Neutral Citation Number: [2024] EWHC 486 (Admin)

Case No: AC-2022-LON-002807

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2024

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

DOREEN CLARK	**Appellant**
- and -	
DAWN BUNYAN (LISTING OFFICER)	**Respondent**

- -
- -

The Appellant in person assisted by Mrs Sandra Upton, *McKenzie* Friend
Nick Grant (instructed by **HMRC**) for the **Respondent**

Hearing dates: 7 November 2023

- -

Approved Judgment

This judgment was handed down remotely at 10:30 on 13 March 2024 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. This is an appeal against a decision of the Valuation Tribunal for England (VTE) dated 4 October 2022 relating to Council Tax. The VTE dismissed the Appellant's appeal against the decision of the Respondent, dated 3 December 2021, refusing the Appellant's challenge to her decision that the Council Tax band of the Appellant's Property known as Popinjay, Balmoral Road, Kingsdown, Kent CT14 8DB (the Property) be increased to Band F from Band E with effect from 28 July 2021. I will refer to the decision under challenge as 'the Decision'.

2. The Appellant represented herself, assisted by a *McKenzie* friend, Mrs Upton. The Respondent was represented by Mr Grant.

3. I think it will assist if I explain in simple terms how Council Tax is charged. Later I will set out the statutory provisions.

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.

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.

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.

7. For properties built after the initial valuation list was compiled, eg the Property in this case, which was built around 2006, 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?

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.

9. In this case, in 2006 the Property was placed in Band E. In circumstances which I will describe, some years later the Listing Officer decided that the Property was larger than had been initially thought in 2006; and therefore that its notional sale value would have been higher at the AVD, so that it should have been placed in Band F. She therefore notified the Appellant that she was going to amend the valuation list to put the property in Band F with effect from 28 July 2021, which is when the alteration was to take effect (alterations cannot be applied retrospectively).

10. As I have said, the Appellant challenged the Listing Officer's decision. However, after considering the Appellant's reasons, the Listing Officer upheld her decision. The Appellant then appealed to the VTE, which dismissed her appeal.

Factual background

11. The Property is a detached chalet bungalow constructed in 2006 as part of a development of four detached bungalows (the others being *The Bumbles*, *The Retreat* (now *The Cedars*) and *Birchfield*). The accommodation comprises a kitchen/dining room, reception room, conservatory, three bedrooms, study, family bathroom and two en-suite bathrooms. It has the benefit of a double garage: Decision, [4].

12. The Property was purchased by the Appellant in 2006. The price paid on 6 March 2006 is recorded as £320,000.

13. The Property was entered into the Council Tax Valuation list in Band E with effect from 6 March 2006, based upon the Respondent's survey which indicated a reduced covered area (RCA) of 137m^2: Decision, [5]. In simple terms, RCA is one way of calculating the floor area of a property; there are others, including gross external area (GEA). The size of a house is obviously one of the factors which affects its value (there are others also).

14. Moving forward, in 2021 Mrs Upton submitted a Council Tax proposal (ie, a document setting out what a person believes a property's Council Tax should be) for an adjacent property (*The Bumbles*). She said that *The Bumbles* was the same size as the Property. Following an investigation, the Respondent concluded that the size of the Property had been incorrectly recorded in 2006: it should have been 166m^2, based on: (a) the developer's scale plans provided; and (b) measurements taken by the Respondent from the street while on location assessing *The Bumbles*.

15. The Respondent then served a notice of alteration on the Appellant indicating that the Property would be placed into the higher Band F, with effect from 28 July 2021. The

reason given was that: 'The entry in the council tax list has been amended in light of additional information.'

16. On 3 October 2021, the Appellant submitted representations to the Respondent, arguing that increase was inaccurate.

17. Provided with the Appellant's representations were:

    a. The HM Land Registry title of the Property;

    b. A document tracking the number of pupils attending Kingsdown and Ringwould C of E Primary School from 2012-2019 (drawn from census data); and

    c. A written statement provided by Mrs Upton outlining why in her view the Property should be returned to Band E. Broadly, this statement suggested (paragraphs are to the statement):

        (i) That the purchase price of £320,000 had to be divided between the chalet bungalow, double garage and forecourt, conservatory and low boundary wall ([3]);

        (ii) The sales values and bandings of comparable properties which were part of the same development: Birchfield (sale price of £315,000 on 18 April 2005, Band F); The Retreat (sale price of £338,000 on 5 July 2005, Band F); The Bumbles (sale price £308,500 on 31 July 2006, Band F) (see [4], [13]);

        (iii) The sales values and bandings of other properties in the area sold around the AVD ([12]);

        (iv) That the amount of traffic along Glen Road at the time the dwelling was entered into the Council Tax list should be taken into account as part of the locality; it was regularly congested in 2006 and is even more so now ([5]-[11]);

        (v) That the sales history of *The Retreat* (another property) indicated the traffic on Glen Road affects the sales values of the Property ([13]);

        (vi) That a reduction in value is caused by the proximity of the primary school, as evidenced by the sales history of *Plen* (Band G in 1991) ([14]), as was accepted by the VTE in Appeal M0859805 *Plen* in October 2020 ([16]).

18. The Respondent issued a decision notice on 3 December 2021 stating that she would make no change to the banding of the Property or effective date. In supplementary information she argued that the correct size of the Property was 166m^2. She also said that the impact of the school had been addressed by the President of the VTE in Appeal M0856750 *Whytebeams*, where the VTE found there was no evidence to suggest a reduction in value caused by the school.

19. The Appellant appealed to the VTE.

Decision of the VTE

20. The appeal was joined with a similar appeal for *The Cedars* (VT00009250). The two came on before the VTE at the same time, but due to time constraints the hearing of *The Cedars* appeal was adjourned.

21. The VTE dismissed the Appellant's appeal.

22. The VTE received evidence about other properties said to be comparable (or not), from both the Appellant and the Respondent.

