

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation appeal; Local Government Finance Act 1992; Council Tax (Situation and Valuation of Dwellings) Regulations 1992 as amended; retirement flat; challenge to the entry in the valuation list; sales and tone of the list supported band C; appeal dismissed.

APPEAL NUMBER: VT00015338

BETWEEN:	W M-F	Appellant
and	Alexandra Morley (Listing Officer)	Respondent

RE: 38 St Catherines Lodge, Lammas Road, Coventry CV6 1QJ
("the subject property")

PANEL: Mrs S Saleem (Presiding Senior Member)
Ms J L Hadley (Senior Member)

CLERK: Mrs A Sloan

SITTING ON: 6 October 2023 (remote hearing no.3)

APPEARANCES: M W (Appellant's representative)
Ms M Garlick (representing the Listing Officer)

Summary of decision

1. Appeal dismissed. The panel made no alteration to the existing entry in the valuation list.

Introduction

2. The subject property entered the valuation list from its inception on 1 April 1993 at band C. The Listing Officer (LO) received a proposal from M W, on behalf of the appellant, on 31 October 2022 seeking a reduction to band A. After considering the content, the LO decided that the proposal was not well founded and issued a decision notice to that effect on 26 January 2023. The appeal to the Tribunal against that decision was received on 22 February 2023.
3. To assist the appellant's representative and with the agreement of all parties, the panel varied the Tribunal's model procedure and invited the LO's representative to present her case first. Ms Garlick presented evidence she had prepared on behalf of the LO. This

document is not intended as a verbatim report of the proceedings, nor does it reproduce in full all the parties' evidence.

Issue

4. The issue before the panel was to determine the correct council tax valuation band for the subject property with effect from 1 April 1993.
5. Regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 sets out the statutory basis for valuing dwellings for the purposes of their entry into the valuation list. This legislation states that the value of any dwelling shall be taken to be the amount it would reasonably expect to have realised had it been sold on the open market by a willing vendor on 1 April 1991 (the antecedent valuation date – AVD). This is to provide uniformity and consistency in the valuation of domestic dwellings.
6. The range of 1991 values for each council tax valuation band are set out in section 5(2) of the Local Government Finance Act 1992. In this case, the appellant sought a reduction to band A (values up to £40,000) or band B (values exceeding £40,000 but not exceeding £52,000) and Ms Garlick defended the current entry of band C (values exceeding £52,000 but not exceeding £68,000).
7. In deciding the value that would have been achieved on 1 April 1991, consideration must be given to the physical state of the locality and the size, layout and character of the appeal dwelling on the relevant date, which in this appeal, was 1 April 1993.

Decision and reasons

8. According to the LO's records, the subject property is a purpose built, second floor flat constructed between 1983 and 1992. The accommodation consists of a kitchen, living room, two bedrooms and a bath/shower room. The LO recorded the property at 52m². The flat was in a development of retirement flats, restricting occupation to those aged 55 or over.
9. The appellant disputed that the flat was a two-bedroom property. The written submissions contended that the flats have a small kitchenette, lounge, small dining room and a single bedroom. MW felt that the subject property should be valued as a one-bedroom flat, and the originating proposal referred to one-bedroom retirement flats in Coventry.
10. The panel considered the plans supplied by the appellant. It noted that most of the flats, including the subject property, were Type A. This configuration had a kitchenette and open plan lounge. Five flats were Type B, slightly larger with a separate kitchen and lounge. Both types were labelled as having two bedrooms. The panel noted MW's submissions that most of the occupants are using the room labelled as a second bedroom as a dining room. He highlighted that there is a guest bedroom onsite for visitors, which he felt supported his case that there is no second bedroom in the flats. Ms Garlick submitted that the flats are managed by Coventry Social Care Authority and categorised as two-bedroom flats.
11. The panel was satisfied that the flats were designed to have two bedrooms as detailed in the plans and, as with any property, the occupant may utilise the rooms as they see fit. Having made this finding, the panel did not find the one-bedroom retirement flats cited in the appellant's proposal to be as relevant as comparable properties.

