

VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation list appeal; accuracy of the band; the tonal evidence for comparable properties within the locality demonstrated that the band F assessment applied to the appeal property was not excessive; Domblides v Listing Officer [2008] EWHC 3271 (Admin); appeal dismissed

APPEAL NUMBER: VT00014653

BETWEEN:	RF	Appellant
	and	
	Ms A Morley	Respondent

RE: 8 Black Rock Sands, Marine Drive, Widemouth Bay, Bude,
EX23 0AG

PANEL: Mr A Hussain (Senior Member)
Dr PAR Thomson (Member)

CLERK: Mrs Deborah Davies

SITTING ON: 16 August 2023, Remote Hearing 2

APPEARANCES: RF (appellant)
Mr A Wakley, on behalf of the respondent

Summary of decision

1. Appeal dismissed. The appeal property is correctly placed in band F with effect from 1 April 2022, the date the property re-entered the valuation list ("the list").

Introduction

2. This appeal is brought in respect of 8 Black Rock Sands, Marine Drive, Widemouth Bay, Bude, EX23 0AG (the 'appeal property'). The appellant made the proposal on 28 August 2022, within six months of the property re-entering the list on 1 April 2022.

3. The appeal property is an end of terrace house built in 2010. The appellant purchased the property in October 2014, at which point the property was in the list in band F. As a holiday let, the property was taken out of the list with effect from 1 April 2015 and placed in the non-domestic rating list. The property re-entered the valuation list from 1 April 2022, again at band F. The appellant submitted a proposal to have the band reduced to E. After considering the merits of the proposal, the Listing Officer (LO) determined that it was not well-founded and issued a decision notice to that effect on 7 December 2022. The appellant made an appeal to this Tribunal on 12 January 2023.
4. With the agreement of the parties and to assist the appellant, the panel varied Practice Statement 8 (the Model Hearing Procedure) and invited the respondent's representative to present his evidence first.
5. This hearing was conducted via Microsoft Teams.
6. The decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary Issue

7. The LO had sent the two-week pack to the appellant and the Tribunal one week late. The six-week pack had been issued in accordance with the Standard Directions and the appellant's response had been incorporated into the evidence bundle.
8. The panel considered the LO's breach of the Standard Directions, having regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926, summarised below:
 - a. Stage one - determine the significance and seriousness of a breach; what are the consequences of the breach and is there prejudice to any party?
 - b. Stage two – consider why the failure and default occurred; if the defaulting party had good reasons for the non-compliance relief from sanctions may be granted.
 - c. Stage three – give due regard to all the circumstances of the case, including the need for litigation to be conducted efficiently and at proportionate costs, and the need to enforce compliance with the rules, directions, and orders of the Tribunal.

9. The panel found that the LO's breach of the Tribunal's Directions was not insignificant, but, as the appellant confirmed that there had been no prejudice to him, the panel was satisfied that the hearing should proceed without any sanctions being imposed on the LO.

Issue

10. The panel was required to determine the correct band for the appeal property with effect from 1 April 2022, when the property re-entered the list.

Evidence and submissions

11. The LO submitted a comprehensive joint evidence bundle, which included a copy of the proposal and appeal form; details of the appeal property and comparable properties, extracts of relevant legislation and caselaw and a summary of the facts of the case. In addition the appellant had included a significant amount of information such as references to house price indices and tables and graphs extrapolated from sales data and indices.
12. The appeal property is an end of terrace house built in 2010. It has four bedrooms, four bathrooms, one reception room, and a kitchen. The living accommodation is on the first floor to take advantage of the sea views. It has drive-way parking for two cars and there is a balcony to the first floor.
13. Having regard to the relevant legislation, the tonal evidence presented, and the points raised by the appellant, the LO contended that band F was correct and sought dismissal of the appeal. The appellant put forward evidence in support of a reduction in the appeal property's assessment to band E.

