the panel was mindful that regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992, as amended, states that the value of any dwelling for council tax purposes should be taken to be the amount which it might reasonably have been expected to realise if it had been sold in the open market by a willing vendor on 1 April 1991, assuming that the dwelling was in a state of reasonable repair, the size, layout and character of the dwelling, and the physical state of its locality were the same as at the relevant date.
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 one which was directly comparable to it, on or close to the AVD. However, it could also be determined by a tone, should one 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 the tone.
16. In this case there was no sales evidence as the properties were all Crown Estate properties that had never been on the market. Therefore, tonal evidence was the only comparable evidence available.
17. In support of the case for the appeal property to remain in band H, the respondent referred to seven properties within the Regents Park and Hyde Park, these were all in band H and ranged in size from 59m² to 239m². It was submitted that the unique style and extremely desirable location of the properties within these parks justified the band H. It was the Listing Officer's opinion that these properties would achieve a much higher sale than similar properties in central London that were not located in such prestigious locations.
18. The appellant challenged Ms Moore on the assumption contained in the bundle regarding the properties in Hyde Park being placed in band H following

consultation with the Crown Estates. He considered it was not correct to apply the same band to all the properties given the differing sizes and character. Ms Moore advised that there was no record held that the Estate Management for the Royal Parks had been consulted regarding the value of the properties within its control. The caseworker assumed this was what had been done to establish the values of these properties.

19. The appellant also argued that the comparable properties were all larger and of better quality and in quieter areas of Hyde Park, he considered these were very different to the appeal property.
20. The panel noted that the other comparable properties cited by the Listing Officer were of differing sizes, designs and character. The panel noted they were all within Hyde Park and most were lodges. The panel found that these carried some weight with regard to the banding of properties within Hyde Park.
21. Ms Moore submitted South Lodge, which is in Regent's Park, had been confirmed by Valuation Tribunal as band H which supported band H for similar properties in such locations. The panel noted that this property was twice the size of the appeal property, and in a different park. It placed some weight on this evidence as an indication of the higher values expected of properties within the Royal Parks.
22. The appellant argued that the rental evidence of the appeal property compared to flats in the locality was the best way to establish the value. He argued that flats were of a similar layout. He identified five properties in band A that he considered comparable using rental value, building quality and desirability. He also identified a number of flats in the area that were similar in size and in band A and B.
23. The panel considered that the importance of using comparable property evidence was that, for it to be persuasive, the properties must be comparable. For example, a flat should be compared with other flats, detached houses compared with other detached houses, terraced houses to be evaluated against other terraced houses, and so on. There was little to be achieved by comparing dissimilar properties as different markets existed for each type of property. Therefore, the panel was not persuaded by the appellant's argument and considered that the evidence of other detached properties within the Hyde Park and Regents Park was the most reliable evidence in this appeal.
24. The appellant also raised the disadvantages suffered by the property, it was very small, it was difficult to heat, access was restricted as the park gates were closed between midnight and five o'clock, there are no council services provided, he is unable to get a parking permit, there has been increased footfall in Hyde Park which causes noise and inconvenience, the increased traffic noise and pollution due to a new road layout. There had also been an improvement notice issued on the appeal property.

25. The appellant had included references to a number of Valuation Tribunal Decisions to support his arguments that the disadvantages suffered by the property would affect its desirability and therefore the value.
26. The panel was aware that previous Valuation Tribunal decisions were not binding upon them, and that any changes adversely affecting the appeal property that occurred after 1991 could not be taken into account unless included in the proposal. In this case there was no material changes mentioned in the original proposal and therefore the panel could not have regard to the later changes that may have an effect on value.
27. The panel was also aware that one of the assumptions that was to be made when determining the value of the appeal property was that it was in a reasonable state of repair. Therefore, the issues regarding the state of the building and the improvement notice could not be given weight.
28. The appellant had provided a list of fifty-one properties located in Royal Parks throughout London which he considered showed the variety of banding for properties in similar locations. The Listing Officer provided the RCA and banding information held for thirty-five of these properties that were in the list, the remaining properties were not recorded. The panel noted that the nine properties situated in Hyde Park and the two in Regents Park that were within Westminster Council were all in band H. It was the panel's opinion that this supported band H for the appeal property.
29. The other twenty-six properties were in various parks around London and were in different Local Council areas. The panel considered these were not sufficiently close to the appeal property to be comparable and therefore the evidence of the bands on these properties was not given weight.
28. The panel understood that the subject property had been placed in band H since 1 April 1993 and that its entry had remained unchanged since that date. This challenge was, in effect, against an assessment of a property that had been in band H for the past twenty-nine years.
30. Ultimately, the panel determined that the appellant had failed to discharge the evidential burden to show that the council tax band of the appeal property was excessive. Having had regard to all of the evidence from the parties, the panel found the bands ascribed to properties situated in the Royal Parks within the Westminster Council area most persuasive. Therefore, the panel was satisfied that the subject property would have a potential sale value above the lower threshold of band H (in excess of £320,000) as at 1 April 1991.
29. In view of the foregoing, the panel dismissed the appeal.

Date: 13 April 2023

Appeal number: VT00010576

Right of Appeal:

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.