23. It also received three other VTE decisions for the local area (the decisions are in the Authorities Bundle and the paragraph numbers in the following are from the relevant decisions):

    a. In Appeal M0856750 *Whytebeams* (2 December 2020), the President of the VTE considered an argument (also put by Ms Upton) that a material reduction for *Whytebeams* should be made from 30 June 2006, being the date on which two new classrooms at the primary school and various other ancillary accommodation 'opened', leading to an increase in traffic and congestion. The President dismissed this argument noting (i) the case focused on the impact of the school on the appellant, not changes to the locality (impermissible following *Chilton-Merryweather v Hunt* [2008] EWCA Civ 1025); (ii) there was no expert valuation evidence of any impact on value ([27]-[38]).

    b. In joined decisions VT00006149 and VT00008011 *Clooneavin*, the VTE considered arguments by Ms Upton that the value of an unadopted road should have been stripped from the valuation; the cost of maintaining that unadopted road was not an encumbrance to be ignored; and the lack of permitted development rights for the instant property would also reduce its value. The VTE did not agree with these points (though the appeal was allowed on a different basis) ([46], [48]).

    c. In joined decisions VT00007846 and VT00007940 *The Bumbles* and *Woodstock* (31 March 2022):

        (i) The VTE dismissed a suggestion, also made by Ms Upton, that the expansion of Kingsdown Primary School was a 'material change' requiring a reduction in Council Tax banding for each of those properties. The evidence presented by Ms Upton was rejected ([33]). The key issue was increased traffic and parking problems – the same issue determined in *Whytebeams* ([36]).

        (ii) It is notable that the panel there dismissed Ms Upton's reliance on the *Plen* decision as she had incorrectly cited it – that is 'not an appeal fully heard and determined by the President, but rather a notification of an agreement to reduce the band based upon sales and tone evidence' ([33]).

        (iii) It noted that The Bumbles had been confirmed by the Tribunal at Band F at an appeal in 2007 ([38]).

24. In relation to school expansion, planning condition, and covenants, the VTE indicated at the outset that it did not require submissions to be made in respect of issues that had been

considered in these previous VTE decisions. Mrs Upton raised no objection to this course of action: Decision, [9].

25. A preliminary issue was taken regarding the size of the Property and the appropriate method of measurement. Mr Sandell for the Respondent calculated a RCA of 165.29m^2. The Appellant's surveyor calculated a GEA of 158m^2. The 7.29m^2 difference between the parties related to the first floor area, and in particular how much should be added to the internal walls. The Appellant argued only 11cm should be added, as only the gable wall was external. Mr Sandell stated that, to convert the calculated internal area to RCA, 28cm should be added for the external cavity walls: Decision, [11]-[12].

26. The VTE adopted the latter approach for the reasons it gave. These were, in short, because while some internal Valuation Office documents (including those cited by the Appellant) referred to GEA, the practice of the Office (and the experience of the VTE) indicated that RCA should be used to determine the areas of houses and bungalows. If the RCA approach was not adopted, a fair comparison could not be made to other properties. RCA methodology required adding 28cm for each cavity external wall. As the first floor of the Property could only be measured internally, the wall thickness of 28cm should be added as required by the RCA methodology: Decision, [13]-[20].

27. The VTE then set the issue for its determination, namely, whether the Respondent was entitled to increase the assessment to correct a perceived error: Decision, [21].

28. The VTE recorded that the Respondent had taken her decision pursuant to reg 3(1)(b)(i), Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2270) (the 2009 Regulations) (a different band should have been determined by the Listing Officer as applicable to the dwelling). A suggestion that the Respondent had no such power was dismissed in *Zeynab Adam v LO* [2014] EWHC 1110 (Admin) and *Listing Officer for Cornwall v Dannhauser* [2018] EWHC 3162 (Admin): Decision, [25]-[26].

29. Pursuant to reg 6 of the 1992 Regulations, each band represents a value the dwelling might reasonably have been expected to realise if it had been sold in the open market by a willing vendor on the AVD, 1 April 1991.

30. The bands were set out in s 5(2) of the Local Government Finance Act 1992. The bands in issue in this case are Band E (£88,000-£120,000) and Band F (£120,000-£160,000). The relevant date for considering the physical state of dwelling and locality is 6 March 2006, the date the Property entered the valuation list at Band E: Decision, [27]-[28].

31. Following recitation of the various submissions made on comparable properties (Decision, [29]-[35]), the VTE dismissed the appeal. Its reasons, in summary, were as follows (Decision, [36]-[42]):

    a. The best evidence would be a sale of the Property or one suitably similar to it at the AVD. There were no sales of chalet bungalows in that time. Comparables of detached houses, cited by both parties, were of less weight.

    b. The most weight was attached to sales of detached bungalows, given they were more similar in character to the Property:

(i) *The Pantiles* (similar in size and location to the Property) sold for £152,000 three months after the AVD. It was reasonable to consider it would have sold for a similar value at the AVD, placing it well within Band F.

(ii) *Cliviean* (a smaller bungalow of 127m^2) sold for £118,000 on 18 October 1991. It was reasonable to consider the Property would have achieved at least £120,000 at the AVD (Band F).

(iii) The VTE also took into account the band confirmed by the VTE for *The Bumbles* in 2007. The Appellant's suggestion that the VTE had proceeded on a wrong size assumption (182m^2 instead of 166m^2) was not material in light of *The Pantiles*' sale valuation.

(iv) *Clooneavain*, a chalet bungalow of 157m^2 (band E) was similar in character and size but in a different location. In *Clooneavin* decision at [47] the Vice-President of the VTE had indicated its location was different to that of *The Pantiles*, with *The Pantiles* being closer to local amenities.

32. The burden of proof rested on the Appellant. The VTE concluded that the weight of evidence demonstrated the increase to Band F for the Property was not excessive.

Grounds of appeal

33. The grounds on which this appeal has been brought have, I think it is fair to say, evolved over time:

a. Three grounds of appeal were contained in the Appellant's Grounds of Appeal attached to the Appellant's Notice (the GoA).

b. The Appellant's first Skeleton Argument of 19 January 2023 (SA1) listed eight grounds, some of which (eg Ground 7) appear to have been listed twice.

c. The Appellant's second Skeleton Argument (SA2), dated 26 March 2023 (headed 'Revised Skeleton Argument') introduced a number of further points, not clearly referable (so far as I can determine) to any grounds, but summarised at [44] of that document.

34. There is a degree of overlap and repetition in the grounds of appeal in these various documents.

35. The following is taken from the Respondent's attempt in its Skeleton Argument of 30 October 2023 to synthesise the issues in dispute. I think it is a fair analysis.

