

Neutral Citation Number: [2009] EWHC 2516 (Admin)

Case No. CO/7744/2008

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

Royal Courts of Justice

Strand

London WC2A 2LL

Date: Tuesday, 10th February 2009

B e f o r e:

MR JUSTICE SILBER

Between:

**THE QUEEN ON THE APPLICATION OF
JOHN FRANCIS BOLGER**

Claimant

v

(1) SURREY VALUATION TRIBUNAL

(2) HM REVENUE & CUSTOMS

Defendants

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(Official Shorthand Writers to the Court)

The Claimant appeared in person assisted by Raymond Curtin (McKenzie Friend)

The First Defendant was not represented and did not attend

David Manknell (instructed by HM Revenue & Customs) appeared on behalf of the **Second Defendant**

J U D G M E N T

1.

MR JUSTICE SILBER: Mr John Francis Bolger makes a renewed application to quash the decision of the Valuation Tribunal, which is dated 27th March 2000, which held that for the purposes of council

tax the property belonging to the claimant at 36 Merland Rise, Epsom should be in Band F. The case for the claimant had been that the house should be in a lower band, namely Band E. This is a renewed application, as it was refused on paper by Charles J.

2.

The background to this case is that on 26th July 2007 the claimant made a proposal to alter the valuation list entry relating to his home at 36 Merland Rise on the grounds that he believed the valuation list was inaccurate. He was seeking a reduction from valuation Band F, which covered values as at 1st April 1991 for sums exceeding £120,000, but no greater than £160,000, to valuation Band E, which dealt with properties valued at 1st January 1991 between £88,000 and £120,000. The listing office did not consider the proposal to be well founded and the matter was referred to the Valuation Appeal Tribunal, which held a hearing, at which the claimant was present, on 28th February 2008.

3.

The listing officer provided materials, which included location plans, a proposal, relevant statutory material, details of the direct dwelling and dates and prices achieved for full sales transactions between 2000 and 2007, with an estate agent's particulars for the most recent sale. He also provided particulars of five comparable property sale transactions on Merland Rise. The claim consisted of submissions that it was wrong to compare the dwelling with a three-bedroomed house, when it was in fact a two-bedroomed house which, relying on the estate agent's particulars, describing one room as "Bedroom 3/Reception 3". He also compared his property with a number of similar and more desirable properties and he referred to the Nationwide index calculations. The Tribunal's decision, to which I will refer in a few moments, was to accept the case for the listing officer.

4.

The grounds of challenge, which have been put forward in a helpful skeleton argument prepared by the claimant, and developed by him helpfully, and very courteously, in argument, are that this is a case where there has been "unfairness, inconsistency, failure to consider relevant considerations and preoccupation with irrelevant considerations, unreasonableness and so forth and not usually a mistake on a point of law and simply not on the simple two relevant, narrow grounds".

5.

The starting point for me has to be to consider the basis of the jurisdiction, because the claimant had a choice of two types of proceedings for challenging the decision of the Valuation Tribunal. First, under the Council Tax (Alteration of Lists and Appeals) Regulations 1993, SI 1993/290, there was provision for a right of appeal from the Valuation Tribunal to the High Court on a point of law (see Regulation 32(1)). Nevertheless, such an appeal has to be brought within 4 weeks of the date on which the notice is given of the decision, as specified in Regulation 32(2).

6.

The claimant decided not to invoke that right, but instead to proceed by way of judicial review. The claimant has not shown an arguable error of public law. The respondent accepts as accurate the guidance issued by the Valuation Tribunal, which is that "if you think the Tribunal has acted outside of its powers in making its decision, or that it did not act correctly at the hearing, you can apply to the High Court for a judicial review". It follows, according to Mr Manknell, who appears for the second defendant, that judicial review would therefore lie where there has been a jurisdictional error or procedural error amounting to a breach of natural justice. That is an important point to bear in mind, because that limits the right of this court to interfere with a decision of the Tribunal. I must stress, as

I made clear to Mr Bolger in oral argument, that I am not concerned, and cannot interfere with, or impugn, the decision of the Tribunal if I disagree with it on factual matters. In other words, the mere fact there is a factual disagreement, on Mr Bolger's part, with the decision of the Tribunal, does not allow me, or permit me, to impugn that decision.

7.

The complaints that are made by Mr Bolger have to be considered in the light of the reasoning given by the Tribunal which is under challenge. It said:

"The Tribunal considers, therefore, that the best indication of value is provided by the sales evidence submitted by the listing officer, rather than comparison with the valuation bands of other houses.

Concerning the extended properties that remain in the same valuation band, as explained at the hearing, under current legislation the listing officer is precluded from altering the band until such time as the property is sold.

