Neutral Citation Number: [2024] EWHC 897 (Admin)

Case No: AC-2023-LON-000389

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2024

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

LAURENTIU TARBUC	**Appellant**
- and -	
DAWN BUNYAN (LIST OFFICER)	**Respondent**

- -
- -

The Appellant appeared in person
Sarah Sackman (instructed by **HMRC**) for the **Respondent**

Hearing date: 25 October 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. On 25 October 2023 I heard an appeal by the Appellant, Laurentiu Tarbuc, against the decision of the Valuation Tribunal for England's (VTE) of 20 October 2022 by which it upheld the Council Tax banding of the Appellant's property at Band E. At the conclusion of the hearing I indicated that the appeal would be dismissed for reasons to be given later. These are my reasons.

Council Tax

2. Recently, in *Clark v Bunyan* [2024] EWHC 486 (Admin), I set out the statutory provisions in relation to Council Tax. I said at [4]-[8]:

> "4. Council tax is charged by the local billing authority on property. The amount payable depends on what Council Tax band the property falls into. Around the beginning of April each year the billing authority sets the amount of Council Tax payable on properties in each band for that year. These bands were set in the Local Government Finance Act 1992, s 5, when Council Tax was first introduced. Each billing authority has a Listing Officer whose job it is to maintain an accurate list of properties and the Council Tax band they fall into. The Listing Office for the Appellant's Property is the Respondent to this appeal.
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> 5. Very simply, the band for a property is determined as follows. When Council Tax was being introduced in the early 1990s, Listing Officers were required to determine what value each property within its area would have sold for on 1 April 1991, which is known as the antecedent valuation date (the AVD). (That is the AVD for England; there is a different date for Wales). Depending on that value, the property was then placed in one of eight value bands (A-H), and the Council Tax payable was that applicable for that band of property in that billing area for each year. A list of all properties liable for Council Tax was compiled and came into effect on 1 April 1993. This is known as the valuation list, and the Listing Officer is responsible for maintaining and accurate list for his or her area.
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> 6. This case is concerned with Band E and Band F. Band E covers properties with a value exceeding £88,000 but not exceeding £120,000. Band F covers properties with a value exceeding £120,000 but not exceeding £160,000.
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> 7. For properties built after the initial valuation list was compiled … the Listing Officer takes the state of the subject property as at a particular date (known as the relevant date, which is defined in reg 6(5A) of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 (SI 1992/550) (the 1992

> Regulations)), and then, based on the assumptions set out in reg 6(2), asks the hypothetical question: what price would that property in the state it was on the relevant date have fetched on the open market if it had been bought by a willing purchaser on the AVD?
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> 8. The principal – but not the only - source of evidence which Listing Officers use to answer that hypothetical question are the actual prices fetched by real, similar, comparable properties which were sold around the AVD in the area local to the subject property. Because the process for new properties is hypothetical and backward looking, and usually involves comparison of properties which will generally differ in some way (eg, smaller or larger garden; garage or no garage; smaller or larger square footage size, etc) determining the notional sale price at the AVD requires judgements of fact and degree to be made by Listing Officers and, where their decisions are challenged, by the Valuation Tribunal for England (VTE), to which appeals lie in respect of Council Tax-related decisions."

3. I went on to explain that under the legislation, a property's Council Tax band cannot be increased simply because the property's value has gone up over the years in line with the market. However, if, for example, a property is extended by adding bedrooms, so that its value *in that state* would have been greater as at the AVD so that it would have been placed in a different band, then it is open to the Listing Officer to increase its Council Tax band accordingly if and when the property is sold, with effect from the date of sale (known as the relevant date).

Factual background

4. The property in question is in Grasmere Road, Bexleyheath, Kent DA7 6PT (the property). The property was entered into the Council Tax List (the List) at Band D on 1 April 1993 (the effective date).

5. The local Billing Authority informed the Valuation Office Agency (VOA) that the property had been extended on 30 January 2018. The Appellant purchased the property on 16 July 2021 (ie, the relevant date) which led to a band review in accordance with reg 3(1)(a)(i) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2270).

6. The LO determined that the banding of the property should increase to take into account the material increase in the value of the dwelling completed before the relevant transaction. The LO notified the Appellant on 17 November 2021 of the increase to Band E.

