TMA/284/2008

LANDS TRIBUNAL ACT 1949

TAX – Inheritance Tax – valuation of dwelling house – comparables- freehold value determined at £230,000 – Inheritance Tax Act 1984, s 160

IN THE MATTER of a NOTICE OF REFERENCE

BETWEEN **BRENDA CONSTANCE TAPP** **Appellant**

and

COLIN RYDER **Respondent**
H M REVENUE AND CUSTOMS – CAPITAL TAXES

Re: 98 Hillingdon Road, Barnehurst, Bexleyheath, Kent DA7 6LL

Determination without an oral hearing under Rule 27, Lands Tribunal Rules 1996

The following case is referred to in this decision:
Duke of Buccleuch v Inland Revenue Commissioners [1967] 1 AC 506

DECISION

1. This is an appeal pursuant to section 222 of the Inheritance Tax Act 1984, as amended, (the Act) against a determination by H M Revenue and Customs – Capital Taxes (HMRC). Under those provisions, a person on whom a notice of determination has been served may appeal against it to the Lands Tribunal on any question as to the value of the land. The notice of determination, under section 221 of the Act, was served on Mrs Brenda Constance Tapp (the appellant) on 12 July 2007 as administratrix in the estate of Robert Ernest Atkinson (the deceased) who, at the date of his death on 4 April 2006, had been the owner of 198 Hillingdon Road, Barnehurst, Bexley Heath DA7 6LL (the subject property). The determination was in the sum of £230,000. A notice of appeal was served upon HMRC in accordance with section 222 of the Act, and it is the appellant's case that the value of the subject property as at the date of death was £195,000.

2. The appellant and HMRC having agreed for the matter to be determined by written representations, I have considered the submissions of Mrs Tapp (and her husband, Denis Ivor Tapp who assisted her in their preparation), and the expert witness report of Rachel Colvill MRICS, a Senior Valuer caseworker in the Bromley office of the Valuation Office Agency, acting on behalf of HMRC. I have also considered the rebuttal statement of the appellant dated 17 July 2008 and the supplementary statement of Rachel Colvill dated 2 July 2008.

Facts

3. No statement of agreed facts was produced, but from the evidence I find the following facts. The subject property comprises a 1930s built two-storey semi-detached house located on a large residential estate of broadly similar properties, lying to the north east of Bexleyheath town centre, and within walking distance of Barnehurst station. The property, which has a gross external floor area of 107 sq m (1,152 sq ft) is of traditional rendered brick construction under clay tiled roofs and is the right-hand unit of a pair situated on the east side of Hillingdon Road. The accommodation, at the date of death, comprised at ground floor a part glazed entrance lobby, hall, cloakroom, two reception rooms, kitchen and a glazed utility room extension. At first floor there were 3 bedrooms and a shower room/wc. Externally, there was a small, lawned, front garden with driveway leading to attached single garage. Enclosed garden to rear. All mains services were connected, and there was a newly installed gas fired central heating system to radiators.

4. The deceased owned the freehold interest in the property, which he occupied, until a point some months before his death, and there were no lettings or statutory tenancies in existence at the relevant date.

Issue

5. The sole issue in this appeal is the determination of the value, as defined by section 160 of the Act, of the subject property as at the date of death, 6 April 2006.

Appellant's case

6. Mrs Tapp said that the property had been purchased by the deceased, who was her uncle, as a home for himself and his parents in 1974. They pre-deceased him, and from 1999 until his hospitalisation at the age of 83 in December 2005, he lived alone in the house. It was at that time that Mr and Mrs Tapp visited the property and they were extremely concerned at what they found. Apart from minor redecoration to just one room, and the installation of double-glazing to the doors and windows, it was apparent that little if any maintenance had been undertaken since 1974. The whole house was filthy; particularly the bathroom and kitchen, and only two of the six electric night storage heaters were operational. There were plumbing leaks and the wc was not properly operational, much of the wiring was defective, illegal and in a dangerous state and the banisters to the staircase were loose and dangerous. Furthermore, there were illegal polystyrene ceiling tiles, paper was hanging off the walls and there was considerable dampness and mildew which, along with "an all pervading" stench of urine forced Mr and Mrs Tapp to the conclusion that not only would Social Services consider the house unsuitable for Mr Atkinson's return, but in its then state, it would be virtually unsaleable. In their view, only a speculator would be likely to be interested, at a value they thought to be in the region of £150,000.

7. Because, at that time, it was anticipated that Mr Atkinson would return, a decision was taken to arrange for essential repairs and basic modernisation to be undertaken as a matter of urgency. The local firm of R Lintorn and Sons was appointed in January 2006 to strip out and completely refurbish the bathroom, and subsequent quotes were accepted to carry out complete rewiring and plumbing to include a new gas fired central heating system, the installation of a new kitchen and a ground floor under-stairs cloakroom together with removal of the polystyrene ceiling tiles, making good and redecoration throughout. By the time Mr Atkinson died on 4 April 2006 the works were underway, but few of the quoted for projects had been completed. A total of £14,973 had been paid to the contractor, £7,500 from Mr Atkinson, and the balance from Mr & Mrs Tapp.

