

UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2021] UKUT 213 (LC)
Case No: LC-2020-159
DET/140/2020**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***TAX – INHERITANCE TAX – s.160, Inheritance Tax Act 1984 - – three terraced houses –
analysis of comparable sales – valuations determined at £830,000, £900,000 and £950,000***

**IN THE MATTER OF AN APPEAL
UNDER SECTION 222 OF THE INHERITANCE TAX ACT 1984**

BETWEEN:

BOZIDAR ZABAVNIK

Appellant

and

**THE COMMISSIONERS FOR HER
MAJESTY’S REVENUE AND CUSTOMS**

Respondent

**Re: 29 Tunis Road,
London W12 7EZ;
31 Tunis Road,
London W12 7EZ;
76 Tunis Road,
London W12 7EY.**

**Mr Mark Higgin FRICS
on
15 July 2021**

Royal Courts of Justice

The appellant, Mr Zabavnik, represented himself
Luke Wilcox, instructed by HMRC, for the respondent

The following cases were referred to in argument:

Inland Revenue Commissioners v Gray [1994] STC 360
Akanwo v HMRC [2018] UKUT 113 (LC)

Introduction

1. These appeals concern the deemed disposal for the purposes of Inheritance Tax of three freehold houses known as 29 and 31 Tunis Road, London W12 7EZ and 76 Tunis Road, London W12 7EY (the “properties”) which were owned by Mrs Vida Zabavnik who died on 4 December 2014 (the valuation date). The appellant is Mr Bozidar Zabavnik who is Mrs Zabavnik’s son and personal representative.
2. On 21 August 2019 a Notice of Determination was served on the appellant by Her Majesty’s Revenue and Customs (“HMRC”) under section 222(4A) of the Inheritance Tax Act 1984 (“the 1984 Act”) under which the deceased’s freehold interests were valued as follows:

29 Tunis Road: £800,000

31 Tunis Road: £800,000

76 Tunis Road: £820,000

Mr Zabavnik appealed to the First-tier Tribunal (Tax Chamber) on 22 September 2019, saying that the correct valuation for the three properties in aggregate was £960,000. The appeal was referred under section 222(4) of the 1984 Act to the Upper Tribunal to determine the valuation dispute.

3. The appellant appeared in person and was unrepresented.
4. Mr Luke Wilcox of counsel appeared for the respondent (HMRC) and called Mr Daniel Newell, MRICS, of the Valuation Office Agency, as an expert valuation witness.
5. The appeal was heard under the Tribunal’s simplified procedure although evidence was given under oath.
6. I inspected the properties on the morning of 12 July 2021 in the presence of Mr Zabavnik.

Statutory Provision

7. In accordance with Section 160 of the 1984 Act, the market value of any asset is defined as:

“the price which the property might reasonably be expected to fetch if sold in the open market at that time [the valuation date]: but that the price should not be assumed to be reduced on the ground that the whole property is to be placed on the market at one and the same time”

In this case, the value of the individual properties would not be reduced, in reality or notionally, by being sold as a whole entity at the valuation date of 4 December 2014.

Facts

8. Tunis Road is almost entirely residential in nature and is situated approximately 350 metres northwest of Shepherd's Bush Green. It runs on a north south axis connecting with the A4020 Uxbridge Road at the southern end and with Stanlake Road at its northern most point. Shepherd's Bush Market Underground Station is within easy walking distance as are the Westfield London shopping centre and Queens Park Rangers ground at Loftus Road.
9. No. 29 is located about halfway along Tunis Road on the western side. Originally a three storey, terraced Edwardian house of brick construction with a pitched slate roof, it has been converted in to three, self-contained one-bedroom flats. Although they are dated and the fittings might best be described as functional, all three are in reasonable condition. Most of the original windows have been replaced with modern PVC double glazed units. Two of the flats were let and occupied at the time of my inspection. Each flat has a reception room, a separate kitchen, a double bedroom and a bathroom. All of the flats have separate utilities and are equipped with gas central heating.
10. Not surprisingly No.31 is situated next door to No.29 and is identically constructed. However, it is not divided into flats and was occupied by Mrs Zabavnik as her home and had been adapted to make it accessible for a disabled person. Again, the windows had been replaced with units that match the neighbouring property and the fittings such as kitchen cabinets are dated. The walls and ceilings have the original lathe and plaster finishes but there is some cracking, especially at the front of the house. A stairlift has been installed between the ground and first floors and the first-floor bathroom has been refurbished to provide a wet room with a hoist. The remaining accommodation comprises two reception rooms and a kitchen on the ground floor, two double bedrooms on the first floor and two double rooms, a box room and a further bathroom on the second floor. A gas central heating system serves the whole house. It is in reasonable condition.
11. No.76 is located on the eastern side of the road, on the section that lies between its junctions with Swindon Road and Stanlake Road. It has much in common with the other two houses being a three storey Edwardian property in a terraced position. It too is brick built with a slate roof and has similar double-glazed PVC windows. At the time of my inspection the property was let and occupied on a room-by-room basis with shared facilities. As such the original configuration is largely intact with two rooms and a kitchen on the ground floor, two double bedrooms and a bathroom on the first floor and two double bedrooms and a bathroom on the second floor. The box room at this level has been converted into a small kitchen. The property is in reasonable condition and all the usual utilities are present. A single gas fired central heating system serves the whole building.

