

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation list appeal; accuracy of band entry in the list; sales and tonal evidence; Dombldes v Listing Officer [2008] EWHC (Admin) 3271; appeals allowed in part/appeal dismissed.

RE: Housemasters Flat, Grenville House, Stowe School, Stowe, Milton Keynes, MK18 5EH (Appeal 1);
Housemasters Flat, Grafton House, Stowe School, Stowe, Milton Keynes, MK18 5EH (Appeal 2)
Assistant Housemasters Flat, Temple House, Stowe School, Stowe, Milton Keynes, MK18 5EH (Appeal 3)

APPEAL NUMBERS: VT00013628 (Appeal 1), VT00013624 (Appeal 2);
VT00013630 (Appeal 3)

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

PANEL: Ms L Moses (Presiding Senior member)
Mr K Everett (Senior member)

CLERK: Mr R Gath IRRV (Hons)

REMOTE HEARING 1 on 2 June 2023

APPEARANCES: Mr D Beattie (The Beattie Partnership) (appellant's representative)
Mr P Inglis (The Beattie Partnership)
Mr J Sandell (Listing Officer's representative)

Summary of decision

1. The panel dismissed (Appeal 2); the assessment in relation to The Housemasters Flat, Grafton House remained unaltered at band D, with effect from 22 November 2021.

2. The panel allowed the appeals in part in respect of (Appeals 1 and 3) and determined that the assessments of those properties should be reduced as follows:

Appeal (1) – The Housemasters Flat, Grenville House, Stowe School, Stowe, Milton Keynes, MK18 5EH – Band C (comp), with effect from 22 November 2021; and appeal (3) - The Assistant Housemasters Flat, Temple House, Stowe School, Stowe, Milton Keynes, MK18 5EH – Band B (comp), with effective from 22 November 2021.

Introduction

3. It was agreed by both parties that these appeals would be heard together as they were all made by the same appellant on the same grounds.
4. The appeal process began when the appellant served proposals on the Listing Officer (LO) on 20 May 2022. The proposals challenged the LO's notice, placing the properties in band D effective from 22 November 2021. In making the proposals, the appellant sought a band A entry instead of band D. After considering the merits of the proposals, the LO determined that the proposals were not well founded and decision notices to this effect were issued on 20 August 2022. The appeals were received by the tribunal on 3 November 2022.
5. The Housemasters Flat, Grenville House is a four bedroom flat covering two floors. It had an internal area of 142m². Housemasters Flat, Grafton House is a four bedroom flat covering two floors. It had an internal area of 168m². The Assistant Housemasters Flat, Temple House is a two bedroom flat on the fourth floor. It had an internal area of 98m². Flats are measured internally, using the Effective Floor Area (EFA). This includes all areas of the property excluding hallways and bathrooms and this method ensures all properties are measured in a consistent way. All three flats were located within the Stowe School building which is a private school in a 17th century mansion.
6. The appellant's representative, in giving expert evidence, had declared that he will not receive any success related fee if the bands of the appeal properties were to be reduced as a result of the panel's decision. He was on a fixed fee.
7. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

8. The issue before the panel was the band that should apply to the appeal dwellings when assessed in accordance with the statutory basis of valuation. This requires estimation of the amount the dwellings might reasonably be expected to have realised if they had been sold on the open market at the antecedent valuation date (AVD) of 1 April 1991, subject to a number of statutory assumptions as set out in Regulation 6(2) of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 as amended.
9. The basis of Valuation for council tax is contained within Regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 (SI 1992 No. 550). Each valuation band represents the value that the dwelling might

reasonably have been expected to realise if it was sold in the open market by a willing vendor on 1 April 1991.