7. The Appellant made a valid proposal on 22 November 2021 against the alteration to the List. On 21 January 2022, the Listing Officer (LO) determined there should be no change to the list and issued a decision notice to that effect.

The appeal to the VTE

8. The Appellant appealed the LO's decision to the VTE on 14 March 2022. The VTE heard the appeal on 20 September 2022 and issued its decision on 20 October 2022. The VTE determined that the property should remain in the list at Band E.

9. In its decision, the VTE identified the main issue in the appeal at [8], namely whether the Appellant's dwelling was in the correct Council Tax band based on the value it may reasonably have achieved on 1 April 1991 if sold on the open market by a willing vendor. In considering the value which it would have been achieved on that date, the VTE had regard to all of the evidence before it and identified (as I have explained) that it was required to have regard to the physical state of the locality, the size, layout and character of the dwelling on 16 July 2021, the date of the relevant transaction. Having done that, it upheld the LO's decision.

10. The VTE said at [25]-[26]:

> "25. The panel considered all of the evidence and relevant legislation. It found the best evidence to be the respondent's sales evidence as the task at hand was to determine a band that reflected values on 1 April 1991. The panel attached the most weight to the sale of 43 Grasmere Road which had sold three months prior to the AVD. The panel considered that this property was located on the same road as the appeal property and had achieved a sale within the band E range of values, close to the AVD. Whilst it had the benefit of a garage which the appeal property did not, it was smaller than the appeal property. The panel ultimately found that this sale suggested that the appeal property would have achieved a sales value in excess of £88,000 at the AVD. The panel found the tonal evidence further supported a band E assessment of the appeal property.
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> 26. It was therefore the decision of the panel for the entry in the valuation list to remain at Band E from 21 November 2021 and to dismiss the appeal."

11. The Appellant then sought a review of the VTE's decision on 9 November 2022 under reg 40 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) (VTE Regulations). On 28 November 2022, the VTE's Vice President declined to review the decision, finding that there had been no procedural irregularities in the VTE's conduct of the appeal.

Appeal of the VTE's decision

12. Regulation 43 of the VTE Regulations provides:

> "(1) An appeal shall lie to the High Court on a question of law arising out of a decision or order which is given or made by the VTE on an appeal under section 16 of the 1992 Act or the CT Regulations [ie, the 2009 Regulations]
>
> (2) Subject to paragraph (3), an appeal under paragraph (1) may be dismissed if it is not made within four weeks of the date on

> which notice is given of the decision or order that is the subject of the appeal.
>
> (3) Where -
>
> (a) the appeal is made by a person whose application under regulation 40(1) for the review of the decision relied (whether in whole or part) on satisfaction of the condition mentioned in regulation 40(5)(c); and
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> (b) the VTE gave notice -
>
> (i) that it would not undertake a review; or
>
> (ii) having reviewed the decision or part, that it would not set aside the decision or part,
>
> the appeal may be dismissed if it is not made within four weeks of the date of the VTE's notice.
>
> (4) The High Court may confirm, vary, set aside, revoke or remit the decision or order, and may make any order the VTE could have made."

13. The provisions in reg 40(3) are not relevant in this case, therefore, the statutory deadline for issuing an appeal to the High Court was 17 November 2022, four weeks after the VTE's decision.

14. It is also important to emphasise that an appeal lies to the High Court on points of law *only*. This means, in summary, that the appellant must establish that the VTE's decision is so unreasonable as to be irrational (for example if there were no evidence to support its findings of fact), or the VTE applied the wrong legal principles, or took into account irrelevant matters: *Pengelly v The Listing Officer* [2014] EWHC 4142 (Admin), [1]:

> "This is an appeal brought by Mr Darren Pengelly against a decision of the Valuation Tribunal Pursuant to Regulation 43 of The Valuation Tribunal for England (Council Tax and Rating Appeals) Regulations 2009. As with many statutory appeals, it is an appeal on a point of law. It is not a rehearing on the merits. The test is essentially the public law test. There are two relevant principles in this case. Firstly whether the decision the tribunal made was so unreasonable as to be irrational, for example if there were simply no evidence to support its findings. Secondly has the decision maker applied the wrong principles of law, or (put in simple terms) asked itself the right question, or taken into account irrelevant matters Those are the two central issues of the public law test that arise in this case."