12. In terms of size both Nos. 29 and 31 have a gross internal area of 135m² whilst No.76 is slightly larger at 150m², again in gross internal terms.
13. Although more than six years have elapsed since Mrs Zabavnik's death I have no reason to conclude that either the properties or the area in which they are situated has changed to any significant extent between the valuation date and the date of my inspection.

The case for the appellant

14. During the hearing Mr Zabavnik's confirmed his assessment of value at £280,000 for each property, notwithstanding the sum of £960,000 he had attributed to the three properties together in his notice of appeal. Over the course of the proceedings, he had raised various concerns in relation to HMRC's valuations, but he had not appointed an expert to advise him and did not submit details of any transactions for the Tribunal to consider. At the hearing he referred the Tribunal to figures relating to the average wage and his conclusion that because 95% of tenants were remunerated at this level, it must follow that rental and consequently capital values for his properties were constrained at much lower levels than those adopted by HMRC. Details of income and expenditure in relation to Nos. 29 and 76 had been supplied by Mrs Zabavnik's accountant.
15. Mr Zabavnik also relied on the application of the House Price Index produced by the Nationwide Building Society to the values determined when the houses passed from his father to his mother in 1984.
16. In correspondence with both HMRC and the Tribunal Mr Zabavnik had stated that the market in the locality had been "*manipulated to only produce a capital gain using a limited circle of properties*". In support of his position Mr Zabavnik had provided a graph on which he had plotted various transactions to show the trajectories of sales in Tunis Road over time.
17. Mr Zabavnik also proffered his opinion that transactions that had taken place in Tunis Road were encumbered with debt at low interest rates and values should be adjusted to determine the open market value.
18. At the hearing Mr Zabavnik said that a transaction relating to 80 Tunis Road provided the best evidence but neither he nor Mr Newell had included this property in their evidence.
19. Finally, Mr Zabavnik observed that the HMRC valuations were higher than the London average house price.

The case for the respondent

20. Mr Newell is a chartered surveyor with 33 years of valuation experience of capital and rating valuation in Greater London. For the last 21 years he has specialised in inheritance tax, capital gains tax and right to buy valuations in north and west London.

21. In his Notice of Determination Mr Newell stated that his valuations of the properties on the valuation date were as follows:

- i) No.29 - £800,000
- ii) No.31 - £800,000
- iii) No.76 - £820,000

By the time he compiled his expert report in January 2021, and having revisited the matter, his opinion was that the values should be amended to:

- i) No.29 - £860,000
- ii) No.31 - £900,000
- iii) No.76 - £950,000

22. Mr Newell inspected the properties on 20 June 2018 but access to No. 29 Tunis Road was limited to the ground floor flat only.

23. Mr Newell valued the properties by the comparative method which involved considering evidence of sales transactions from properties which were physically similar to and in close proximity to the property being valued. He had identified seven sales, six in Tunis Road and one in the neighbouring Abdale Road. He included a schedule in his report which contained his analysis of the transactions. A copy is set out below:

Address	Date of Completion	Value transferred	GIA m ²	£/m ²	VOA Adjustments		£/m ²
					1. HP Index	2. Size	
22 Tunis Road	07/03/2013	£ 645,000	91.4	£7,057	1. 84.5 2. 10%	£ 7,537	
53 Tunis Road	12/07/2013	£1,050,000	150.3	£6,986	1. 86.2	£ 8,128	
14 Tunis Road	29/11/2013	£ 900,000	148.6	£6,056	1. 91.0	£ 6,675	
14 Abdale Road	26/09/2014	£1,200,000	148.0	£8,108	1. 106.5	£ 7,635	
24 Tunis Road	27/03/2014	£ 985,000	116.0	£8,491	1. 92.9 2. 5%	£ 8,708	
23 Tunis Road	29/08/2014	£ 910,000	112.0	£8,125	1. 104.6 2. 5%	£7,380	
Flat B, 43 Tunis Road	08/01/2015	£ 990,000	118.0	£8,390	1. 100 2. 5%	£ 7,993	