36. In this judgment my failure to mention a particular point does not mean that it has been overlooked. I have considered all the points made by or on behalf of the Appellant.

37. *GoA Ground 1/SA1 Ground 1*: the VTE erred in adding 28cm for the cavity walls in accordance with the RCA method.

38. *GoA Ground 2(1)/ SA1 Ground 2-4/SA2 Ground 1-2*: the VTE erred in concluding that an error in size was sufficient for the Respondent to rely on reg 3(1)(b)(i) of the 2009 Regulations without undertaking a valuation under reg 6 of the 1992 Regulations, and/or it erred in failing to establish whether the Respondent had carried out a reg 6(1) assessment.

39. *GoA Ground 2(2)*: the VTE misdirected itself when stating they it did not require submissions on the expansion of the local school, planning conditions and restrictive covenants being relevant to a reg 6(1) and 6(2) valuation exercise.

40. *GoA Ground 3/SA1 Grounds 5-8 /SA2 Grounds 3-5*: the VTE misdirected itself in:

    a. not considering the reg 6(2) mandatory assumptions and physical locality of the Property;

    b. concluding that *Clooneavin* was in a different location to the Property;

    c. not recognising *Clooneavin*, having been determined at Band E by the VTE, should carry more weight;

    d. concluding that detached single storey bungalows are similar in character to the appeal property, a detached chalet bungalow;

    e. attaching the most weight to the sales evidence of a single-storey bungalow new build in 1991, in the same physical locality as *Clooneavin*;

    f. failing to consider the Appellant's evidence as to the distance of the Property from local amenities and the difference in physical locality between the Property and *The Pantiles* (including the traffic present on the roads);

    g. failing to consider the procedure to be undertaken pursuant to reg 6(1) and (2) of the 1992 Regulations;

    h. taking into account *The Bumbles*' valuation, previously confirmed by the VTE, was based on a mistake of fact.

    i. ; 'Numerous attempts have been made to correct the CT list for The Bumbles, all to no avail';

    j. considering only the tone of the list based on other dwellings of a different layout and in a different locality.

Legal provisions

41. In the following paragraphs I will set out the statutory provisions relevant in this case.

Banding properties for the purposes of Council Tax

42. Regulation 6(1) of the 1992 Regulations provides:

> "(1) Subject to regulation 7, for the purposes of valuations under section 21 (valuations for purposes of lists) of the Act, 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.
>
> (2) The assumptions are -
>
> (a) that the sale was with vacant possession;
>
> (b) that the interest sold was the freehold or, in the case of a flat, a lease for 99 years at a nominal rent;
>
> (c) that the dwelling was sold free from any rent charge or other incumbrance;
>
> (d) except in a case to which paragraph (3) applies, that the size, layout and character of the dwelling, and the physical state of its locality, were the same as at the relevant date;
>
> (e) that the dwelling was in a state of reasonable repair;
>
> (f) in the case of a dwelling the owner or occupier of which is entitled to use common parts, that those parts were in a like state of repair and the purchaser would be liable to contribute towards the cost of keeping them in such a state;
>
> (g) in the case of a dwelling which contains fixtures to which this sub-paragraph applies, that the fixtures were not included in the dwelling;
>
> (h) that the use of the dwelling would be permanently restricted to use as a private dwelling; and
>
> (i) that the dwelling had no development value other than value attributable to permitted development."

43. The 'relevant date' is defined by reg 6(5A). In the case of the Property, there is no dispute that the relevant date is 6 March 2006.

44. The Listing Officer is required to assume the conditions reg 6(2) exist even where they do not: *R v East Sussex Valuation Tribunal ex parte Silverstone* [1996] RVR 203. In other words, they are irrebuttable presumptions.

45. The task for the Listing Officer is to ascertain a property's value as at the AVD in accordance with the statutory assumptions. This involves a hypothetical sale on that date:

a. taking the property in its actual location and with its actual character on the relevant date;

b. making the assumptions required by reg 6(2);

c. taking into account any other legally factors about the property which would affect its value. For example, this could include concerns in the market about contamination of the site, or planning restrictions: *Assessor for Grampian Valuation Board v Brownlie* [2003] SC 245, [9] (planning restriction limiting occupancy to a person employed by a farm); or a restrictive covenant in a conveyance: *Coll (LO) v Walters* [2016] EWHC 831 (Admin) (covenant restricting use to single private residence in one occupation only); *R (McKenzie) (LO) v Marshall* [2008] EWHC 641 (Admin), [11].

46. It is for the VTE – a specialist body – to assess the evidence and come to its own expert conclusion on value. It need not assess a specific value for the property – only the band in which it falls: *Domblides v Listing Officer* [2008] EWHC 3271 (Admin), [32]. Nor is a specific methodology prescribed: *Domblides***,** [4]-[6]. It is open to the tribunal to consider what type of evidence it considers, including the 'tone of the list' (ie, the assessment of comparable hereditaments): *Domblides*, [33]-[35]; *Cornwall v Dannhauser* [2018] EWHC 3162 (Admin), [36]-[37]. Where another entry in the list is under challenge at the date of the tribunal hearing, it remains admissible and it is a matter of weight as to how reliable it is as evidence of value: *Thomas Scott & Sons (Bakers) Ltd v Davis (VO)* (1969) 16 RRC 30, 36.

47. A number of points have been taken regarding the effect of the school expansion and its effect on a road for the purposes of Council Tax. In *Chilton-Merryweather (LO)*, [31], the Court of Appeal determined that an increase in volume of traffic on a motorway was not part of the 'physical state' or essential fabric and character of a dwelling and its locality, for the purposes of s 24(10) Local Government Finance Act 1992 (alterations) ([31]). The Court accepted this may be different where the character of the road changes (such as where a quiet road becomes a 'rat run') but that would be a matter for the expertise of the Listing Officer ~~O~~ or VTE ([48], [51]).

