

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation list appeal; accuracy of band entry in the list; tonal evidence; Domblides v Listing Officer [2008] EWHC (Admin) 3271; appeal dismissed.

Re: 104 Sunnings Lane, Upminster, Essex, RM14 2DQ

APPEAL NUMBER: VT00013853

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

PANEL: Mr G D Coombes (Senior Member) and Mr N De Freitas

CLERK: Miss K Hendry

REMOTE HEARING on Monday 18 September 2023

PARTIES PRESENT:

The Appellant
Mr L Dalli (Respondent's Representative)

Summary of decision

1. The appeal was dismissed. No change was made to the appeal property's current band E entry in the valuation list effective from 25 May 2022.

Introduction

2. The appeal property entered the council tax list as band D with effect from 1 April 1993 when the appeal property had been assessed on the basis that it was a three-bedroom terraced house with an reduced covered area (RCA) of 79m².
3. In March 2022, the Listing Officer (LO) received a report from Havering Council requesting that the appeal property be assessed as two separate dwellings for council tax purposes as

it was considered that an outbuilding should be assessed for council tax as it was a self-contained annexe.

4. Having undertaken a review, the LO concluded from photographs provided by Havering Council that the outbuilding was self-contained and brought it into the council tax list at band A with effect from 25 May 2022.
5. As the original hereditament ceased to exist, and two new dwellings had come into existence. Reg 11(6) of The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 states that the appeal property must be brought into the list taking into account the size, layout and character at the date the list is altered. This meant that at the relevant date of 25 May 2022, the LO had to assess the appeal property as it stood, meaning that any alterations and extensions that had taken place by the current owner had to be included even though a relevant transaction had not taken place. This was supported by High Court cases of;
 - *R (on the Application of Kelderman) v Valuation Office Agency* [2014] EWHC (Admin)
 - *Corkish (LO) v Berg* [2019] HWHC 2521 (Admin)
6. The LO reviewed the council tax band on the appeal property and took into consideration a loft conversion and rear extension which increased the property size to 120m². The band was increased to band E with effect from 25 May 2022.
7. The appellant served a proposal on the LO on 5 July 2022 disputing the band E assessment and sought a reduction to band D.
8. After considering the merits of the proposal, the LO determined that the proposal was not well founded and a decision notice to this effect was issued on 15 October 2022. The appeal was received by the tribunal on 18 November 2022.
9. Section 5(2) of the Local Government Finance Act 1992 sets out the bands for valuation purposes at the antecedent valuation date (AVD) of 1 April 1991. The relevant bands in relation to this appeal are as follows:

Band D: values exceeding £68,000 but not exceeding £88,000
Band E: values exceeding £88,000 but not exceeding £120,000
10. With the agreement of the parties, the panel varied the Model Hearing Procedure and invited the LO to present his evidence first.
11. This tribunal decision document is not, and does not purport to be, a verbatim record of the proceedings.

Issue

12. The issue in dispute was the correct valuation band to be applied to the appeal property.

Evidence and submissions

13. The bundle provided by the LO contained the parties' respective cases and supporting documents.

Decision and reasons

14. Regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 sets out the statutory basis for valuing dwellings for the purpose of their entry into the valuation list. It is not necessary to repeat verbatim the provisions of these regulations but suffice it to say that the value of any dwelling shall be taken to be the amount it would reasonably expect to realise had it been sold in an open market by a willing vendor on the AVD, regardless of whether or not it actually existed on this date. This is intended to provide uniformity and consistency in the valuation of domestic dwellings.
15. In accordance with the High Court decision of *Domblides v Listing Officer* [2008] EWHC 3271 (Admin) the best evidence must always be an open market sale of the appeal dwelling on or close to the AVD. Where there is no such sale, the panel must consider the sale of dwellings close to the AVD and decide whether those dwellings are comparable. Whilst more recent sales on comparable dwellings are useful to compare their relative value in the market at the time of their sales, they are less reliable in demonstrating value at the AVD. Also, a tone of band can become established when a number of properties of similar size, character, quality, detachment and location are attributed the same valuation band which over time are not challenged, are challenged and subsequently agreed by the parties, are challenged and subsequently withdrawn or are challenged and determined by valuation tribunals. The panel also had regard to the size, layout and character of the appeal dwelling and its locality at the relevant date. This was 25 May 2022, the date the assessment was split.
16. The appellant argued that the footprint of the appeal property had not changed. The loft had already been converted by the previous owner prior to her purchase in 2006 and the only alteration she had made was to add a dormer in 2010 to allow for more headspace. She did not consider it to be fair that the appeal property had increased from band D to band E, resulting in higher council tax bills which she could not afford.
17. The appellant also mentioned other properties on Sunnings Lane which had outbuildings and a loft conversion, yet their band had not changed. The appellant contended that the annexe had now been deleted from the list with effect from 21 August 2022 following works undertaken so that it was no longer self-contained. Therefore, as she no longer had a separate annexe, the band on the appeal property should be reduced back to band D.
18. In response to the appellant's argument, Mr Dalli confirmed that the loft or rear extension had not been included on their records for the appeal property, therefore it may have been under-assessed from 2006 when the appellant purchased the property and should have been increased to band E then. Despite the fact the annexe had now been deleted from the list, Mr Dalli contended that the appeal property at band E was correct. This was because it had increased in size from 79m² to 120m².
19. In support of band E, Mr Dalli referred to seven other properties located on Sunnings Lane. These properties ranged in size from 77m² to 96m² and were all in band D. The sale values achieved on these properties ranged from £60,000 on 24 April 1991 to £97,500 on 11 May 1990. Mr Dalli contended that the sales achieved supported upper end of band D for properties much smaller than the appeal property. Therefore, in its extended state, band E in his opinion was correct for the appeal property.
20. In further support of band E, Mr Dalli referred to 34 Sunnings Lane which had been extended and a relevant transaction had taken place in 2015. This property had been increased from

band D to band E as a result of the alterations. 60 Sunnings Lane had also been increased to band E with effect from 13 August 2023 due to alterations and a relevant transaction which took place in 2021.

21. Mr Dalli stated that he was aware that other properties have had similar extensions, however they had not yet sold so the band could not be increased. There were indicators marked on the properties to review the bands once a sale did take place.
22. The panel had regard to the legislation and held that it was right for the LO to assess the appeal property as a new hereditament because of it being split into two hereditaments. Therefore, it was correct to assess the property at the relevant date having regard to any alterations and extensions.
23. The panel held that the appeal property prior to its alterations at a measurement of 79m², would have achieved a sales value at the top of band D. This was evidenced by the basket of sales evidence on Sunnings Lane which achieved over £80,000 close to the AVD. As the appeal property was 41m² larger, it is reasonable to expect it to have sold for values over £88,000 band E threshold.
24. This was further supported by 34 and 60 Sunnings Lane which were of a similar size to the appeal property and had their bands increased to band E.
25. Ultimately, in appeals of this nature the burden of proof is with the appellant to satisfy the panel that the appeal property had been incorrectly banded. After consideration of the evidence placed before it, the relevant legislation and case law, the panel dismissed the appeal.

Date: 25 September 2023

Appeal number: VT00013853

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.