12. The panel was aware of the High Court decision of *Domblides v Listing Officer* [2008] EWHC 3271 (Admin), contained in the LO's evidence provided to the appellant prior to the hearing. This judgment provided guidance on the weight to attach to different evidence in this type of appeal. The best evidence would be a sale from the AVD on the subject property or one similar to it. However, the band could also be determined by tone, should one be found to have been established in the locality. There was no sale on the subject property from 1991 to provide evidence of its value at the AVD. Therefore, the panel found that the next best evidence would be sales on similar retirement flats that occurred close to the AVD to demonstrate the open market values at the time.
13. In support of the LO's case to maintain band C for the subject property, Ms Garlick relied on the tone of bandings in St Catherines Lodge and some sales from the early to mid-1990s. She submitted that there are 38 two-bedroom flats at St Catherines Lodge that are the same size as the subject property, and all were ascribed band C. The Tribunal had considered appeals on numbers 10, 20, 28 and 36 at hearings in 1994 and 1995. Band C was confirmed in each case.
14. Ms Garlick provided details of sales that occurred on those flats, plus the subject property and 3 St Catherines Lodge. The panel found that sales which occur after the valuation date can be subject to changes in the market, making such later information less valuable than sales which took place close to 1991. Recent sales on similar properties are useful to compare their relative value in the current market, but without 1991 sales they are of little use to demonstrate value at the AVD. It therefore found the sales closer to the AVD to provide the strongest evidence of the local market for this type of accommodation.
15. The closest sales to the AVD were on 3 and 10 St Catherines Lodge. Number 10 sold on 17 August 1994 for £46,750 and number 3 sold on 8 December 1995 for £48,950. Ms Garlick submitted it was widely accepted that the property market in most areas was lower in 1994 and 1995 than it was in 1991. MW had provided his analysis of sales in St Catherines Lodge. The panel noted that numbers 11 and 24 had also sold in April and September 1995 for £40,000 and £39,950 respectively.
16. The panel noted that these sales were below the band C threshold. However, the 1994 sale of 10 St Catherines Lodge was considered by the Tribunal at hearings on 20 December 1994 and 26 July 1995 and on each occasion the panels were satisfied that the sale supported an AVD value over £52,000 on 1 April 1991. As those hearings were conducted not long after the sale, the panel concluded the market conditions would have been clearer then. It found the Tribunal decisions persuasive and they added weight to the LO's argument that a tone of bandings had been established in St Catherines Lodge.
17. MW's written submissions included reference to nearby terraced and semi-detached three-bedroom houses, which were in band B. He also cited a modern block of two-bedroom flats at Elizabeth Court in band B. Using recent sales on these properties he had estimated the equivalent value in April 1993. He contended that 22 St Catherines Lodge, the same location as the subject property, sold for £120,000 on 11 March 2022 and its April 1993 value would be £30,242, suggesting band C is excessive.
18. The panel did not consider terraced or semi-detached houses to be comparable to the subject property. It found that retirement flats have their own market and should be compared with other similar retirement properties, not flats with no such restrictions on occupation. Therefore, the only comparable property cited by the appellant was 22 St Catherines Lodge. The panel considered that a sale in 2022 was too far removed from the

AVD to be of use in establishing the value at the AVD. MW had not set out how he had arrived at his estimated 1993 valuations for these properties and the panel did not consider them helpful. Firstly, the statutory valuation date is 1 April 1991, two years before the date that MW had estimated these values to in April 1993. Secondly, on another document analysing sales in St Catherines Lodge, he had referred to gathering data from the Halifax House Price Index. The *Domblides* High Court judgment cautioned against the use of such indices as they cover a wide geographical area and all types of property. The panel did not find this data to be specific enough when it was only concerned with two-bedroom retirement flats in Coventry.

19. Much of MW's submissions concerned the restrictions on occupation to those aged 55 and over, plus the cost burden of the service charges for the flats. He highlighted that the charge was not optional and covers additional services than the usual maintenance and upkeep of the building. He submitted that in 1993 the charge was £88.85 per month but was currently £239.99. In his opinion, this had a negative effect on the price and saleability of retirement flats.