48. Regarding amendments to a Council Tax band in which a property is to be placed, reg 3(1)(b)(i) of the 2009 Regulations provides:

> "(1) No alteration shall be made of a valuation band shown in a list as applicable to any dwelling unless –
>
> (b) the LO is satisfied that -
>
> (i) a different valuation band should have been determined by the LO as applicable to the dwelling; or …"

49. In *Zeynab Adam v Johnson (LO)* [2014] EWHC 1110 (Admin), [22]-[23], the High Court emphasised that this provision allows a mistake to be corrected prospectively if the Listing Officer determines the Band should have been different:

> "22. The import of the paragraph is, in my judgment, clear and simple: if a Listing Officer, in the exercise of his or her judgment, is of the view that a different Band should have been determined by a Listing Officer, he or she has an obligation to alter it. In other words, if it appears that a mistake was made or for some other reason the Band should have been different, then he or she has a duty to change it. It is to be noted the Listing Officer may only do that prospectively and not retrospectively.
>
> 23. Paragraph 3(1)(b)(i) plainly permits an error or mistake to be corrected prospectively not retrospectively if the Listing Officer determines that the Band should have been different. When that decision falls to be made by the Listing Officer, or on an appeal to the Tribunal, the analysis must be undertaken in accordance with the law as expressed in the statute and regulations. Reference to the concept of issue estoppel is irrelevant. Vague, or even more precise, notions of fairness are equally inappropriate. The Listing Officer and the Tribunal are required to make decisions in a fair manner based upon the statute and regulations. Plain it is in this case, the Listing Officer was of the view a mistake was made in the past to downgrade the banding for the appellant's home. That is implicit in the language employed by Mrs Arbuckle in her submissions to the Tribunal, and, indeed, the language employed by the Tribunal. Certainly evidence was presented to reveal this property to be in Band C and not Band B. That was for the factual judgment of the Listing Officer and the Tribunal. Consequently, the Listing Officer and the Tribunal were satisfied that a different valuation band *should have been determined,* and that permits an alteration to be made under this paragraph of the regulations."

50. In *Listing Officer for Cornwall v Dannhauser* [2018] EWHC 3162 (Admin) the High Court considered this provision in detail from [8]-[28]. Murray J confirmed that: (a) the Listing Officer has the power to alter the Council Tax band if s/he is satisfied that the property should have been entered into a different band (it is a matter for his or her judgment) ([54]); and (b) she is entitled to use any evidence in reaching that conclusion ([61]-[68]).

51. In the rating world, where the VO has to reconsider an entry in the rating list due to a material change in circumstances, she must value the hereditament as it now is rather than assess the sum which must be added or taken from the previous rateable value. In most cases, however, the starting point will be the original entry in the list and the appropriate method will be to make adjustments to the original figure: *Re Pearce's Application* [2014] UKUT 0291 (LC), [30].

Appeals to the VTE, and from the VTE to the High Court

52. Regulation 43(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) (VTE Appeal 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]…

53. Therefore an appeal to the High Court from the VTE only lies on *points of law*. 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."

54. 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.)

(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]).”

55. In light of these principles, I need to emphasise that I am concerned with points of law *only*. That is because a lot of what has been submitted in support of this appeal by the Appellant and Mrs Upton are factual matters. All such matters of fact, for example, whether another dwelling is the same or different to the Property, were for the judgment of Listing Officer in the first instance and then the VTE. They are not matters for this Court.

56. The High Court is given a wide discretion as to the orders it can make on an appeal. Regulation 43(4) provides:

> “(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.”

Discussion

GoA Ground 1/SA1 Ground 1: RCA as measuring method

57. By this ground the Appellant alleges that the VTE applied the wrong test (viz, RCA) for measuring the Property for valuation purposes. The first ground in the Grounds of Appeal is as follows:

> “The first ground for Appeal is whether or not the VT applied the correct test when confirming that for chalet bungalows with rooms in the roof space, fictitious cavity walls 28cms wide were to be substituted for every external stud wall 11cms wide when measuring for council tax purposes.
>
> The panel then turned to the proposal and held that in the subject appeal it was the discrepancy in the size of the appeal property which had led the Listing Officer to be satisfied that a different valuation band should have been determined.”

58. The relevant part of the VTE’s decision was as follows:

> “16. From the documents provided by Mr Sandell [the surveyor for the Respondent], it was evident to the panel that previous Valuation Office Agency instructions had indeed referred to GEA for houses and bungalows. GEA was also referred to in the RICS code of measuring practice, however, this was primarily used in connection with non-domestic properties. Mr Sandell stated that enquiries were made to both local and national Technical Advisers and

> Technical Leads who confirmed that RCA is the correct method to be used for the valuation of houses and bungalows.
>
> 17. It was also the panel's experience that the adopted practice of the Valuation Office Agency is to measure the RCA of all houses and bungalows for the purposes of council tax valuation. While there is not a significant difference between the methods (as evidenced by the differential of less than $8m^2$ between the parties' calculations) if RCA is not used, then a fair comparison cannot be made with other properties."

59. I am not persuaded that this ground of appeal raises a question of law. Given that there is no measuring methodology set down by law, and that there are different methodologies, the VTE's assessment of whether the RCA method used for the Property was appropriate, was one for its expert judgment based on all the material before it.

60. This conclusion is consistent with what was said in *Domblides*, [4]-[8], [34]-[36]:

> "4. My attention has been drawn to Lord Justice Schiemann's decision in the case of *Atkinson and Others v Lord* [1997] RA 413 (CA) which may be convenient for me briefly to mention at this stage on that issue. His decision in the bundle is at page 128, but it is page 423 of the Rate of Appeals Reports for 1997. The headnote indicates that:
>
> > 'Although the valuer was required always to have regard to the relevant amount and a failure to consider it would amount to making an error of law, he was not invariably required to determine the relevant amount, and in certain circumstances it could suffice if he determined that the relevant amount must lie in a certain range or be above or below a certain figure.'
>
> 5. In other words, an individual valuation did not have to be carried out. Importantly also, although we are considering a different regulation, under the regulations the principle is the same: the regulation:
>
> > 'Did not tell the valuer what valuation technique to use, and there was no legal error in the method of valuation in this case and it was not forbidden by the legislator, nor was it a method which failed to achieve the legislator's objective or resulted in any unfair treatment of the taxpayer.'
>
> 6. It should be pointed out in this case that there is nothing in the regulations which prohibits the specific valuation technique that was adopted by the listing officer in this case;

and it is at page 423, right at the end of Lord Justice Schiemann's judgement that that passage in the headnote is extracted.