15. In *Ramdhun v Valuation Tribunal of England* [2014] EWHC 946 Admin, Haddon-Cave J said, at [20], that 'absent a patent error of law or findings of fact which simply cannot be justified on the evidence, the High Court will not interfere'. At [28], he set out the well-known principles governing appeals from statutory tribunals, which were

helpfully summarised by the Upper Tribunal in *Ramsay v Commissioners of HM Revenue and Customs* [2013] UKUT 0226 (TCC), at [48]:

> "(1) If the case contains anything which on its face is an error of law and which bears upon the determination, that is an error of law (*Edwards v Bairstow and another* [1956] AC 14, per Lord Radcliffe at p 3).
>
> (2) A pure finding of fact may be set aside as an error of law if it is found without any evidence or upon a view of the facts which could not reasonably be entertained (*Edwards v Bairstow*, per Viscount Simonds at p 29).
>
> (3) An error of law may arise if the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal (*Edwards v Bairstow*, per Lord Radcliffe, op cit.)
>
> (4) It is all too easy for a so-called question of law to become no more than a disguised attack on findings of fact which must be accepted by the courts. The nature of the factual enquiry which an appellate court can undertake is different from that undertaken by the Tribunal of fact. The question is: was there evidence before the Tribunal which was sufficient to support the finding which it made? In other words, was the finding one which the Tribunal was entitled to make? (*Georgiou v Customs and Excise Commissioners* [1996] STC 463, per Evans LJ at p 476).
> (5) For a question of law to arise in those circumstances, the appellant must first identify the finding which is challenged; secondly, show that it is significant in relation to the conclusion; thirdly, identify the evidence, if any, which was relevant to that finding; and fourthly, show that finding, on the basis of that evidence, was one which the Tribunal was not entitled to make. What is not permitted is a roving selection of the evidence coupled with a general assertion that the tribunal's conclusion was against the weight of the evidence and was therefore wrong (*Georgiou*, Per Evans LJ, op cit.)
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> (6) An appeal court should be slow to interfere with a multi-factorial assessment based on a number of primary facts, or a value judgment. Where the application of a legal standard involves no question of principle, but is simply a matter of degree, an appellate court should be very cautious in differing from the judge's evaluation. Where a decision involves the application of a not altogether precise legal standard to a combination of features of varying importance, this will fall within the class of case in which an appellate court should not reverse a judge's decision unless he has erred in principle (*Proctor & Gamble UK v Revenue and Customs Commissioners* [2009] STC 1990, per Jacobs LJ at

> [9]-[10]; *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2000] 1 WLR 2416, per Lord Hoffman at p 2423).
>
> (7) Where the case is concerned with an appeal from a specialist Tribunal, particular deference is to be given to such tribunals, for Parliament has entrusted them, with all their specialist experience, to be the primary decision maker. Those tribunals are alone the judges of the facts. Their decisions should be respected unless it is quite clear they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently (*AH (Sudan) v Secretary of State for the Home Department* [2008] AC 678, per Baroness Hale at [30])."

16. The Appellant issued and filed his Appellant's Notice on 16 January 2023, two months or so after the deadline. He sought an extension of time. In error, he named the VTE, rather than the LO, as the Respondent in the Appellant's Notice and served his documents on the VTE. The LO was first made aware of the existence of the Appellant's Notice on 27 April 2023 when the VTE passed the Appellant's documents to the LO. The LO was only served by the Appellant on 22 May 2023, approximately six months after the statutory deadline.

The parties' submissions

17. The Respondent applied to strike-out the appeal on the grounds it was out of time. Collins Rice J ordered (in effect) a rolled-up hearing of that application, with the appeal on the merits to follow if it was unsuccessful.

18. In the event, with the agreement of the parties, I heard all matters together, ie both on the strike-out and on the merits of the appeal. Ms Sackman for the Respondent addressed me first and then the Appellant. She replied, and exceptionally I allowed the Appellant to have the final word as he was unrepresented.