20. The panel considered MW's submissions regarding the statutory assumptions that must be made when valuing a property for council tax purposes (as set out in the Council Tax (Situation and Valuation of Dwellings) Regulations 1992). The panel is required to assume:

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

21. MW had provided a definition of encumbrance as *"Any burden, interest, right or claim which adversely affects the use of, or the ability to transfer, property."* He had not indicated the source of this definition, but the panel found that an *encumbrance* was different to an *incumbrance*, the legal term mentioned in the statutory assumptions.

22. The clerk referred the panel to a High Court judgment where incumbrances and restrictive covenants were considered in relation to valuing dwellings for council tax purposes. A copy of the decision *Coll v Walters* [2016] EWHC 831 (Admin) was provided to the parties and the hearing adjourned to allow time for them to read the judgment. The High Court found that restrictive covenants affecting the use of the dwelling should be a consideration when valuing for council tax purposes and not be disregarded as an incumbrance. In the judgment a definition of incumbrances from the Law of Property Act 1995 was provided as follows:

"... a legal or equitable mortgage and a trust for securing money, and a lien, and a charge of a portion, annuity or other capital or annual sum."

23. The panel concluded that the age restriction on retirement flats should be considered in the valuation as this would be implemented by a restrictive covenant (or similar). MW argued that the service charges were *"a charge or other encumbrance which should be factored in."* The panel found that the service charge was not an incumbrance as defined in the *Walters* case but rather a charge paid for services provided at the building. It noted that MW appeared to be arguing against himself as, if the service charge were considered an incumbrance, it would be disregarded for valuation purposes under the statutory assumptions. In fact, he contended that the level of service charge should be a factor in valuing and that it had a negative impact on value.

24. It was clear that the age restriction for retirement flats limited the pool of potential purchasers but there was no clear evidence presented at the hearing as to whether this impacted value when compared to similar flats in non-retirement developments. The only sales presented

from close to the AVD were on other retirement flats within St Catherines Lodge, and the sale prices achieved would have factored in the service charges and facilities at that time. As previously mentioned, the panel did not find comparison using current market values particularly helpful and no sales from around the AVD had been provided on two-bedroom flats in the locality that were not subject to an age restriction for comparison.

25. The panel considered that a service charge is usually payable on most leasehold flats. The level of charge would generally reflect the services provided in return, as well as contributions to the building maintenance. In the case of retirement flats, the charge often includes onsite managers and medical alarm services. The panel found that the value attached to such services would depend on the purchaser, as many older taxpayers would find security and peace of mind in having access to those services. It concluded that there was no strong evidence that the level of service charge or age restriction had a negative impact on value. When deciding this appeal, the panel must consider the physical state of the locality and the size, layout and character of the subject dwelling on 1 April 1993, when it entered the valuation list. While it acknowledged that the service charge had increased since 1993, so had the value of the dwelling, and the panel did not find this argument persuasive in supporting a reduction in band. MW had referred to other retirement flats in Coventry but had provided no examples of two-bedroom retirement flats lower than band C, to support his case that the subject property was banded out of line with the tone for this type of property.
26. The sales from 1994 and 1995 within St Catherines Lodge, freely negotiated on the open market, were strong evidence of the value on identical flats close to the AVD. The *Domblides* judgment confirmed that valuation in line with an established tone in a locality was also a valid method for council tax purposes. It was clear to the panel that a tone of bandings had been established in St Catherines Lodge. The bands ascribed to identical flats had been in place since 1993 and band C had been confirmed on four identical flats by the Tribunal.
27. The panel found that as the valuation list has been in force for over 30 years, the tone of the list in many areas is well established. In this appeal, the sales and tone of the list support the existing band and the panel considered that the tone should only be disturbed when there is strong evidence to do so. In appeals of this nature, the persuasive or legal burden of proof was on the appellant to prove that the band C entry for the dwelling was wrong, rather than on the LO to prove that it was right. The panel concluded that on the balance of probabilities, the appeal property would have realised more than £52,000 if it had been sold at the AVD in accordance with the statutory basis of valuation. It therefore found that no alteration of the existing band was warranted, and it dismissed the appeal accordingly. Band C was confirmed with effect from 1 April 1993.

Date: 26 October 2023

Appeal number: VT00015338

Right of further 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.