7. Now by section 24 of the Act, the Secretary of State is empowered to make regulations governing the manner and circumstances in which lists, once compiled, may be altered. As I say there has only been one list compiled, it was compiled in accordance with section 22(2) on 1st April 1993, and that is the basic list to which comparison has been made over the years. The applicable valuation provisions and assumptions, to which I have made brief reference, are contained in the Council Tax (Situation and Valuation of Dwellings) Regulations 1992. Regulation 6(1) provides that the value of any dwelling, for the purposes of a valuation under section 21 of the 1992 Act, that is valuations for the purposes of this; and I quote from the regulation:

> '… shall be taken to be the amount which, on the assumptions mentioned in paragraph (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 1 April 1991.'

8. Then there is a whole list of assumptions, which we need not trouble with for this appeal, are set out. Just to give examples, the sale of the property must have been a vacant possession, and that the interest that was sold must either have been the freehold or a 99 year lease; there is a whole series of assumptions that are made. Mr Domblides does not criticise the listing valuation officer for ignoring any of those assumptions or not proceedings on any of those assumptions. If those assumptions are made, the dwelling is then placed in one of the valuation bands.

…

34. Now, the first point that I make is one that I have already referred to the case of *Atkinson v Lord*. This method adopted by the tribunal was not one that was prohibited by the regulations, which leave it to the specialist tribunal to determine what type of evidence it considers appropriate to do the exercising of placing a particular property in the band. Secondly, it is the case that over time valuation tribunals' decisions will shift from a consideration of individual sale prices, as they were in 1991, and will develop a body of case law which establishes that certain types of properties fall within bands. Thus, in relying on the later decisions, the tribunal is not relying on specific valuations; though it was specific valuations that underlay

the subsequent decisions of the tribunal. This resembles the accepted method of valuation known as relying on the, "tone of the list" and this is an appropriate valuation method that is supported by a reference to *Ryde on Rating*. Chapter 6 of this is set out in an extract in the bundle of legal authorities. The introduction at paragraph 481 is relied on and I quote:

> ‘While it may be doubted whether reference to the assessments of comparable hereditaments is truly a method of 'valuation' [that was the initial complaint of Mr Domblides to which I have already referred] it is of necessity widely used as a means of ascertaining the rateable value of an hereditament where better evidence is lacking or in order to supplement other evidence.’

35. The tone of the list is referred to at paragraph 483:

> ‘The assessments of comparable hereditaments have become an important source of evidence. This was especially so under the 1973 valuation list (now called rating list) which remained in force for some seventeen years due to postponements of the requirement to prepare a new list. The term 'tone of the list' probably derives from the side note to the General Rate Act 1967, section 20. [This should obviously be recognised when dealing with the preceding system but the principle is perfectly applicable to this.] Since all rateable values in the rating list must be assessed at a common valuation date, the 'tone of the list' for a particular category of hereditament is the general level of value for that type of hereditament at that date. Assessments under appeal will carry less weight than assessments which are settled in the absence of the appeal or following determination of an appeal. [I stress the last phrase, these in the List Officer's list were following, four of them, determination appeals.] The weight to be attached to comparable assessments increases over time.’

36. It is very important to note that the further away one gets from the 1991 list the more appropriate it becomes for the valuation tribunal or the listing officer to have regard, particularly in the interests of consistency, to the decisions of the tribunal. Mr Domblides in opening the case to me stressed the policy of the Act to ensure consistency of approach to different properties within a specific area. He is undoubtedly right in making the submission that the

> broad policy of the Act was to achieve that consistency. However what I do not accept is his submission to me that it is inappropriate for the tribunal or the List Officer to take account of previous appeals of the valuation tribunal in assessing whether a particular property is similar to those in previous appeals and thus falls within a certain band rather than another. In my judgement it is clear that it is permissible, certainly not prohibited, by the regulations and in my judgement permissible for the tribunal in assessing what type of evidence it considers to be appropriate, to take into account previous appeals of the tribunal itself; and indeed the further one gets from the appropriate date the more weight should, in my judgement, be given by the tribunal or listing officer to those appeals. Thus, in my judgement, ground 4 of Mr Domblides' grounds is an unsustainable one."

61. However, even if the issue of measuring methodology is a question of law, there was no error of law by the VTE in selecting the RCA approach, for the reasons it gave. There was expert advice that RCA was the appropriate method. The Listing Officer and the VTE needed to be able to compare properties (including their size) to produce a reliable and accurate valuation of the Property at the AVD. To have picked a different measuring method, when RCA had been used for other properties, risked leading it into trying to compare an apple to a basket of oranges. Hence, its decision that RCA was not inappropriate was not irrational.

GoA Ground 2(1)/SA1 Grounds 2-4 /SA2 Grounds 1-2: power to revise list based on inaccurate measurements

62. Ground 2 as pleaded in the GoA actually appears to consist of two separate grounds, and so I have followed the Respondent's suggestion of dividing them into two: Ground 2(1) and Ground 2(2).

63. Ground 2(1) is (*sic*):

> "The second ground of Appeal is whether or not the appeal panel applied the correct test when determining the evidence of an error in size was sufficient to invoke the power of Reg 3(1) (b) (i) without the evidence of a Regulation 6 Valuation having been carried out including the taking into account of the assumptions and disadvantages of the dwelling and any adjustments to the 'real world' sales evidence which didn't meet the statutory assumptions, such as the planning restriction to remove permitted development rights."

64. It is argued that:

> "ln her proposal Mrs Doreen Clark, challenged the power of the LO to use Regulation 3(1)(b)(i) on the grounds that a

> valuation pursuant to regulation 6(1) had not been carried out. The LO had relied solely upon tone of the list based upon size which tone could be taken into account only. Tone could not be the only valuation procedure for the power to become available to the LO pursuant to reg 3(1)(b)(i). The disadvantages and adjustments necessary to meet the regulation 6(2) assumptions had also to be considered.
>
> Therefore the LO had no power to determine mid ownership that the valuation band applicable to Popinjay should be band F rather than band E.
>
> The LO had to wait until a relevant transaction had occurred."