19. Ms Sackman said that the appeal should be struck out as being out of time. She relied on *Humphrey v Fenland DC* [2019] RVR 107, [9]-[15], applying *Denton v TH White Ltd* [2014] WLR 3926). She pointed to the extent to which the appeal was out of time (even discounting the Appellant's failure to serve the right Respondent until about six months after the VTE's decision). She relied on the Appellant's acceptance that he knew time was running during the review process but that even then it was not until some six weeks after that decision that he filed his Appellant's Notice.

20. Further and in any event, she said the Appellant's grounds of appeal did not involve a question of law. They just involved criticisms of the VTE's approach to the evidence, how it evaluated it, and what weight the VTE gave to various factors. The matters which the Appellant says the VTE did not take into account were in fact mentioned by it and taken into account.

21. The Appellant accepted that he knew of the four week deadline for appealing to the High Court, and that that time began to run from the date of the VTE's decision. He also knew that his application for a review did not 'stop the clock' (and the forms

supplied by the VTE indicated as such). He said he wanted to exhaust his remedies before commencing High Court proceedings because of their cost and complexity. He said the appeal should be allowed because of its general importance. He said these were good reasons why I should extend time.

22. On the merits, he said that whilst the VTE had compared his property with a number of other properties, and had considered their sale prices around the AVD, the VTE had not properly taken into account a number of factors which, he said, meant the values did not show his property would have been in Band E at the AVD. He cited, for example, plot size, which he said would have served to increase these other properties' values, and flood risk, which he said would have served to lower his property's value.

Discussion

23. At the conclusion of the hearing, having considered all of the submissions made orally and in writing, I was satisfied that Ms Sackman's submissions as to the time point, and as to the merits, were correct and that the appeal should therefore be dismissed.

24. Dealing with the time point first, I was clear that on any view, even discounting his service error, the Appellant's appeal was substantially out of time and that he had not advanced any good reason for extending time. As I have said, he accepted candidly to me orally, as he had done in writing, that he knew time was running during the review process, and he deliberately waited. Even once that process was over, he did not act with promptitude but only filed his appeal six weeks later.

25. Statutory time limits promote finality in litigation and are therefore important and should be observed. Wilful non-compliance is not, in general, tolerated. In *Humphrey,* His Honour Judge Cooke sitting as a High Court judge said at [10]:

> "There is a considerable jurisprudence built up as to the circumstances in which the court will extend time which, in general terms, can be summarised as being that: a good reason should be shown for the extension; in particular in circumstances where a time limit has not been observed, an appellant should address the matter in terms as if it were an application for relief from sanctions; approaching the matter under the three-stage test set out in *Denton*, dealing with the seriousness of the breach and whether any good reason is shown for it; and emphasising the importance of compliance with the rules in order that litigation may be conducted effectively."

26. In this case, as I have said, the breach (in terms of being out of time) was significant, and no good reason for it was advanced. I therefore concluded that no extension of time could properly be granted.

27. As to the merits, I considered all of the points made by the Appellant. It was clear to me that the Appellant's appeal is, in substance, just a disagreement with the merits of the VTE's decision on the facts and the conclusion that it came to having exercised its expert judgment on the evidence put before it by the Appellant and by the Respondent. The appeal therefore did not involve a question of law as required by reg

43(1) of the VTE Regulations. It took all of the relevant factors into account, including those which the Appellant maintained it had not considered. In its detailed reasons the VTE preferred the LO's evidence, particularly the sales evidence for comparable property close to the AVD. It was entitled to do so.

28. It was for these reasons that I dismissed the Appellant's appeal.

Post-script

29. Following circulation of this draft judgment to the parties, Mr Tarbuc made some observations about it, in particular in relation to the treatment of the merits. The Respondent had no observations in reply. I have considered Mr Tarbuc's observations. The cases show that a judgment does not have to deal with every single point advanced by the parties, and that reasons do not have to be elaborate. I consider that the draft judgement clearly and properly set out the law, the parties' respective submissions (both as to the time point and the merits), and clearly explained my reasons for dismissing the appeal, However, in deference to Mr Tarbuc and especially as he is acting in person, I am content to add the following paragraphs to make the position even more clear.

30. At the hearing, although the Respondent had applied to strike out the appeal on the time point on an *in limine* basis, as I have already mentioned, I explained at the outset that I wished to hear submissions on everything, both time and merits. Ms Sackman addressed me on both. During Mr Tarbuc's submissions I reiterated this point that I would permit him to say everything he wanted to, and would not close him down from submitting on the substantive merits of his case. He proceeded to do so clearly.

