

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax valuation appeal; Local Government Finance Act 1992 (as amended); Local Government Finance Act 1988 (as amended); Domestic property; Meaning of dwelling; Appeal dismissed.*

RE: No 1 Bungalow Zouch Farm, Zouch, Leicestershire LE12 5EQ

APPEAL NUMBER: M0856610

BETWEEN: Mr N East Appellant

And

Jo Moore Respondent  
(Listing Officer)

PANEL: Mr A Ramsay (Senior Member)  
Mr J P Percival

CLERK: Ms S Hodgson

ON: 12 March 2021

APPEARANCES: Mr N East, the appellant  
Mr G Bolger of the Valuation Office Agency for the respondent

REMOTE HEARING

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## Summary of decision

1. Appeal dismissed. No1 Zouch Farm is a dwelling.

## Introduction

2. The appeal began when the appellant served a proposal on the Listing Officer (LO) at the Valuation Office Agency (VOA) on 11 July 2019. The appellant made his proposal to delete the entry in the valuation list from 27 August 2005. The LO issued her decision in respect of the

proposal on 10 September 2019 and this was challenged by way of appeal to the Valuation Tribunal on 9 December 2019.

3. The appeal property was a detached bungalow with two bedrooms that measured 61m<sup>2</sup> located on Zouch Farm next to the River Soar. It was accessed off the main road through a field and a gate and included a parking space. The property had mains electric and water and a cesspit for sewerage. Mr East believed the bungalow was not domestic and should be removed from the valuation list.
4. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)( arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
5. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.
6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

## **Issue**

7. The issue in dispute was whether No 1 Bungalow Zouch Farm was a dwelling.

## **Evidence and submissions**

8. It was brought to the panel’s attention that Mr East had provided photographs to the Tribunal outside of the standard directions. Although there clearly was a breach of the directions Mr Bolger confirmed he was not prejudiced by it and was content for the photographs to be admitted as evidence in these proceedings. The panel was satisfied that as the respondent did not feel disadvantaged by this breach, in the interests of justice, the photographs were allowed.
9. The panel was provided with the photographs from Mr East and photographs taken during an inspection by the VOA. Both parties had completed an agreed statement of facts and provided descriptions of the site and its location.

10. The High Court case *Lewis v Christchurch Borough Council*, *Lewis v Vivian* [1996] RA 229 and the Upper Tribunal case *Graham John Aylett v Timothy Francis O'Hara (Valuation Officer)* [2011] UKUT 418 (LC) were referred to by Mr Bolger.
11. Both parties made comparisons to the VTE decision by Vice President Alf Clark where he heard ten appeals relating to properties on two nearby fields to the appeal dwelling. The VTE decision was appealed to the High Court and the parties made reference to this decision; *The Queen on the Application of Corkish (LO) v Gillian Carter & Ors* [2017] EWHC 1181 (Admin).

## **Decision and reasons**

12. Section 3 of the Local Government Finance Act 1992 defines what a dwelling is:

### **3 Meaning of “dwelling”**

- (1) *This section has effect for determining what is a dwelling for the purposes of this Part.*
- (2) *Subject to the following provisions of this section, a dwelling is any property which –*
- (a) by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act if that Act remained in force; and*
  - (b) is not for the time being shown or required to be shown in a local or a central non-domestic rating list in force at that time; and*
  - (c) is not for the time being exempt from local non-domestic rating for the purposes of Part III of the Local Government Finance Act 1988 (“the 1988 Act”);*
- and in applying paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption.*
- (3) ...
- (4) *Subject to subsection (6) below, none of the following property, namely –*
- (a) a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property used wholly for the purposes of living accommodation; or*
  - (b) a private garage which either has a floor area of not more than 25 square metres or is used wholly or mainly for the accommodation of a private motor vehicle; or*
  - (c) private storage premises used wholly or mainly for the storage of articles of domestic use,*