The Tribunal attaches little weight to house price indices since they cover the whole of an outer metropolitan region and are not specific to a particular area. At best they show a general trend.

The Tribunal notes that 25 Merland Rise (a detached house opposite the appeal property) realised £138,000 in February 1991 and that 50 Merland Rise (a detached house identical to the appeal property) realised £127,750 in March 1991.

The Tribunal also notes that three semi-detached houses in Merland Rise realised £115,750, £115,000 and £121,000 soon after the AVD.

Concerning Mr Bolger's point that his is a two-bedroom property, it nonetheless has five rooms (like, for example, number 50) — the actual use of the rooms, the Tribunal believes, is purely personal choice."

The decision of the Tribunal was that it concluded "that the value of the appeal dwelling would have been in excess of £120,000 as at 1st April 1991". For that reason the appeal was dismissed.

8.

The complaints made by the applicant all relate to different factual issues relating to comparisons with the comparable properties relied upon by the Tribunal, but those challenges are not amenable to judicial review. They do not fall within the public law aspect with which this court is concerned. I stress that mere factual disagreement does not give rise to a claim for judicial review. Therefore, notwithstanding the courteous and helpful submissions made, both orally and in writing, by Mr Bolger, I have to refuse this application.

Yes?

9.

MR MANKNELL: My Lord, there is an application by the second defendant for the costs of drafting the acknowledgment of service. There was the order by Charles J which was that, unless the claimant either seeks a reconsideration of his decision, which of course he did, or responds to the issue of costs, then the claimant is to pay £500 towards the costs of the second defendants in preparing an acknowledgment of service and summary grounds of defence. He did respond, and, my Lord, it is a matter for you. My instructions are that, although there is no schedule, the costs were substantially greater than £500. I know Mr Bolger makes the point about VAT, and I can, on instructions, confirm that no VAT is included in that total.

10.

MR JUSTICE SILBER: There is not a bill. We do not have any bills, do we?

11.

MR MANKNELL: We do not, my Lord. My Lord, the £500 would cover 2½ hours' time by my instructing solicitor. There is a great deal more time that has gone into it.

12.

MR JUSTICE SILBER: Did you produce the --

13.

MR MANKNELL: I wrote the summary grounds myself, but on the basis of detailed instructions to do so.

14.

MR JUSTICE SILBER: So you are asking for £500 costs.

15.

MR MANKNELL: For £500 towards the costs of the acknowledgment of service.

16.

MR JUSTICE SILBER: What do you say about that?

17.

THE CLAIMANT: My Lord, first of all, I did not receive any schedule of costs.

18.

MR JUSTICE SILBER: You can always ask me to order that costs be assessed, if you want me to do that, but that might turn out to be much more expensive for you.

19.

THE CLAIMANT: Right. In their brochure the Valuation Agency -- there is no mention regarding costs when it comes to a judicial review. In fact, they actually do mention costs being awarded if you appeal on a point of law.

20.

MR JUSTICE SILBER: Yes, but you have certainly known since Charles J's order that you were liable to have to pay the costs. I find it difficult to see, much as I have sympathy with you, why I should not make an order that you should pay the costs. You can say to me, as you have not had the bill, that you are entitled to have an assessment of the costs, but that might turn out to be much more expensive. It is up to you.

21.

THE CLAIMANT: Well, my Lord, as I said to you earlier on, in my submission, that I'm exercising my right against what is a Government department. Obviously, if one queries a tax bill, you don't expect to be actually charged against that.

22.

MR JUSTICE SILBER: You do expect it if you start court proceedings up, because then the other side are incurring legal costs. That is the difference. You see, if it had all remained with the valuation officer or the Valuation Tribunal, these problems would not have arisen. It is when you actually

brought the court proceedings, that in fact sets in motion a whole series of things which mean that the other side incur costs, which they are entitled to recovery of.

23.

THE CLAIMANT: Well, I still maintain that the order for costs should not awarded against me as --

24.

MR JUSTICE SILBER: I am afraid I am against you on that, but the question is: do you want an order for assessment or £500? You are taking a gamble if you ask for an assessment.

25.

THE CLAIMANT: May I?

26.

MR JUSTICE SILBER: Of course.

27.

THE CLAIMANT: **(Pause)**. Any further costs that may be awarded, would it include, may I ask, my Lord, the costs of this hearing?

28.

MR JUSTICE SILBER: There will be further costs, but you might well have to pay the cost of the assessment. That is the problem.

29.

THE CLAIMANT: Right.

30.

MR JUSTICE SILBER: I ought to tell you, from my experience, that £500 is not an unusually large sum for these costs.

31.