65. In SA1, [18], under Ground 2, the nub of the Appellant's case appears to be that the presumption of size (one of the matters in reg 6(2)) is irrebuttable and so, the Property having been measured at a particular size in 2006 and entered into the Council Tax list at Band E based upon the AVD valuation at that size, the Council Tax band could not thereafter be altered:

> "18. It is therefore Mrs Clark's case that:
>
> - Popinjay having been newly constructed in 2006
> - Measured using the GEA method in place in March 2006
> - Entered into the list for the first time at Band E
> - there at no time was the size been misrepresented by Mrs Clark (*sic*)
> - the presumption of size at the point of entry into the CT list being irrebuttable
> - that the size, layout, character of the dwelling, and the physical state of its locality, were the same as at the relevant date, whether or not that is in fact true
> - the LO is prohibited from raising size during the period of ownership because …
>
> [Omitted]"

66. As to this, I note that the VTE found the earlier, lower, incorrect size for the property which led to it being placed in Band E had been based on the RCA method, and not the GEA method, as asserted by Mrs Clark.

67. Paragraph 22 argues (sic):

> "It is Mrs Clark's case that Parliament did not intend the LO to have the power to use Regulation 3(1)(b) the LO is satisfied that –

(i) A different valuation band should have been determined by the LO as applicable to the dwelling

in circumstances where the error relied on by the LO is disputed and the size of Popinjay being one of the irrebuttable presumptions cannot be questioned when the measuring practice adopted by the VOA changes."

68. The Respondent's case is, in short, that she had the power to revise the banding of the Property once the inaccuracy as to its size had come to her attention, and once she had satisfied herself that the Property should have been in a different band. That is what reg 3(1)(b)(i) allows, and that is what is required by the Respondent's legal obligation to maintain an accurate list.

69. I am satisfied that the Respondent is correct and that there is no merit in Ground 2(1). It is clearly established that a Listing Officer can amend the valuation list to correct banding errors, and that must include circumstances where she finds an earlier banding had been based on incorrect size measurements. I add the following.

70. The VTE recorded at [5], [11]-[13]:

"5. The property entered the council tax valuation list at band E with effect from 6 March 2006, based upon the Listing Officer's survey which recorded a reduced covered area (RCA) of 137m^2.

…

11. Following the joint inspection, Mr Sandell calculated a RCA of 165.29m^2, whereas Mrs Upton's surveyor calculated a gross external area (GEA) of 158m^2. Both parties provided plans, calculations and supporting documents.

12. The ground floor areas were agreed, but it was the approach to the first floor area which resulted in a difference of 7.29m^2 between the parties. Mrs Upton contended that 11cm should be added to the internal walls as only the gable wall was external. Mr Sandell stated that in order to convert the calculated internal area to RCA, the correct approach was to add 28cm for the external cavity walls.

13. After a brief adjournment the panel confirmed that the correct size to be adopted for the appeal property was 165.29m^2 RCA.
…

26. In her submissions, Mrs Upton had argued that the Listing Officer did not have the necessary power under

> regulation 3(1)(b)(i) to alter the list, however, *Zeynab Adam v Listing Officer* [2014] EWHC 1110 (Admin) and *Listing Officer for Cornwall v Michael Dannhauser* [2018] EWHC 3162 (Admin) are authoritative High Court judgements which confirmed that the Listing Officer is entitled to correct an error. The panel held that in the subject appeal it was the discrepancy in the size of the appeal property which had led the Listing Officer to be satisfied that a different valuation band should have been determined."

71. Hence, the VTE found as a fact that the Property had been incorrectly measured in 2006, in that it was bigger, as measured on an RCA basis in 2021, than had been measured in 2006, again using RCA. In other words, an error as to its size has been made, on the basis of which error its Council Tax band had been assessed when it was entered into the valuation list in 2006 at Band E. The first question therefore was whether the Listing Officer was entitled to correct the list because of that error.

72. Chapter II of Part I of the Local Government Finance Act 1992 contains provisions requiring Listing Officers to produce and maintain valuation lists for Council Tax purposes. They are under a specific duty to ensure that valuation lists are maintained and kept accurate. Section 23(1) and (2) provide (emphasis added):

> "(1) The Secretary of State may make regulations about the alteration by listing officers of valuation lists which have been compiled under this Chapter; and subsections (2) to (10) below shall apply for the purposes of this subsection.
>
> (2) The regulations may include provision that where a listing officer intends to alter the list with a view to its being accurately maintained, he shall not alter it unless prescribed conditions (as to notice or otherwise) are fulfilled.
>
> (3) The regulations may include provision that any valuation of a dwelling carried out in connection with a proposal for the alteration of the list shall be carried out in accordance with section 21(2) above.
>
> (4) The regulations may include provision that no alteration shall be made of a valuation band shown in the list as applicable to any dwelling unless -
>
> (a) since the valuation band was first shown in the list as applicable to the dwelling -
>
> (i) there has been a material increase in the value of the dwelling and a relevant transaction has been subsequently carried out in relation to the whole or any part of it;
>
> (ii) there has been a material reduction in the value of the dwelling;

(iii) the dwelling has become or ceased to be a composite hereditament for the purposes of Part III of the 1988 Act; or

(iv) in the case of a dwelling which continues to be such a hereditament, there has been an increase or reduction in its domestic use, and (in any case) prescribed conditions are fulfilled;

(b) the listing officer is satisfied that -

(i) a different valuation band should have been determined by him as applicable to the dwelling; or

(ii) the valuation band shown in the list is not that determined by\ him as so applicable; or

(c) an order of a valuation tribunal or of the High Court requires the alteration to be made."

73. Section 24(10) provides that 'material increase' means:

> "…in relation to the value of a dwelling, means any increase which is caused (in whole or in part) by any building, engineering or other operation carried out in relation to the dwelling, whether or not constituting development for which planning permission is required;"

and that a 'relevant transaction' is

> "… a transfer on sale of the fee simple, a grant of a lease for a term of seven years or more or a transfer on sale of such a lease."