24. Mr Newell had appended to his report details of each transaction from the Rightmove website. These contained floor plans and thumbnail photographs showing that each of the properties, with the exception of 22 Tunis Road, had been modernised with new kitchens and bathrooms and in the case of five properties it was evident that loft conversions had been undertaken. The details showed that 14, 24 and 53 Tunis Road and 14 Abdale Road had been marketed on dates after the date of the transaction referred to by Mr Newell. It was therefore not clear whether the details provided related to the sales being relied upon. Mr Newell said that he had endeavoured to check the facts with the relevant selling agents but nothing confirming this was provided in evidence.
25. Mr Newell's comparables related to sales spread over a period of 22 months and he considered that each of them required adjustment to take account of changes in the market. He had relied upon the Land Registry House Price Index as a means of doing so, notwithstanding that the index was for terraced houses over the entire borough of Hammersmith and Fulham. It was pointed out by the Tribunal that the application of the index produced a result in respect of 24 and 23 Tunis Road that was completely at odds with reality, the transactions showing a decline of 4.3% whereas the index showed growth of 12.6%. Mr Newell said that the larger sample size was to be preferred although he acknowledged that it might include disparate locations. In his view, seven transactions over the period in question was insufficient to establish a trend.
26. Mr Newell's second adjustment was for size, as the three properties being valued were larger than some of the comparables. For properties in the size range of 112m² to 118m² he had adopted a discount of 5% and for 22 Tunis Road which only extended to 91.4m² he increased his adjustment to 10%. When I questioned him about the evidence for these reductions Mr Newell confirmed that they were simply based on his professional opinion. He had not considered a comparison of 14 Abdale Road and 23 Tunis Road, where the sales had taken place a month apart, the respective sizes were 148m² and 112m², and the devaluations were almost identical.
27. In coming to his valuations Mr Newell found it necessary to deduct a sum of £1,000 per m² from his analysis to take account of the work needed to modernise Mrs Zabavnik's properties to the standard achieved at most of the comparables. It was not apparent from his evidence how this figure had been arrived at. Mr Newell explained at the hearing that in the past he had attempted to cost the individual items but this had proved unsatisfactory and he had taken to using a single figure to cover everything. He had not sought to corroborate his approach by consulting the Valuation Office Agency's own building surveying team and described his methodology as "erring on the side of generosity". He had applied the same allowance to all three properties despite one of them being configured as three flats and which could require additional work to convert it back to a single dwelling.
28. Mr Newell also made allowance for the presence of tenants in two of the properties. His valuations had been derived from comparisons with properties sold with vacant possession and he reduced his values by 5% for this factor.

29. Mr Newell identified 22 Tunis Road as being in need of modernisation and therefore closest in terms of its condition to the appeal properties. The sale closest to the date of valuation is Flat B at 43 Tunis Road where the completion was just over a month later. Mr Newell noted that the property is occupied under a lease with a term of 99 years from 24 June 1984 which means that the unexpired term was 68 years at the time of sale.
30. Mr Newell's conclusion was that the properties should be valued at £7,700 per m² with a further allowance £1,000 per m² for the costs of refurbishment. An additional allowance for the presence of tenants was made for 29 and 76. This approach produced values of £859,275, £904,500 and £954,750 for 29, 31 and 76 respectively. Mr Newell rounded these figures to £860,000, £900,000 and £950,000.