Decisions and Reasons

14. The panel had regard to relevant legislative provisions governing the valuation of dwellings for the purposes of determining into which council tax band a particular dwelling should fall. These are contained in the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 SI 550 and, broadly, require a determination to be made of the amount the subject property could reasonably have been expected to have realised had it sold in the open market by a willing vendor at the antecedent valuation date (AVD) of 1 April 1991, subject to various assumptions.

15. Amongst these assumptions is the requirement to have regard to the physical nature of the property and its locality as they stood at a particular day, the ‘relevant date.’ The relevant date in this appeal is 1 April 2022, the date the property entered the list.
16. The panel therefore looked to determine the valuation band that correctly reflects the amount the property might reasonably have been expected to have achieved had it sold on the open market by a willing vendor on 1 April 1991, assuming the property and its locality physically existed at that date as they did on 1 April 2022.
17. The council tax bands are set out in section 5(2) of the Local Government Finance Act 1992, with the bands relevant to this appeal being:
- Band E – values in excess of £88,000 but not exceeding £120,000
 - Band F – values in excess of £120,000 but not exceeding £160,000
18. The panel acknowledged that the best evidence in determining council tax banding appeals would be that of an open market sale of the appeal property that had completed at or around 1 April 1991. That could not apply to the appeal property as it did not exist in 1991. The next best evidence is that of sales of similar properties that had completed at or around 1 April 1991. Failing that, any evidence of truly open market sales may be examined, and adjustments made to equate to the AVD of 1 April 1991. If no relevant sales evidence was available, the panel would consider the established ‘tone of the list’.
19. For council tax purposes, houses and bungalows are measured to reduced covered area (“RCA”). In brief, this is the area of a building measured externally at each floor level and includes perimeter wall thickness, external projections (such as a bay), and areas occupied by internal walls, partitions and stairwells. Spaces such as unconverted loft areas, integral garages, outbuildings, open balconies, internal areas with a head height of below 1.5m are excluded. Measurements are done in this way to provide uniformity; it also facilitates comparison between dwellings.
20. The appeal property has an RCA of 157m² according to the measurements provided by the LO.
21. The LO provided a list of 11 properties in support of the appeal property’s band F entry. This was a mixture of sales evidence and tonal. The panel was aware that details of the banding of other comparable properties nearby is helpful in establishing whether a ‘tone’ of value exists

and, if so, whether that has been applied correctly in the banding of the appeal property. The panel had regard to the High Court judgment of *Domblides v Listing Officer* [2008] EWHC 3271 (Admin), a copy of which had been sent to the appellant by the LO prior to the hearing. The panel understood from the *Domblides* judgment that it was not unreasonable in the absence of any relevant AVD sales evidence to determine a band by reference to tone, if one has been established in the locality. A tone of band is established when sufficient properties, similar in size, character, quality, detachment and location have been assigned the same band which, over time, has not been challenged. Council tax bands that have been challenged and subsequently agreed by parties, or determined by a tribunal panel, are also instrumental in establishing the tone.

22. The LO provided sales evidence of three properties it deemed comparable to the appeal property. 49 Bede Haven Close is a detached house built in the 1970s. It sold for £105,000 in May 1991, placing it in the upper middle range of values for band E. The LO is satisfied that, although larger than the appeal property at 195m², this property is correctly banded in E because it is older and in a less desirable location. Similarly, the respondent argued that two 1930s detached houses, 54 Valley Road and 8 Broad Close Hill, were both larger but in less sought after locations than the appeal property. Valley Road sold for £100,000 in November 1990 and Broad Close Hill for £108,000 in January 1991, placing both comfortably within band E. The appellant stated that it appeared that these properties had been selected as comparable to his own more on the basis of their difference than their similarity. The LO's representative placed great emphasis on the greater desirability and scarcity of the appeal property, claiming that 'this case epitomises the importance of location'; he explained that he believed that, had 8 Black Rock Sands existed on 1 April 1991, it would have sold for a higher price than the selected properties, thereby placing it within the band F range of values.
23. The LO provided 8 comparable properties in respect of the tone of the list. One was larger than the appeal property and the other seven were smaller. The majority of the properties are holiday lets and therefore may no longer have entries in the valuation list. The 'band' referred to in these cases is the last list entry before deletion. Five of the properties are (were) in band E and the other three are in band F. The three properties with a band F entry are numbers 1, 6 and 7 Black Rock Sands. Number 1 is slightly smaller than the appeal property, at 150m² and with one less bathroom. Number 6 is larger than the appeal property at 167m² whilst number 7 is again slightly smaller at 152m². The LO's representative confirmed that these were his preferred comparators.

