

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation appeal; band C in dispute; whether a detached house or an annexe; single hereditament; comparable properties; appeal allowed.

Re: Tidnor Cross Mews, Lugwardine, Hereford, HR1 4AP

APPEAL NUMBER: VT00004202

BETWEEN: Mr R Wilkinson Appellant
and

Mr D Virk, Listing Officer Respondent

PANEL: Mr M Smith (Senior Member), Mr S Smith

CLERK: Mrs L Horne

REMOTE HEARING ON: Friday 27 August 2021

APPEARANCES: Mr R Wilkinson, the appellant
Mr A Leese, representing the Listing Officer

Summary of decision

- 1 Appeal allowed. The panel determined that the appeal property should be entered into the list at band A with effect from 1 November 2019.

Introduction

- 2 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.

- 3 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.
- 4 This appeal is brought in respect of a proposal received by the Listing Officer on 12 June 2020, in which Mr Wilkinson challenged the decision to enter the appeal property in the list at band D with effect from 1 November 2018. The proposal was made on the grounds that two bedsits had been merged to create a small one bedroom home for an elderly dependent relative. A reduction to band A or B was requested with effect from 1 November 2019.
- 5 The Listing Officer issued a decision notice on 10 August 2020, which stated that after a review of the information held, there would be a change to band C with effect from 1 November 2018. Mr Wilkinson submitted an appeal to the Valuation Tribunal, which was received on 16 September 2020, in which he submitted that there were other “granny” annexes in the locality larger than the subject property in band A.
- 6 The appeal property was originally a detached garage which was converted to two, one bedroom bedsits in 2003. It is located within the curtilage of Tidnor Cross Cottage, which was also the subject of an appeal determined at this hearing. The reduced covered area (RCA) of the property is 82 m² and comprises living room, kitchen, one bedroom and a bathroom. The property has the benefit of a parking space.
- 7 The valuation bands which reflect capital values as at the antecedent valuation date (AVD) of 1 April 1991 are set out in section 5(2) of the Local Government Finance Act 1992, with the relevant bands in relation to this appeal being:

Band A – values up to, but not exceeding £40,000;
Band B – values exceeding £40,000 but not exceeding £52,000;
Band C – values exceeding £52,000 but not exceeding £68,000.
- 8 The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issues

- 9 The issue before the panel is the correct banding for the appeal property.
- 10 Mr Leese confirmed that while the Listing Officer's case had been based upon a defence of band C, in the interim period an offer had been made to reduce to band B.

Evidence and submissions

- 11 The bundle provided by the Listing Officer contained the parties' respective cases and supporting documents and included: location plans and layout plans of the appeal property, photographs and details of comparable properties, a copy of the original planning permission for Tidnor Cross Mews, and a copy of *Domblides v Listing Officer* [2008] EWHC 3271 (Admin).
- 12 On behalf of the Listing Officer, Mr Leese contended that the appeal property is not an annexe and should be valued as a separate hereditament due to there not being a restrictive covenant on occupation. He submitted that the best evidence was derived from sales of similar detached properties, to which he had applied a 30% reduction to reflect that the appeal property was within the curtilage of Tidnor Cross Cottage.
- 13 Mr Wilkinson argued that the appeal property is an annexe, as it is situated within the curtilage of Tidnor Cross Cottage, and cannot be sold separately. When the decision was made by the Listing Officer, his elderly relative was in occupation. He disputed the Listing Officer's approach of applying a 30% reduction to traditional detached houses, and provided details of annexes in the locality which had been placed in band A.

Decision and reasons

- 14 The subject of this appeal is the correct banding for the appeal property. The significant factor to be determined by the panel in order to arrive at the correct banding is whether the appeal property is a detached house or an annexe.
- 15 The appeal property has been brought into the valuation list and valued as a detached house by the Listing Officer. Mr Leese confirmed that the appeal property had been valued as a hereditament in its own right, as it was not considered to be a "true annexe" due to a lack of occupancy restrictions. He did, however, acknowledge that the property could not be sold separately.
- 16 Mr Wilkinson referred to the original planning permission from 2003 which stated that the former garage could not be sold separately. The property was within the curtilage of Tidnor Cross Cottage and had been converted from bedsits to provide separate accommodation for an elderly dependent relative.