*is a dwelling except in so far as it forms part of a larger property which is itself a dwelling by virtue of subsection (2) above.*

13. Section 115(1) of the General Rate Act 1967 states:

*“hereditament” means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list;*

14. Section 66(1) of the Local Government Finance Act 1988 defines what domestic property is:

**66 Domestic property**

*(1) Subject to subsections (2), (2B), (2BB) and (2E) below, property is domestic if –*

*(a) it is used wholly for the purposes of living accommodation,*

*(b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,*

*(c) it is a private garage which either has a floor area of 25 square metres or less or is used wholly or mainly for the accommodation of a private motor vehicle, or*

*(d) it is private storage premises used wholly or mainly for the storage of articles of domestic use.*

15. Subsections (2), (2B), (2BB) and (2E) mentioned above relate to property that is used in the course of a business for short-stay accommodation in England and Wales. These sections were not relevant in this appeal and Mr East stated that the appeal property was used only by his family and they occasionally had friends visiting during the day.

16. It was for the panel to determine if the appeal bungalow was a dwelling based on the evidence before it and the case law referred to.

17. The panel had regard to the photographs provided that showed the following rooms within the appeal property:

- Enclosed entrance way
- Living/dining area with a table and chairs, sofa and armchair, television and wood burning stove.
- Two bedrooms each with double beds, bedside tables, and one with a radiator on the wall.
- A kitchen with a cooker, sink, microwave, cupboards, and bench areas. While it could not be seen in the photograph the agreed statement of facts also had a fridge listed.
- A bathroom with a shower, toilet, and hand basin.

18. The panel heard from Mr East, and had sight of the agreed statement of facts, that the subject property had the following services:

- Mains electricity
- Mains water
- Cesspit sewerage
- Electric heating and a wood burning stove
- Refuse collection by the Local Authority

Mr East qualified the above by advising the panel that while there was mains electricity, it was shared with another bungalow and the fuse box was located in the main farmhouse. He also stated that due to the electricity tripping frequently, he had taken the decision to power the cooker by bottled LPG.

19. Mr East had a licence granted by “The Paget Estate” to retain the appeal property on the pitch with a parking space for one car included. Conditions of the licence included that the pitch could be used “*for private holidays for no more than four persons only for not more than six weeks and 30 weekends per annum*” and that no car could be parked “*on the Flood Defence bank or Zouch field, other than on the pitch and to limit the use of motor vehicles across the Flood Defence bank and Zouch field during the months of October to March, other than to allow loading or unloading*”.

20. The panel was referred to the Upper Tribunal decision of *Graham John Aylett v Timothy Francis O’Hara (Valuation Officer)* [2011] by Mr Bolger. It was Mr Bolger’s contention that this decision supported his view that due to the facilities available at the subject property, it was a dwelling. In the Aylett case the property concerned was a plot of riverside land that had a small summerhouse erected on it. The summerhouse had no bathroom or kitchen, water supply or sewerage. The summerhouse was used to store tables and chairs for use in the garden. The appeal was heard by the President of the Upper Tribunal who found that the property could not be classed as domestic and therefore was not a dwelling.

21. The panel found that this case differed to the one before them as the summerhouse described in the Upper Tribunal President’s decision bore no resemblance to the bungalow in this appeal. The summerhouse had no facilities and was a small octagonal structure with what appeared to be no room separation inside.

22. The main argument from both parties centred around a VTE decision by Vice President Alf Clark. The decision was appealed to the High Court, which was also referenced, however the detailed property descriptions come from the VTE decision. The High Court case was *The Queen on the Application of Corkish (LO) v Gillian Carter & Ors* [2017]. The decisions covered ten appeals of which Gillian Carter’s appeal number was 3040730191/037CAD. The properties were all chalets located on Loseby Field or Ferryfield in Normanton on Soar. The location is on the same estate as the subject property but in different fields.