31. As I explained at [14]-[16] above, and referred to again at [27], an appeal to the High Court lies in relation to points of law *only*. I accepted the Respondent's submission, which was fully set out in its Skeleton Argument and orally, that this case did not involve any questions of law, and that the Appellant's case on the merits was, in substance, a disagreement on the evidence and the facts underlying the VTE's decision.

32. Mr Tarbuc's 'Grounds of the Appeal' set out his case as follows:

> 4. In an open market, the plot size does play a role in the price of a property. The central argument of my appeal to the Valuation Tribunal for England was the significant difference in plot size between the two properties; however, the decision makes no reference to the actual dimensions and only compares the built area (RCA). There is official data available for average plot prices in each area, and by taking this into account, I managed to demonstrate that 43 Grasmere Road attracts more value because of its bigger plot.
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> 5. Given the fact that the Valuation Tribunal for England only took into account only the built area (RCA) and did not consider the impact of the plots, despite being provided with this data, it is a case of not applying the law properly. Therefore, I am bringing this case to the attention of the High Court.

> 6. The Valuation Tribunal for England did not mention the plot sizes in its decision; it only mentioned the built area (RCA)."

33. Mr Tarbuc's Skeleton Argument went into considerable detail on the evidence and features of properties in Grasmere Road. He said at [17] and [22]:

> "17. The Valuation Tribunal for England (VTE) has only considered the Reduced Cover Area (RCA) for the two properties in its decision. The 1992 Regulations do not advise comparing RCAs to determine the value of a property; they reference the value of the property in an open market. Therefore, the VTE did not apply the law correctly, as plot size, flood risk, and the presence of a garage do influence the property value.
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> …
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> 22. There is official data for the plot price per each area, unfortunately, the latest data is from 2019. Using this official data in conjunction with the price paid in 2021 for 38 Grasmere Road, a price per m2 of built area (RCA) can be determined. Using the price per m2 plot and price per m2 of built area (RCA) I prove that the value of 43 Grasmere Road is higher than 38 Grasmere Road by at least 5.5%, despite ignoring the flood risk, garage and also, using 2019 price for land. From 2019 to 2021 house prices have gone up, and subsequently plot prices increased. A higher price for the plot means that in reality, the price gap between the 2 properties is in fact bigger than 5.5%. In 1991, 43 Grasmere Road was sold for £92,500, meaning only 5.11% over the band D limit which is £88,000"

34. During the hearing I asked Mr Tarbuc to precisely identify the question of law he said was involved. He said it was that the VTE 'should have assessed the value of the property in the open market, and they only assessed the size.'

35. I set out [25]-[26] of the VTE's decision earlier. They clearly show the VTE *did* reach its decision based upon value, ie, sale price. Mr Tarbuc's formulation of the issue of law therefore does not reflect what the VTE said. As Ms Sackman said, sale price will have as one of its components plot size, as well as other things –'everything in the round'. As to Mr Tarbuc's principal complaints that the VTE did not consider plot size, flood risk, and the presence of a garage, the VTE did expressly consider all of these matters both generally and specifically:

    a. Firstly, at [9], it said

> "In considering the value which would have been achieved on 1 April 1991, the panel must have regard to the physical state of the locality and the size, layout and character of the dwelling on the "relevant date", this being 16 July 2021, namely the date the relevant transaction was undertaken.

b. Second, at [19] they specifically referred to Mr Tarbuc's evidence about plot sizes and his evidence about their effect on value. At [20] they gave reasons for not placing reliance upon it.

c. Third, at [21] they referred to the flood plain point and again gave reasons for not accepting it ('The panel noted this disadvantage, however, was unable to conclude that the value of the appeal property would have been lower than the threshold value of band E if taking it into account.')

d. Fourth, they referred to the garage in [25]. They also expressly said they had considered all of the evidence.

36. Hence, as I said clearly in [27] above, the VTE considered all the evidence and exercised its expert judgment upon it, as it was entitled to do. Mr Tarbuc disagrees with the conclusions it reached, but no question of law was involved in his appeal. There was no patent error of law in its decision or findings of fact which could not be justified on the evidence: see *Ramdhun,* [20].