- 17 It was therefore necessary for the panel to consider whether the appeal property was a separate hereditament, the starting point of which, was to consider the meaning of a dwelling, as contained in section 3 of The Local Government Finance Act 1992:
- “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 had remained in force”.
- 18 A hereditament was defined in Section 115 (1) of the General Rate Act 1967 as being “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.”
- 19 Prior to council tax and poll tax, all hereditaments, whether for business use or domestic, were subject to rating. Property which was occupied would be rated and therefore the concept of rateable occupation was interlinked with the hereditament. There could only be one rateable occupation (ratepayer) per hereditament. If there are two competing occupations, it has to be established whose occupation is paramount, i.e. who exercises overall control over how the property is used.
- 20 In the subject appeal, both Tidnor Cross Cottage and Tidnor Cross Mews are owned and occupied by one household. Mr Wilkinson as the owner of the main dwelling retains control over all the property and curtilage, including the annexe. The nature of the appeal property as an annexe, rather than a separate hereditament is further supported by the fact that there is a planning restriction in place which prevents a separate sale of the property:
- “The residential accommodation hereby approved and the dwelling known as Tidnor Cross Cottage shall not be sold separately from each other.”
- 21 The fact that there did not appear to be an occupancy restriction did not alter the panel’s finding that Tidnor Cross Cottage and Tidnor Cross Mews comprised a single hereditament.
- 22 Having undertaken the primary test of whether separate hereditaments existed under section 3, the panel then turned to consideration of the self-contained unit test in accordance with the relevant legislation:
- 23 Section 3(5) of the Local Government Finance Act 1992:
- “The Secretary of State may by order provide that in such cases as may be prescribed by or determined under the order --

(a) anything which would (apart from the order) be one dwelling shall be treated as two or more dwellings . . .”

- 24 Article 3 of the Council Tax (Chargeable Dwellings) Order 1992, SI 1992 No.549 (as amended), provided:

“...where a single property contains more than one self-contained unit, for the purposes of Part I of the Act, the property shall be treated as comprising as many dwellings as there are such units included in it and each such unit shall be treated as a dwelling.”

- 25 Article 2 of the Order contained the definition of a ‘self-contained unit’:

“ ‘Self-contained unit’ means a building or a part of a building which has been constructed or adapted for use as separate living accommodation.”

- 26 There was no dispute that the appeal property provided separate living accommodation. The panel therefore held that the Listing Officer’s approach to value the appeal property as a separate hereditament was incorrect.

- 27 The panel also made a finding that the Listing Officer had entered the appeal property into the list using the wrong effective date. In his proposal Mr Wilkinson requested band A or B for the appeal property with effect from 1 November 2019. His proposal had been made in response to a Listing Officer’s Notice which had brought the appeal property into the list at band D with effect from 1 November 2018. However, the alterations to merge the two bedsits had not occurred until after Mr Wilkinson’s purchase of Tidnor Cross Cottage in June 2019.

- 28 For the reasons outlined above the panel rejected the Listing Officer’s evidence of detached properties. They were all hereditaments in their own right, and therefore not relevant for comparison with an annexe.

- 29 In support of band A, Mr Wilkinson provided details of local annexes which have the same planning restriction as the appeal property:

Address	Details/ size (external)	Band
The Vine, Tarrington	3 bedrooms, 107 m ²	A
21 The Maltings, Dormington	2 bedrooms, 96 m ²	A
Braemar, Lugwardine	2 bedrooms, 100+ m ²	A
1 Lower Bartestree	2 bedrooms, 80 m ²	A
Little Rock, Lugwardine	1 bedroom, 65+ m ²	A
Ridgemont, Dormington	2 bedrooms, 90-95 m ²	A
Tynant, Mordiford	2 bedrooms, 95 m ²	B

- 30 Mr Leese stated at the hearing that when he had reviewed these annexes, he found that they were substantially smaller, and it was his opinion that the bandings were attributed to the sizes held by the Listing Officer. The panel noted that the Listing Officer had not submitted a written rebuttal to the appellant's case, and therefore no evidence was available to the panel to show that the appellant's evidence was incorrect.
- 31 In further support of band A, Mr Wilkinson referred to valuations of the annexe provided by two local estate agents. Taking the highest figure from each and using the Nationwide and Halifax Price Calculator, this indicated values of £32,293 and £37,675 for the first quarter of 1991.
- 32 However, house price calculators and indices are by their very nature unreliable for council tax purposes and, therefore, of little assistance; they cover a wide geographic area, which contains great variation between different localities and includes different types of properties. This was confirmed in the High Court case of *Domblides v Listing Officer*, and therefore, the panel could not attach any significant weight to that evidence.
- 33 The panel decided to attach most weight to the evidence of comparable annexes, as provided by Mr Wilkinson. There were five annexes in band A, three of which were larger than the appeal property. The panel held that the appellant had demonstrated that band A was fair and reasonable and consistent with other annexes in the locality.
- 34 Accordingly, the appeal is allowed, and band A is confirmed with effect from 1 November 2019.

Order:

- 35 Under the provisions of Regulation 38 (2) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal orders the Listing Officer to enter the appeal property into the Valuation List at band A with effect from 1 November 2019, within two weeks of the date of this order.

Date: 13 September 2021

Appeal Number: VT00004202