23. Mr Bolger argued that there were significant differences between the subject property and the properties considered by Mr Clark and the High Court. The main differences he referred to was the level of services and facilities available at the subject property which, in his opinion, were no different to other domestic dwellings around the country.
24. Mr East contended that there were enough similarities between the subject properties and those on Loseby Field and Ferryfield. The similarities referred to were the licence agreement for the pitch, the fact that the appeal property did not have a postcode, the lack of a reliable electricity supply, the unavailability of the appeal property between October and May due to flooding, and the usage of the property.
25. The panel heard that the subject property was only for personal use and that Mr East's main house was located 5.5 miles away, a 15-minute drive from the bungalow. Mr East advised he had bought the bungalow in 2005 to use as a base for fishing. He stated that during the fishing season the property was used on the weekend with overnight stays on Saturdays. During the weekends he would have friends visit during the day.
26. The panel accepted that there were similarities between the licence agreements at the subject property and those at Loseby Field and Ferry Field. However, it was the panel's view that the terms of the licence alone could not decide the question of whether the subject property was a dwelling. While the licence required a main address for Mr East, the panel was of the opinion that many people have second homes that are not their main residence and are used on the weekends or for holidays.
27. The panel considered the usage of the property when compared to the chalets on Loseby Field and Ferryfield. While the usage is similar in terms of undertaking leisure activities from the site, the panel found that Mr East used his property for overnight stays and social occasions and had the bungalow set up for this purpose. This was in contrast to many of the chalets considered by Mr Clark where overnight stays were not the norm, or indeed possible in many of the cases.
28. The panel had regard for the VTE decision by Mr Clark and found that the ten properties considered in that decision all had a severe lack of facilities. The properties were all described in detail and all were listed as having no running water, no sewerage, no mains gas, no access to wastewater and no access to refuse services. In contrast, the subject dwelling had all these facilities, except for mains gas, and had a mains electricity supply. Mr East explained he took all his rubbish and recycling home with him; however, the refuse collection was available from the subject property.
29. In consideration of the facilities available at the subject property, the panel noted that it had a working shower and toilet. The properties at Loseby Field and Ferryfield did not have these facilities. A shower was listed in one of the chalets, however it was not in use as there was no mains water. All references to toilets in the chalets were chemical toilets, most of which were described as mobile that the owners took away with them at the end of the day.
30. The panel appreciated that the fields flood in the winter months, however it was the panel's view that no evidence was provided to show the bungalow was unusable during these times and

photographs were seen showing the property had been accessed during a flood. The panel noted from Mr Clark's decision that this was a factor he considered when determining the chalets were not dwellings, however it had been considered with other factors to make this determination, not on the accessibility point alone.

31. At paragraph 42 of *Corkish v Gillian Carter & Ors* [2017], Mr Justice Fraser made the following statement:

*42. So far as independent living is concerned, it is said that this is simply not relevant. I am not persuaded that is correct for the following reason. If a property (not one of these chalets) were wholly fitted out with every imaginable service, such that it is capable of supporting independent living, I would have thought that is a pretty good argument on the part of the listing officer to suggest, as a matter of fact, that such a property was indeed being wholly used for living accommodation.*

32. Coming back to the test in law, property is domestic if it “*is used wholly for the purposes of living accommodation*”. The panel held that there were significant differences between the subject property and the chalets on Loseby Field and Ferryfield that were subject to appeals to the VTE and the High Court.

33. The panel made a finding of fact that due to the services available at the subject property, namely the mains electric, mains water, wastewater provision, cesspit sewerage, and refuse collection, and the facilities at the subject property, namely the plumbed in bathroom with shower, handbasin and working toilet, the fitted kitchen with cooker, benches, cupboards and working sink, electric radiators throughout the property, separate living and bedrooms, the subject property was wholly for the purposes of living accommodation.

34. Therefore, based on the evidence before it, the panel dismissed the appeal and confirmed No1 Zouch Farm in the valuation list as a dwelling.

**Date:** 26 March 2021

**Appeal number:** M0856610