10. This regulation also set out the statutory assumptions which are-

- (a) that the sale was with vacant possession;
- (b) that the interest sold was the freehold or, in the case of a flat, a lease for 99 years at a nominal rent;
- (c) that the dwelling was sold free from any rent charge or other incumbrance;
- (d) except in a case to which paragraph (3) applies, that the size, layout and character of the dwelling, and the physical state of its locality, were the same as at the relevant date;
- (e) that the dwelling was in a state of reasonable repair;
- (f) in the case of a dwelling the owner or occupier of which is entitled to use common parts, that those parts were in a like state of repair and the purchaser would be liable to contribute towards the cost of keeping them in such a state;
- (g) in the case of a dwelling which contains fixtures to which this sub-paragraph applies, that the fixtures were not included in the dwelling;
- (h) that the use of the dwelling would be permanently restricted to use as a private dwelling; and
- (i) that the dwelling had no development value other than value attributable to permitted development.

11. Whilst the valuation has to be made having regard to 1 April 1991 levels of value, physical facts relating to the dwellings and their locality have to be considered as at the relevant date, which in this case was 15 November 2021, the date the appeal properties were entered into the council tax valuation list.

12. In this case the appellant sought the following entries:

- (Appeal 1) - The Housemasters Flat, Grenville House, Stowe School, Stowe, Milton Keynes, MK18 5EH – Band C with effect from 22 November 2021;
- (Appeal 2) - The Housemasters Flat, Grafton House, Stowe School, Stowe, Milton Keynes, MK18 5EH band B, with effect from 22 November 2021.
- (Appeal 3) - Assistant Housemasters Flat, Temple House, Stowe School, Stowe, Milton Keynes, MK18 5EH band A values not exceeding £40,000, with effect from 22 November 2021.

The LO defended the entries of band D (values exceeding £88,000 but not exceeding £120,000). Therefore, for the appeals to be successful and the bands to be reduced it must be shown that the appeal properties would have sold for no more than £40,000 for band A, no more than £52,000 for band B and no more than £68,000 for band C as at 1 April 1991.

Evidence and submissions

13. The LO had provided the hearing bundles which included a copy of the proposal, the appeal form, the Regulation 17 notice, a map of the area, details of the appeal properties and the LO's comparable properties, extracts of the relevant legislation, the appellant's evidence and the LO's rebuttal statement. It also included the judgment of *Atkinson & Others v Lord (LO)* CA [1997] RA 413.

Decisions and Reasons

14. Where no actual April 1991 sale existed for the appeal properties, the panel considered that the dwellings should, where possible, be valued by reference to other similar properties in the locality that had sold on or close to this date. This gave guidance on the levels of value passing for similar properties in the area at that time. The bands adopted for comparable properties also assisted in arriving at the correct level of value to be applied, where no direct evidence of sales was available. This 'tone' method of valuation was endorsed in the High Court decision of *Domblides v Listing Officer [2008] EWHC (Admin) 3271* in the absence of relevant AVD sales in relation to comparable properties.
15. The panel understood that the appeal properties were unusual and whilst the LO had produced some sales and tonal evidence, they were not comparable in terms of age or location and therefore applied less weight to the LO's evidence.
16. Turning to the appellant's evidence, Mr Beattie had referred to the Memorandum of Agreement for Public and Independent Schools in England and Wales for the 1990 revaluation. He had also used the contractor's method and had used 1990 rebuild costs to establish how much it would have cost to build the appeal properties. He then adjusted this to reflect age and obsolescence, location and the land. Using this method he had established the following valuations as at 1 April 1991:

Housemasters Flat, Grenville House, Stowe School, Stowe, Milton Keynes, MK18 5EH – value £65,000 and should be placed in band C;
Housemasters Flat, Grafton House, Stowe School, Stowe, Milton Keynes, MK18 5EH – value £47,500 and should be placed in band B; and
Assistant Housemasters Flat, Temple House, Stowe School, Stowe, Milton Keynes, MK18 5EH – value £26,000 and should be placed in band A
17. However, the panel was not persuaded that the appellant's valuation was the best way to establish the bands of the appeal properties. Whilst there was no doubt the age of the appeal properties and that they were Grade 1 listed buildings which would no doubt incur significant costs, this could also be seen as an advantage to someone who was selling a property, a willing vendor.
18. During questioning, Mr Beattie also accepted that a rebuild cost of a property could differ from the value of a property.
19. Regulation 7 (1) of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 as amended fell to be applied. Regulation 7(1) stated that in the case of a dwelling which is a composite hereditament or is part of a single property which is a composite hereditament, the value of the dwelling, for the purposes of valuations under Section 21 of the Act shall be taken to be that portion of the relevant amount which can be reasonably be attributed to domestic use of the dwelling.
20. How each party had arrived at their respective valuations of the domestic portion of the "relevant amount" was the crux of the dispute. Both parties referred the tribunal to the Court of Appeal judgment in *Atkinson & Others v Lord 1997* where Lord Justice Schiemann made the following statements:

- a) "I consider that the reference to relevant amount was an understandable legislative technique to bring composite hereditaments into line with purely domestic hereditaments....;
- b) while it is always necessary to have regard to the relevant amount it is not always necessary to determine it. I find no conceptual difficulty in having regard to an amount without having determined it; and
- c) Regulation 7 does not tell the valuer by what valuation technique he is to arrive at the portion of the relevant amount which can reasonably be attributed to the domestic use of the composite hereditament."

In the same judgment, Lord Justice Hutchison made the following observations:

- a) "Indeed, there is nothing in the regulation which specifies how the value of the part attributable to the domestic use is to be arrived at;
- b) provided whatever method of valuation the valuer adopts enables him to advance a figure which can properly be said to represent that portion, I would hold that there was no breach of the requirements of regulation 7; and
- c) I agree with Schiemann L.J. that there is no requirement that the valuation officer should determine the value of the property as a whole before allocating a value to the domestic use part, and that it is enough if he has regard to it."

21. In the case under consideration, the tribunal was in no doubt that the parties had had regard to the relevant amount, Mr Beattie had just applied a different method of valuation.
22. It was not necessary, for the LO to value the whole of the composite site first, in order to ascertain the domestic portion of the relevant amount. The Court of Appeal's judgment in *Atkinson* had established that, provided the LO had had regard to the relevant amount, it was permissible for the LO to arrive at a valuation of the domestic portion by whatever means he chose to employ, without breaching regulation 7.
23. The panel noted from the floor plan of the school that there were other flats within the school for which appeals had been recently settled at band A. The EFA's of these ranged from 57m² to 72.96m². The panel was therefore not convinced by Mr Beattie's use of the contractor's method as it did not appear correct that a larger property such as The Assistant Housemasters Flat, Temple House, which had an EFA of 98m² should be placed in the same band A.
24. Furthermore, the *Atkinson* judgment confirmed there was nothing to state what method should be used for valuing properties for council tax. Furthermore, the *Dombldes* judgment stated that the LO is only seeking to determine what band a property should be placed in, rather than a specific value.
25. As the panel was not persuaded by either party's arguments, the panel turned to the band A agreements reached in respect of other flats within the school, which ranged in size from 57m² to 72.96m². This demonstrated to the panel's satisfaction that the pattern of bandings suggested that the Assistant Housemasters Flat, Temple House, which had an EFA of 98m², should be placed in band B as it was larger than other flats that had been agreed at band A. The panel then concluded that The Housemasters Flat, Grenville House which had

an EFA of 142m² should then be placed in band C and The Housemasters Flat, Grafton House which had an EFA of 168m² should then remain in band D.

26. Therefore, the appeal in relation to The Housemasters Flat, Grafton House was dismissed and the appeals in relation to The Housemasters Flat, Grenville House and The Assistant Housemasters Flat, Temple House were allowed in part.

Order

27. Under the provisions of regulation 38(2) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Listing Officer to alter the Valuation List within two weeks of the date of this order to show that following entries with effect from 22 November 2021:

Housemasters Flat, Grenville House, Stowe School, Stowe, Milton Keynes, MK18 5EH – Band C (comp); and
Assistant Housemasters Flat, Temple House, Stowe School, Stowe, Milton Keynes, MK18 5EH – Band B (comp)

Date: 23 June 2023

Appeal numbers: VT00013624, VT00013628; VT00013630

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.