THE VALUATION TRIBUNAL FOR ENGLAND

Appeal Number: 5180706009/084CAD

11 August 2015

Council tax - valuation list – banding – agreement to reduce band – whether later alteration possible if previous reduction was in error – Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2270).

Mr and Mrs Michael Ward **Appellants**

v.

Ms Josephine Coll (Valuation Officer) **Respondent**

Re: 113 Goodhart Way, West Wickham, Kent BR9 0EU

Before: The President (Professor Graham Zellick QC)

At: Leman Street, London

On: 28 July 2015

Appearances:

Mr Michael Ward, Appellant, in person.

Mr Matthew Donmall, of Counsel, instructed by the Solicitor to HMRC, for the Respondent.

Introduction

1. This appeal has been selected as a test case to deal with a point of law that commonly arises and generates a sense of unfairness and injustice on the part of council tax payers who are affected by it. The point may be simply stated: does an agreement between the council tax payer and the Listing Officer (LO) to reduce the council tax band, so that the taxpayer's appeal against the banding is thereby withdrawn, bind the LO for all time or does it yield to the LO's primary duty to maintain an accurate valuation list?

2. It had been hoped that the point would be authoritatively settled in the appeal from this Tribunal to the High Court in *Adam* v. *LO* [2014] EWHC 1110 (Admin). Mr Donmall for the LO in these proceedings has sought to persuade me that it was decided in *Adam* and that it is binding on me.

3. I expressed the contrary view in *Martin* v. *Coll (LO)*, 25 March 2015, Appeal No. 2245637079/084CAD, paras. 23-31, and nothing said by Mr Donmall has caused me to revise that opinion. Indeed, these proceedings have reinforced my view. Counsel for the LO has produced an admirable skeleton argument running to 16 pages and we have had a half-day hearing. The argument is firmly located in the legislation on council tax, where the answer is to be found, and not in judicial review principles or indeed in other common law doctrines such as estoppel or abuse of process, which are not common currency in this Tribunal (though not, I hasten to add, excluded). The judge in *Adam* dismissed the point in a few lines. It is clear he thought it wholly misconceived and unarguable.

4. These proceedings afford the opportunity I hoped for in *Martin* (para. 31) to consider the point fully and carefully, though I am conscious that I have heard argument from only one side. Mr Ward, the appellant, listened to the argument with great care and patience and clearly understood it, but was unrepresented and did not make any legal submissions of his own.

5. Even if this issue does come before the High Court again on appeal from this Tribunal, the question of whether *Adam* is binding on this point will be superseded by the need for the Court to consider the point itself, since *Adam* is not binding on another High Court judge and it will take more than a few lines to dispose of the issue.

6. I therefore turn to the substance of the argument so that my decision may resolve the issue at least until a higher court rules otherwise or the legislation is amended and clarified.

The facts

7. The facts are typical of all the cases in which this issue arises. The dwelling was originally in band F in 1993, but was reduced the following year when the LO agreed to the appellants' proposal (which after six months under the regulations then in force had automatically become an appeal). 20 years later, the LO decided that the 1994

reduction was based on a mistake and the dwelling was restored to band F. The appellants submitted a proposal to alter the band to E, which the LO rejected, and the present appeal was made on 10 February 2015.

8. If I decide that the 1994 agreement precludes any later alteration by the LO, the appeal will be allowed and the LO ordered to restore the band agreed in 1994. If, however, I conclude that the agreement is no impediment to the subsequent alteration, the appeal will proceed to the valuation stage where the appellants will be able to argue what they believe the correct valuation to be and the LO will be able to argue what mistake was made in 1994.

The issue in a nutshell

9. I set out here, before turning to the detailed legislative provisions, the essence of the argument, eschewing technical terms and procedural nuances.

10. The LO sets a valuation band which the taxpayer disputes and lodges a formal challenge. The LO accepts the correctness of the challenge and a formal agreement is reached and signed and the valuation list altered. The appellant's appeal is automatically withdrawn as a result of the agreement. It is not the practice to inform the taxpayer at that time that the agreement may subsequently be ignored by the LO if he is of the view that the band agreed was at the time of the agreement wrong. The taxpayer thinks the agreement is binding. He is therefore happy to forego the appeal to the Tribunal and it does not occur to him to seek a consent order (or confirmation from a panel following a hearing) which might inhibit any later alteration by the LO. Consequently, when (perhaps many years later) the LO says that a mistake was made at the time of the agreement and alters the band, the council tax payer is both surprised and unhappy that he must go through the challenge process all over again and at a time when he may no longer have all the information he had assembled for the original challenge.

11. The LO sees it differently. He is mindful of his duty to maintain an accurate valuation list. If he is of the opinion that a mistake was made at the time of the agreement, he must take steps to correct the list. The taxpayer's interests are safeguarded in two ways: first, the alteration is not backdated, so the reduced council tax paid over the period between the two alterations is unaffected, constituting an adventitious windfall; and secondly, the taxpayer may challenge the new alteration before the Tribunal. Moreover, says the respondent, any abuse of the LO's powers may in an appropriate case be challenged by way of judicial review in the High Court.

12. As to consent orders, which in any case were not available until the 2009 Rules came into force, the LO points out that (a) he would have to agree to that course and might not and (b) it is not clear that such an order would in any case preclude an alteration: see *Pearce (Re White Waltham Aerodrome)* [2014] UKUT 291 (LC).