74. These provisions are given effect in reg 3 of the 2009 Regulations:

> "*3. Restrictions on alteration of valuation bands*
>
> (1) No alteration shall be made of a valuation band shown in a list as applicable to any dwelling unless—
>
> (a) since the valuation band was first shown in the list as applicable to the dwelling—
>
> (i) [subject to paragraph (2A),] there has been a material increase in the value of the dwelling and a relevant transaction has been subsequently carried out in relation to the whole or any part of it;
>
> …

> (b) the LO is satisfied that—
>
> (i) a different valuation band should have been determined by the LO as applicable to the dwelling; …"

75. Hence, an unaltered property's Council Tax band cannot be changed by a Listing Officer simply because the property's value has gone up over the years in line with a rising property market. However, if (for example) an extension is built onto a house to add extra bedrooms and a conservatory, thus increasing its value, and the house is then sold for a price reflecting that extension, then it would be open to the Listing Officer, if satisfied that the house in its enlarged state would have been valued at a level which put it in a different band on 1 April 1991 had it been sold on that date, to alter its Council Tax band accordingly.

76. But the Listing Officer c*an* alter a property's Council Tax band where s/he is satisfied that a different valuation band should have been applied at some earlier time– for example, where a mistake was made which led to an incorrect banding. That is the obvious effect of reg 3(1)(b)(i).

77. The passage from *Zeynab Adam* which I quoted earlier shows that the Listing Officer is under a *duty* to correct inaccuracies in the Valuation List for which s/he is responsible and in so doing, he or she may take into any evidence relevant to the question of what an accurate valuation of the property would have been on the AVD.

78. Further, in *Dannhauser* at [68] the judge said:

> "68. … it seems to me that Parliament was concerned principally with the accuracy of the valuation list as at 1 April 1993 and not with the quality of the listing officer's performance in her compilation of the valuation list as of that date. In exercising her power (and duty) to alter the valuation list, the listing officer must therefore be entitled to take into account any evidence capable of showing what the accurate valuation of a dwelling was, its true Regulation 6(1) Value, regardless of when that evidence arises. This may therefore include evidence of relevant sales post-dating 1 April 1991 and evidence of the tone of the list, which, as we have seen, necessarily arises after 1 April 1993."

79. In this case there had been a valuation of the Property pursuant to reg 6 in 2006, when it was placed in Band E. The question then arose in 2021 whether that valuation had been correct (ironically, as I have explained, because of representations Mrs Upton had made about *The Bumbles*). In determining that question, the Listing Officer took the size of the Property in 2021 as measured using the RCA methodology and looked for comparable properties and what they sold for around the AVD, and considered other evidence relating to property values. Those values, of necessity, took account of the factors in reg 6 because they were transactions which took place on the open market. Once the relevant band had been determined for comparable properties, the Property was placed in that

band. The whole process undertaken by the Listing Officer therefore took account of all of the matters listed in reg 6.

80. This is made clear by *Dannhauser*, [16]-[17], [55]-[56], which lays out the steps which a Listing Office has to take before altering the valuation list based on an earlier mis-banding:

> "16. Regulation 7 is irrelevant for present purposes. Paragraphs (2) and (3) of regulation 6 set out the various assumptions applicable, including those highlighted by Rix LJ in the *Chilton-Merryweather* case at [9]. In particular, regulation 6(2)(d) provides that the dwelling will be valued as if, on 1st April 1991, its size, layout and character, and the physical state of its locality, were the same as on the 'relevant date', which under regulation 5A means 1st April 1993 in the case of a valuation carried out for the purposes of an alteration to correct an inaccuracy in the valuation list on the day it was compiled. [Note: in this case the relevant date was 6 March 2006]
>
> 17. In other words, in this case, the correct valuation of the Property for purposes of determining the appropriate council tax band is the amount that the Property might reasonably have been expected to realise if it had been sold in the open market by a willing vendor on 1st April 1991 on various assumptions, including vacant possession, a reasonable state of repair and so on, and in particular on the assumption that its size, layout and character, and the physical state of its locality, were the same as they were on 1st April 1993 ("the Regulation 6(1) Value").
>
> …
>
> 55. So, how does the LO determine what valuation band *should have been determined* by the LO as applicable to the dwelling? It is clear from regulation 6(1) of the 1992 Regulations that the value that the LO should have used to determine which valuation band applied to the Property as at 1 April 1993 was its Regulation 6(1) Value, as I have defined it at [17] above.
>
> 56. Where the LO is seeking on a subsequent date to determine whether the Property has been allocated to the correct valuation band, she is required to determine the Regulation 6(1) Value. Having done that, she simply has to look at the relevant valuation bands set out in the statutory scheme to determine which valuation band the Regulation 6(1) Value falls within. If, once that has been determined, it is clear that the Property should have been allocated to a

> different council tax band on the basis of that value, then the LO has the power to alter the valuation list in respect of the Property in reliance on regulation 3(1)(b)(i)."

81. No question arises in relation to the irrebuttable presumptions in reg 6(2). The presumption operated in relation to the size of the property on the relevant date. The Property had only ever been one size, namely that which was measured in 2021.

82. As for the suggestion that the VTE should have taken account of other matters, eg, traffic from the nearby school, or planning restrictions, the VTE adopted its earlier decisions about these without objection from Mrs Upton and it therefore did not err. I will say more about this in relation to Ground 2(2), where it is also raised.

83. But the more fundamental answer is that this appeal is not against what the Listing Officer did. The VTE undertook a full merits review based upon the Appellant's grounds of appeal and decided for itself whether the Listing Officer had been correct to place the Property in Band F. It decided for the reasons it gave that she had been correct to do so.

84. In conclusion, I have considered the points made in the Appellant's submissions on this ground however none of them has substance. The Listing Officer did not act to 'impugn the list', as alleged by the Appellant. The issue is straightforward: in 2021 the Listing Officer discovered that a material mistake as to size had been made when the Property was measured and then banded in 2006, and she then acted to correct the valuation list, which she determined was inaccurate due to the mistake. On the wording of the statutory provisions, and on the principles contained in the cases, she was entitled – indeed, bound - to do as she did.

Ground 2(2): failure to require submissions on certain matters

85. The second part of Ground 2 is that:

> "The panel misdirected themselves when they stated at the outset of the hearing that they did not require submissions to be made in respect of issues raised by Mrs Upton which had been heard and dismissed by the President and previous Tribunal panels (expansion of the local school, planning conditions and restrictive covenants) being all matters relevant to a regulation 6(1) & (2) valuation exercise."