Discussion

31. Firstly, I will deal with Mr Zabavnik's claim that the value of the properties is restricted by the returns that can be achieved by letting them. As Mr Wilcox pointed out, we are concerned with sales in the open market. The characteristics of that market and the assumed transaction were set out by Hoffmann LJ in *IRC v Gray* [1994] STC 360:

“In all other respects, the theme which runs through the authorities is that one assumes that the hypothetical vendor and purchaser did whatever reasonable people buying and selling such property would be likely to have done in real life. The hypothetical vendor is an anonymous but reasonable vendor, who goes about the sale as a prudent man of business, negotiating seriously without giving the impression of being either over-anxious or unduly reluctant. The hypothetical buyer is slightly less anonymous. He too is assumed to have behaved reasonably, making proper inquiries about the property and not appearing too eager to buy. But he also reflects reality in that he embodies whatever was actually the demand for that property at the relevant time. It cannot be too strongly emphasised that although the sale is hypothetical, there is nothing hypothetical about the open market in which it is supposed to have taken place. The concept of the open market involves assuming that the whole world was free to bid, and then forming a view about what in those circumstances would in real life have been the best price reasonably obtainable. The practical nature of this exercise will usually mean that although in principle no one is excluded from consideration, most of the world will usually play no part in the calculation. The inquiry will often focus upon what a relatively small number of people would be likely to have paid. It may have to arrive at a figure within a range of prices which the evidence shows that various people would have been likely to pay, reflecting, for example, the fact that one person had a particular reason for paying a higher price than others, but taking into account, if appropriate, the possibility that through accident or whim he might not actually have bought. The valuation is thus a retrospective exercise in probabilities, wholly derived from the real world but rarely committed to the proposition that a sale to a particular purchaser would definitely have happened.”

32. Mr Zabavnik's approach ignores the bid of the owner-occupier, and despite providing income and expenditure figures to substantiate his point he did not produce a convincing argument why his approach should be preferred to evidence of open market transactions.
33. Mr Zabavnik's observation that properties in Tunis Road were achieving values higher than the average in London may be correct but nothing turns on this point. His reference to the Nationwide House Price Index offers no additional insight, given its generalised statistical basis.
34. Mr Zabavnik's comments about the market being underpinned by debt financing may also have some basis in fact but they do not apply to this location alone and do not advance his case for the values he seeks.
35. The same can be said of his claim that the market in this location has been manipulated. His graph of values achieved over time showed a remarkable similarity in the shape and gradient of the curve for each property, thereby dispelling any impression of collusion.
36. Mr Newell's evidence is not without its shortcomings; there are doubts about the configuration and condition of some of his comparables, specifically those which were marketed again after the transaction dates relied upon. I am not persuaded that his adjustments for size are appropriate, and his refurbishments costs were not supported by evidence.
37. Only 22 Tunis Road provides a ready guide to the value of a property in this location which has yet to be bought up to contemporary standards in terms of configuration and fittings. However, the sale was 21 months prior to the valuation date and it is the smallest of Mr Newell's comparables. Flat B at 43 Tunis Road is the closest sale in time terms to the valuation date but it is not strictly comparable being a leasehold flat rather than a freehold house. It appears to have a relatively short unexpired term and Mr Newell had not taken account of this feature in his analysis.
38. Only one of Mr Newell's comparables was originally built as a three-storey house, namely 14 Tunis Road. The details relied upon by Mr Newell indicate that the roof space has been converted into an additional bedroom effectively making it into a four-storey home. However, the property was marketed again at a later date and I cannot be sure that the details supplied relate to the sale in 2013. His analysis at £6,675 per m² appears out of step with the other comparables being 10% less than the next lowest devaluation. If the loft conversion was not present at the date of the transaction, the analysis would be £7,826 per m², a figure that sits more comfortably with the other comparables.
39. It seems to me that 14 Abdale Road and 23 Tunis Road are the most reliable comparables; there is no doubt about their veracity, and they were the closest sales to the valuation date. The former devalues to £7,635 per m² and disregarding Mr Newell's allowance for size the latter devalues to £7,791 per m². I conclude that Mr Newell was correct to adopt a figure of £7,700 per m².

40. I also agree with his view that it is appropriate to make a 5% allowance for the tenancies at Nos. 29 and 76.

41. However, Mr Newell applies the same allowance for refurbishment to all three properties, although No. 29 would undoubtedly require more work than the other two. In my view his allowance should be adjusted to £1,200 per m² for No. 29 to reflect this.

Determination

42. I determine the value of the freehold interests in the properties as follows:

i) No.29 - £830,000

ii) No.31 - £900,000

iii) No.76 - £950,000

43. The appeal was heard under the Tribunal's simplified procedure under which costs are not normally awarded unless either party has behaved unreasonably, or the circumstances are in some other respect exceptional. I do not consider that either party acted unreasonably or that there are any such exceptional circumstances. I therefore make no order as to costs.

Mark Higgin FRICS
Member
Upper Tribunal (Lands Chamber)
20 August 2021