8. Mrs Tapp said that the contractor was instructed to continue with the works, and they progressed until June, with a final payment being made to Lintorn on the 24th of that month. However, she explained that even by then the works had not been completed – in particular the new kitchen, elements of the electrics and the downstairs cloakroom. The redecoration was also still to be done. By this time, they had become thoroughly disillusioned with managing the project, and obtained indications of value for the property in its then unfinished condition from two local estate agents. The estimates were in the range £210,000 to £220,000, a significant increase on their earlier estimate of "speculator" value, thus reflecting the works that had been done to date, and the fact that the property was now likely to be of interest to a handyman who could complete the outstanding works. However, Mr & Mrs Tapp decided to persevere, and between June and October 2006 arranged for all the remaining outstanding

works to be completed, together with attention to some additional works such as repair and replacement of rainwater goods, replacement of two doors, boxing in pipe work and the provision of new, good quality carpets and floor coverings. Thus, by the end of October, the house was fully modernised, repaired and redecorated, and was "ready to move into."

9. On 2 November 2006, Haart Estate Agents inspected the property and recommended it be put on the market at £269,995. Particulars were prepared and distributed, and on 4 November and offer was received, and accepted, in the sum of £267,000. In the appellant's view, based upon the price achieved once the house had been fully restored, the estimates of value received in June when the works were only partially completed, and their own opinion of value in its totally unmodernised state in December 2005 of £150,000, they assessed the value at the date of death, with the assistance of a plotted graph, at £195,000.

10. In respect of HMRC's "offer" to agree the value at £230,000, based upon the opinion of a Mr Coll, the District Valuer, in a letter of 25 September 2006 before the determination was formally made, Mrs Tapp said that that opinion was worthless. Mr Coll had said that "judging from the sales of other similar houses (and taking into consideration the repairs that had been effected to 4 April 2006) the value of the house would have been in the region of £230,000 to £250,000....." and sought agreement to the lower figure. No comparables had been identified or specifically referred to and, most importantly of all, there was no way that Mr Coll could have known a) precisely what works had and had not been carried out to the subject property by 4 April and b) what the condition was of any of the comparables he might have considered, in comparison. Despite a challenge to this assessment and a number of requests for information, Mrs Tapp said that no response had been forthcoming. Latterly, another District Valuer, a Mr Shryane, became involved but matters did not progress happily. Mr Shryane had not seen the property until the works had been completed, and had not inspected it internally, despite knowing it to be in the hands of an agent who had the key. There was no way, Mrs Tapp said, that he could have known what still needed to be done in April.

11. Turning to Ms Colvill's expert witness report, Mrs Tapp said that, putting aside the question of the propriety of her visit to the subject property in April 2008, and what appeared to be a discourtesy in not advising her that this was being done, it could have been of little assistance to her in producing a valuation at 4 April 2006. She could not have known how much work had been done between the date of death and the time it was sold, and had made unsupported assumptions that it had been given "a basic clean up and redecoration". The fact that in November 2006 it had a brand new kitchen, bathroom and cloakroom together with a new central heating system and had been fully redecorated so that it was ready for immediate occupation did not seem to have been taken into account. It appeared, Mrs Tapp said, that Ms Colvill had simply adjusted the sale price back, for inflation, to April 2006 to give her opinion of its value at that date, and that was clearly wrong.

Respondent's case

12. Ms Colvill is a chartered surveyor with 17 years experience in the Bromley Valuation Office (formerly the District Valuer's Office). She said that she made an internal inspection of the subject property, with permission of the new owners, on 2 April 2008, and confirmed that it

had not been inspected by any member of the Valuation Office Agency in 2006. During her inspection, Ms Colvill said, the new owners advised her that the only works that they had undertaken since they bought the house were the installation of new uPVC double-glazed patio doors at the rear of the dining room, and replacement of the shower cubicle at first floor with a conventional bath. Being aware that the works that had been described by the appellant were put in hand in January 2006, she said she had assumed that, as at the date of death, the property was "in reasonable order with no major defects." She said she had assumed that the house had been rewired and had new central heating, uPVC double glazed windows, new kitchen and a new bathroom. However, she also noted that further works were carried out after the date of death to prepare the property for sale, but said "unfortunately I have no information as to the exact nature of these works." She went on to say that her inspection revealed the kitchen and bathroom fittings to be of a basic, utility standard, as were the floor coverings. It was also noted that walls had had lining paper applied rather than being re-plastered.

13. In arriving at her valuation, Ms Colvill said she considered a total of five transactions (including the sale of the subject property in November 2006) that took place in Hillingdon Road and Westfield Road on the same estate, between December 2005 and December 2006. She then made adjustments to reflect any differences in size (two of them having been extended to 5 bedrooms and two having smaller gardens) and to allow for the growth in the market, as defined in the Land Registry Index for semi-detached houses in Bexley. A schedule demonstrating the indicative value for the subject property based upon the analysis and adjustments was produced in her report, along with a graph plotted over the one-year period based upon the Land registry Index. This produced a value for the subject property of £258,071 at 4 April 2006 upon the assumption that it had been "substantially refurbished to a modern standard" by that date.