24. The properties in band E are numbers 2, 3, 4 and 5 Black Rock Sands, and Tater Du Lodge. The Black Rock Sands properties are all notably smaller than the appeal property, varying from 110 m² to 117 m² RCA. Tater Du Lodge is also smaller, at 134 m². This three-bedroomed property, an eco-house, is described by the appellant as 'in a class above' the appeal property. The appellant recognised that his property would correctly be in a band above that of the smaller Black Rock Sands properties, but he believes that all of the properties are over-banded.
25. There was significant debate about how the sales prices achieved by the Black Rock Sands properties should be interpreted in the context of extrapolating a value as at 1 April 1991. The properties were built in 2010 and sold 'off-plan'. The appellant contends that the off-plan sales figure achieved is not consistent with the open market value and so is not a fair starting point. Four of the eight Black Rock Sands properties sold again within five years of their initial sale for significantly lower amounts than achieved in their first sales. The LO's representative stated that in his experience of new builds it was 'not unusual' for the second sale price to fall short of the initial one. He refuted the argument that an off-plan sale was not equivalent to an open market sale and contended that the 2010 sales figures were therefore indicative as to the value and band of the appeal property. The LO's representative explained that, to band brand new properties, a comparison was made to other properties which were similar in size and location, and which existed on 1 April 1991.
26. The appellant suggested that the fact that the appeal property was restricted to use as holiday accommodation had not properly been taken into account, contending that such a restriction would adversely affect the open market value. The LO's representative stated that in his experience such a restriction did not negatively impact sales values, and that the valuation assumptions required that the property was valued on the basis that it was free of any 'incumbrance'. The panel was aware that the LO's representative was referring to one of the assumptions listed in the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 SI 550:

6 Valuation of dwellings: general

(1) ... the value of any dwelling shall be taken to be the amount which, on the assumptions mentioned in paragraphs (2) and (3) below; the dwelling might reasonably have been expected to realise if it had been sold in the open market by a willing vendor on 1st April 1991

(a) ...; and (b)....

(2) The assumptions are—

(a) ...;(b)...

(c) that the dwelling was sold free from any rent charge or other incumbrance;

(d)...; (e)...; (f)...; (g)...; (h)...; (i)...

Whilst the panel accepted that the restriction on use might be considered an ‘incumbrance’, there was no evidence presented to it to demonstrate whether the restriction to holiday use only had impacted the sales value either positively or negatively; therefore, the panel attached little weight to this argument.

27. Additional to the properties selected by the LO as sales evidence, the appellant provided information about sales for a further 17 properties which he identified as being more comparable to the appeal property. Unfortunately, the sales evidence was not from the AVD, and the appellant extrapolated from the available information, using data obtained from housing price indices to create graphs and charts for comparison purposes. The data was presented in an interesting and informative way, but the panel understood from the *Domblides* judgment that one had to have caution when having regard to such indices as they were compiled from sales of different types of property over a wide geographic area, often focussing on mortgage details of only one lender, and as a result they do not provide a reliable guide to the value of a specific type of property in a particular location.

28. In appeals of this nature, the burden of proof rests with the appellant to show that the band ascribed to the appeal property is excessive. The panel was not convinced that the available evidence demonstrated that the current band F entry is excessive. The tonal evidence presented by the LO was persuasive and satisfied the panel that, had the appeal property been placed on the open market as at 1 April 1991, it would have achieved a sales value in excess of £120,000. The panel therefore dismissed the appeal.

Date: 23 August 2023

Appeal number: VT00014653

Rights 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.