MR CURTIN: My Lord, could I address you on the point of costs?

32.

MR JUSTICE SILBER: Yes, of course.

33.

MR CURTIN: My understanding of it was that if an estimate for costs was not put in with the acknowledgement of service, that they would not be entitled to an order for costs.

34.

MR JUSTICE SILBER: I am not sure where you get that from.

35.

MR CURTIN: I think it's in Rule 54, CPR Part 54PD.8.5 and 8.6.

36.

MR JUSTICE SILBER: I do not have a single book up here, as you probably see, so you have a huge advantage over me.

37.

MR CURTIN: You have neither. This is out of Atkins.

38.

MR MANKNELL: **(Pause)**. My Lord, I am afraid I cannot assist. The paragraphs referred to in the text that Mr Bolger's McKenzie friend cited do not deal with costs — they deal with permission hearings — and at 8.6 the fact that the court will not generally make an order for costs against the claimant, which, of course we accept, are the costs of the hearing.

39.

MR CURTIN: I was going by what it said in Atkins Court Forms. It said that when an order is sought, the defendant or interested party should include an application in its acknowledgement of service and should append to it a schedule of costs. Then it says 6, and it says in 6, "CPR PD54a paragraphs 8.5 and 8.6", but when we looked at that, it does not actually say what Atkins says it says. That's the trouble. I think it's based on that provision, I think, in PD44 in County Court proceedings.

40.

MR JUSTICE SILBER: No, if you actually look at, the actual directions they ask for is that the claimant pay the second defendant's costs on, or incidental to, the acknowledgment of service. That is what it says on the acknowledgment of service, so they have put them on notice they are asking for it.

41.

MR CURTIN: Yes, sorry, but they should've put an estimate of costs in as well, because I think that's based on Rule 44 of the Civil Practice Rules, where you have to put in an estimate of costs before any hearing, that's where that Rule 54 comes from, I think.

42.

MR JUSTICE SILBER: How do you think we should deal with this?

43.

MR CURTIN: I thought that this, as a Government department, and he was making an appeal, that he should not have to --

44.

MR JUSTICE SILBER: I can see the force of that, but many is the time Government departments do get the money, that is the difficulty, because they have been put to the expense of dealing with this. I am afraid I am going to make an order for costs.

45.

MR CURTIN: Yes, your Lordship, I could see that you were, but I just wanted to --

46.

MR JUSTICE SILBER: Particularly as there has been a claim for it and they will be put on notice as well.

47.

MR CURTIN: I just wanted to make those points, really.

48.

MR JUSTICE SILBER: You put them very well, but they were put on notice of it by Charles J's order and the claim form. The real question is: should it be costs to be assessed or should it be the order of £500, which they are after?

49.

MR CURTIN: The other point we ran with — a bit of a technicality — but by virtue of [section 10](#) of the [Finance Act 1972](#) the £500 would include VAT because it did not make any reference to VAT. That was the original VAT legislation. It's like a price that's quoted: it's deemed to include VAT, if it doesn't mention VAT.

50.

MR JUSTICE SILBER: I think this is exclusive of VAT, and this is regarded as a payment towards the costs, rather than the full amount of it. You see, if you go on about that, they might well add the VAT on to it.

51.

MR CURTIN: Yes, I know. I was hoping to trip them with that.

52.

MR JUSTICE SILBER: What do you want to do?

53.

MR CURTIN: It would be £500 including VAT.

54.

MR JUSTICE SILBER: It will be £500 in total.

55.

MR MANKNELL: £500 in total. VAT is not claimed. My Lord, if it assists Mr Bolger, I have been given an estimate of the total costs, and they are substantially greater than £500.

56.

MR CURTIN: Yes, because, you see, the reason I made the point, sorry, about the VAT, your Lordship, was because that VAT **(inaudible)** Government department, someone shouldn't be ordered to pay VAT. That's in another rule, you see.

57.

MR JUSTICE SILBER: But they are not after VAT. I do not think you realise that they are not being as tough --

58.

MR CURTIN: It's just, your Lordship, if I could say VAT -- they couldn't get VAT, so he might only be like £450, because they would end up --

59.

MR JUSTICE SILBER: No, no.

60.

MR CURTIN: It would end up being that much less.

61.

MR JUSTICE SILBER: I am going to give you a choice again: do you want the costs to be assessed, in which case you can take all these points, if you want to, or do you want to pay £500?

62.

MR CURTIN: Yeah, £500. Sorry about that.

63.

MR JUSTICE SILBER: No, not at all. Thank you very much. That has been very helpful. Thank you very much indeed for coming, but there we are, I am afraid you are not given powers to appeal questions of fact. That is the difficulty. Thank you all very much.