14. In the knowledge that additional works had been undertaken to prepare the property for sale (although, she said, no evidence or invoices had been produced to show exactly what had been done since April), she deducted £3,000 to reflect this. This produced a true comparative value of £255,000, which she then rounded to £250,000.

Conclusions

15. I am entirely satisfied that Ms Colvill's approach was thorough and well considered. The exercise that she undertook to analyse and adjust comparable sales to arrive at a value for the subject property was precisely in line with what is required of a chartered surveyor (in accordance with the RICS Practice Statement: *Surveyors Acting as Expert Witnesses*). However, it seems to me, the problem is the fact that not only had she not seen the property until some 2 years after the relevant date, and almost 18 months after it had been sold, but she was also clearly unaware of precisely how far the modernisation, repair and improvement works had got at that time. It is unfortunate that the appellant's evidence is not entirely clear on this aspect, and I accept Miss Colvill's criticism of the fact that no documentary evidence was produced to verify precisely what works remained unfinished when Lintorns were finally paid off in June 2006, with no estimates or invoices forthcoming in connection with completion of the outstanding works, or the additional works referred to.

16. It is clear that, at the date of death, Lintorns were only about halfway through what they were engaged to do (between February and June 2006), and I accept that the refurbishment was almost certainly much less advanced than had been assumed by Ms Colvill. Nevertheless, not only has Ms Colville effectively reduced her opinion of value by £8,000 from the analysis of £258,000 to £250,000, but also that is not the figure that was in HMRC's determination. That determination was in the sum of £230,000 which is some £20,000 less than Ms Colvill's valuation, or £28,000 less than the figure she arrived at by pure analysis.

17. Therefore, whilst I am satisfied that the property was in a far less advanced state of modernisation in April 2006 than Ms Colvill thought, in my judgment the effective discount of £28,000 – or almost 10% of the price eventually agreed - would more than adequately reflect what works were still outstanding, and the effect they would have upon the price a purchaser would be prepared to pay.

18. As to the appellant's argument for a valuation of £195,000, it is in my view flawed in that it was derived from a graph that had as its starting point an assumed value in December 2005 of £150,000, plotted through estate agents' marketing assessments (rather than actual sales evidence) in June 2006 to the price eventually achieved in November 2006. No evidence was produced to support the "speculator" value of £150,000, and this appears to have been nothing more than the appellant's own opinion. It does seem to me that a figure of £230,000 against a value which, according to Ms Colvill's analyses would have been £258,000 assuming it to be in the condition it was actually in when sold, is far more realistic than that propounded by the appellant – which was some £63,000 less than the achieved price, even despite price inflation.

19. There was no dispute that, at the relevant date, the property market was extremely buoyant, and I think it inconceivable that the best price that could be achieved when there was, according to the appellant, realistically no more than a maximum of £15,000 worth of work outstanding could possibly be so much less than what its full value would have been. I therefore conclude that the appellant has failed to prove that HMRC's determination was wrong, and confirm the value of the subject property at 4 April 2006 at £230,000.

20. Finally, in her submission, the appellant asked me to consider ordering a tax rebate of 40% of the difference between the gross valuation figure of £195,000 assuming I find in her favour (and the figure upon which inheritance tax has, so far, been paid), and the net figure after the deduction of estate agents and conveyancing fees. The grounds were that, if the property were actually being sold for that sum, on the agreed valuation date, the net figure is the sum that the vendor would actually receive. Whilst on the face of it this seems an interesting point, it is not within the Lands Tribunal's jurisdiction to make such an order. Under section 160 of the Act, the "value" upon which tax is to be paid is to be determined as "the price which the property might reasonably be expected to fetch if sold in the open market at that time..." and both by convention, and in accordance with the principles detailed in the RICS Appraisal and Valuation Manual (the Red Book), that is the price that a purchaser would pay; it is the figure that would appear in the Land Registry records, and does not make any allowance for deductions, compulsory or otherwise. It is that figure upon which taxable liability is assessed under the Act. As a corollary, it seems to me, it would not be correct for a

value to be determined that, for instance, took into account the amount of stamp duty that a purchaser would have to pay on the agreed price.

21. The basis of the price to be determined is further supported by the decision in *Duke of Buccleuch v Inland Revenue Commissioners* [1967] 1 AC 506 where Lord Reid stated, in connection with the Estate Duty equivalent of section 160 of the 1984 Act, at 525B:

> "the [1894] Finance Act permits no deduction from the price fetched of the expenses involved in the sale."

22. The matter having been determined without a hearing under Rule 27, I make no award of costs, and this decision is therefore final.

DATED 5 September 2008

P R Francis FRICS