86. This also does not seem to me to raise any issue of law. But in any event, the VTE did not err. As I have already said, Mrs Upton did not ask to make any submissions on these points, and so it is now too late to try and resurrect them on appeal to this Court. The VTE's decision specifically records at [9] that:

> "This is not intended to be an exhaustive record of the proceedings or the substantial evidence contained within the parties' submissions. The panel stated at the outset of the hearing that they did not require submissions to be made in respect of issues raised by Mrs Upton which had been heard and dismissed by the President and previous Tribunal panels (expansion of the local school, planning conditions

and restrictive covenants). *Mrs Upton raised no objection and the panel proceeded to hear the appeal.*"

87. Furthermore, as the Respondent points out, the VTE did not in fact exclude from consideration the points mentioned in [9] of its decision. The position was just that it did not require submissions on them because they had been considered and determined in previous appeals. If Mrs Upton had wished to argue that those earlier decisions were wrong or should not be followed then she could and should have done so. In the absence of any challenge, the VTE was entitled to adopt its earlier decisions.

88. The points are of no merit in any event and/or do not involve questions of law. They are or were all matters for the VTE's judgment.

89. For example, as to the expansion of the local school and consequent increase in traffic, this argument has been run and dismissed several times before the VTE, including in relation to the Property's locale. For example, Appeal M0856750, *Whytebeams*, considered and rejected the impact of an expansion of the local school and associated increase in traffic. This is consistent with higher authority. The Court of Appeal has held that an increase in traffic is not part of the 'physical state of the locality' for the purposes of s 24(10) of the Local Government Finance Act 1992. *In Chilton-Merryweather*, [39], the Court of Appeal said:

> "In my judgment, and I bear in mind all the various submissions which have been made to the court, the listing officer is properly concerned only with the essential fabric and character of house and locality, but not with other matters which go to their enjoyment, use, occupation or activity, such as, I would suggest, the particular degree of traffic to be met on a particular date. Thus, just as any one house has to be valued according to its actual physical configuration, but otherwise on other assumptions as to its state of repair and so on and according to a bible of historical value, so also it has to be valued according to the physical state of its locality but otherwise according to a bible of historical value which itself, as I imagine, contains comparative guidelines as to how a house's value might differ, in general, depending on such matters as its physical location on a road of a certain category or configuration. I agree therefore in essence with Mr Mould's submissions, and would distinguish between that physical state which is the first limb of the concept of *rebus sic stantibus* and that use which constitutes its second limb (see [*Williams (VO) v. Scottish and Newcastle Retail Limited* [2001] RA 41 (CA)] at para 17)."

GoA Ground 3/SA1 Grounds 5-8/SA2 Grounds 3-5

90. Ground 3 is as follows (I quote only part of it (*sic*)):

> "The third ground of appeal is the valuation method adopted by the VT to consider the Band.
>
> The panel misdirected themselves by finding that Clooneavin was in a different location to Popinjay.
>
> The panel applied the incorrect test when it discounted the 3 bed chalet bungalow Clooneavin as a comparable dwelling. Clooneavin was new build in 2016 157m2 and determined at Band E by the Vice President of the VT. Assessments that have been challenged and determined by the Tribunal are generally regarded as carrying more weight in valuation tribunals.
>
> The panel applied the incorrect test when it considered detached single storey bungalows to be similar in character to the appeal property, a detached chalet bungalow."

91. The Appellant's first Skeleton Argument also argues others matters, for example, that the VTE wrongly failed to take into things such as upkeep of roads and planning restrictions (see [41]-[42]).

92. Dealing with this point first, it is a repetition of the argument made under Ground 2(2) above and I reject it for the same reasons.

93. The other parts of this ground of appeal plainly do not involve any question of law and no attempt has been made to identify one. They consist of a series of challenges to the VTE's findings of fact and expert valuation judgment. This includes, in SA2, [25], the apparent addition of decisions which post-date the decision of the VTE.

94. As the Respondent rightly submitted, the VTE undertook a careful and considered analysis of the various comparables put before it, and it applied the correct test. There is no reasonable basis to suggest its decision was irrational in the *Wednesbury* sense, or that it was vitiated by any other legal error. This ground is, in very large substance, an appeal on the merits which is not within the jurisdiction conferred on this Court by reg 43(1) of the VTE Appeal Regulations.

Other points

95. I can take these reasonably shortly.

96. Ground 6 as articulated in the Appellant's SA1 at [44], [48] is that (*sic*)

> "44. In support of the increase to Band F, Mr Sandell cited sales and comparable property evidence.

> Indirect evidence which the LO was entitled to take into account but only after the capital value evidence to establish the Reg 6(1) value for Popinjay.
>
> None of the comparable property evidence submitted by the LO were chalet bungalows
>
> Only 1 was new build at the date of entry into the CT list
>
> None had been determined by the Tribunal
>
> None were similar the Popinjay in terms of location, size or character
>
> …
>
> 48. … The panel refused to allow relevant details of the character and physical locality of Popinjay to be taken into account …"

97. This ground of appeal, to the extent that I understand it, consists of assertions about matters of fact which are not within this Court's jurisdiction. Furthermore, the VTE did not 'refuse' to allow the evidence alleged. This appears to be just a repetition of the argument made under other grounds about school noise, etc, which I have already dealt with.

98. Ground 7 (SA1, [53]) is that the VTE should have waited for the outcome of appeals in relation to other chalet bungalows. This is not a point of law. Furthermore, it is not said how these other cases would have been relevant.

99. Ground 8 (SA1, [54]) is that the VTE applied 'the wrong legal test'. No further explanation is given about this assertion, and this ground appears to be a repetition of matters already raised.

Conclusion

100. Finally, in January 2024 whilst I was writing this judgment, Mrs Upton sent in (uninvited) a case called *Ward v Peterson* [1929] 2 Ch 396 which she said was relevant. The Respondent objected on the grounds that the time for submissions was at the hearing, and that the case was irrelevant in any event as it concerned the interpretation of a particular conveyance and the meaning of 'bungalow'.

101. I agree with the Respondent's position, and need not say any more.

102. Mrs Upton then sent in a number of further documents, which I declined to look at on the basis that the time for making submissions was at the hearing.

103. This appeal is therefore dismissed.