13. This Tribunal does not decide cases on the basis of justice and fairness but on the relevant law. Justice and fairness, though, are not irrelevant. They may be helpful in informing a statutory interpretation, where different interpretations are possible, but the above paragraphs show that the merits argument, if I may so describe it, is not all on one side.

The legislation

14. I shall refer only to provisions that bear directly on the specific point under consideration.

15. Section 22(1) of the Local Government Finance Act 1992 requires the LO to compile and maintain a valuation list. Maintenance of the list has been held to mean an accurate list: see e.g. *R. (Corus UK Ltd)* v. *VOA* [2002] RA 1, para. 46.

16. The Secretary of State is empowered to make regulations which may include provision that the LO may only alter a band if satisfied that a different band should have been determined, the band shown is not that determined by him, or this Tribunal or the High Court has ordered the alteration: s. 22(4).

17. These provisions are reflected in the current regulations: The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009, SI 2009 No. 2270, reg. 3(1)(b). (I pass over the previous 1993 Regulations, although they were in the same form.) Reg. 3(1)(b)(i) allows the LO to alter the band if satisfied that "a different valuation band should have been determined", which is the claimed basis for making an alteration notwithstanding an earlier agreement. It is to be noted that this is not restricted, for example, by the existence of any such agreement.

18. A proposal may be made for the alteration of the list in accordance with reg. 4(1) which mirrors reg. 3. Reg. 4(1)(c), mirroring the power to alter in reg. 3(1)(b)(i), states:

> "the Listing Officer has determined as applicable to the dwelling a valuation band other than that which should have been determined as so applicable".

19. Again, it is to be noted that there is no provision for making a proposal on the basis that the new entry is inconsistent with the former entry which was based on an agreement between the LO and the taxpayer.

20. Reg. 10 makes provision for making an appeal to the Tribunal, which differs from the earlier regulations where the proposal was automatically transmitted to the Tribunal as an appeal after six months.

21. Reg. 13 deals with "Post-appeal agreements". This is important because it shows that agreements are more than mere settlements or informal arrangements, but enjoy statutory recognition. Sub-para. (1) states that "the Listing Officer may reach an agreement on an alteration of the list" and under sub-para. (7) the appeal "shall be treated as withdrawn". The rest of the regulation deals with various procedural steps of no significance for present purposes save to emphasise that the agreement is invested with a juridical quality.

22. There is no further provision about the effect or implications of the agreement as to future alterations. It may also be observed that, as the appeal is automatically withdrawn and the Tribunal is no longer seized of the appeal, the only way a consent order could be obtained would be for there to be no agreement under reg. 13 and a joint application made to the Tribunal by the parties. It must therefore be acknowledged that the draftsman contemplated that reg. 13 agreements could not

enjoy the imprimatur of the Tribunal and would not therefore have whatever durability was conferred by an order of the Tribunal.

23. Where the agreement has been reached before any appeal has been commenced, the statutory provisions do not apply.

24. Mr Donmall also points out that if it were the case than an alteration pursuant to an agreement precluded a later alteration on the basis that the earlier alteration was based on an error, the LO would equally be prevented from reducing the band to the taxpayer's advantage where the error was that the agreed band was higher than it should have been. The draftsman would be unlikely to have intended that result.

25. Finally, Mr Donmall advances an argument based on jurisdiction, but it seems to me that this merely restates the earlier argument in different words or on a different conceptual basis. The argument is that a proposal can be made only on the grounds set out in reg. 4; a proposal based on an agreement with the LO would therefore be invalid; and the Tribunal would accordingly have no jurisdiction to entertain the appeal.

Conclusion

26. I conclude that the statutory provisions discussed above taken together and read as a whole do not prevent the LO from correcting a mistake in the valuation list where that entry followed an agreement within the terms of the regulations. I acknowledge and understand the sense of grievance that this causes council tax payers who then have to instigate the challenge process all over again when they thought it had been settled for all time. Most people would think that the essence of a formal agreement with a statutory officer in accordance with subordinate legislation was its binding character but that it not so in this instance.

27. In reaching this conclusion, I am comforted by three thoughts: one, that the circumstances in which an alteration can be made are limited (see the *Adam* case); two, that any misuse or abuse of the power by the LO is, as counsel has accepted, correctable in the Administrative Court; and three, that the taxpayer may appeal to this Tribunal against the actual valuation.

28. I make two concluding observations:

- I suggest that LOs should make reference in the written agreement to their power to disregard the agreement in the future should they believe that the entry was erroneous so that it will be known to the taxpayer at the time and not come as a complete surprise later.

- The burden on the LO to show that a mistake was made at the time should be scrutinised by the Tribunal with considerable intensity before endorsing the alteration.

29. It is perhaps ironic that I have come to the same conclusion as Judge Richardson QC in *Adam*, but I am grateful to the respondent for co-operating in resolving the issue

and particularly for instructing counsel to enable the point to be decided in what is my last decision as President of the Tribunal.

30. The appellants' challenge to the valuation of their dwelling will now proceed to a hearing in the normal way and other appeals stayed pending this decision can also proceed or be dealt with appropriately.

President

Registrar
11 August 2015