

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation list appeal; care home; self-contained unit; backdating held to be incorrect; appeal allowed in part.

RE: Self Contained Staff Flat at Heathfield House, Bicester Road, Bletchington, Kidlington, Oxon OX5 3DX (the “appeal property”)

APPEAL NUMBER: VT00007677

BETWEEN:	Mr R G	Appellant
	and	
	Dawn Bunyan	Respondent
	(Listing Officer)	

PANEL: Mr W J Read (Chairman)
Mrs V Hollender

CLERK: Mr D Mulgrew

HEARING: Remote hearing No.5 on 27 April 2022

APPEARANCES: Mr R G (Appellant)
Mr A Miah (Respondent’s representative)

Summary of decision

1. Appeal allowed in part. While the panel decided that the appeal property was a self-contained unit for the purposes of council tax, the respondent was incorrect to backdate the new valuation list entry.

Introduction

2. This appeal has been brought in respect of the respondent’s decision of 19 May 2021 to refuse to delete the valuation list entry for the appeal property. That valuation list entry was made on 24 January 2021 backdating a band A entry with effect from 1 April 2010.

3. Band A is the lowest council tax band and represents open market property values as of 1 April 1991 up to and including £40,000.
4. Heathfield House is a care home and the appeal property falls within that property.
5. To assist the appellant (who was not professionally represented), the tribunal panel varied its model procedure and invited the respondent's representative to present his case first.
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 item of evidence, should not be construed as it having been overlooked.

Issue

7. The dispute concerned the valuation list entry in respect of the appeal property, namely whether it should have been brought into the list and if so, whether its entry should have been backdated.

Evidence and submissions

8. The respondent provided a joint evidence bundle which included contributions from both parties to the appeal. Amongst other things it included plans, photographs, the originating proposal, respondent's decision, the appeal form, extracts from legislation and email correspondence between the parties.
9. The following High Court judgments were referred to by the respondent:
 - *R (on the application of Coleman (LO)) v Rotsztein* [2003] RA 152
 - *Hayes v Humberside Valuation Tribunal and Kingston Upon Hull CC* [1998]
 - *McColl v Subacchi (LO)* [2001]
 - *Jorgensen (LO) v Gomperts* [2006]
 - *Daniels (LO) v Aristides* [2006] RVR 379

Decision and reasons

10. Since the introduction of council tax on 1 April 1993, there had been two entries in the valuation list at Heathfield House: Heathfield House (band H) and Flat at Heathfield House (band B).
11. During October 2020, Cherwell District Council asked the respondent to review the bands after becoming aware of the layout of Heathfield House. As a result, the respondent split the valuation list entry for Flat at Heathfield House to bring in the appeal property from 1 April 2010. This meant that there were now three valuation list entries at Heathfield House: the appeal

property was placed in band A from that date and the bands of Heathfield House and Flat at Heathfield House remained in bands H and B, respectively.

12. The appellant was aggrieved by this and made a proposal to request deletion of the new valuation list entry for the appeal property stating the following:

“The Banding has been backdated 10 years. This is wrong. The areas were used as staff break rooms and storage previously as part of the care home. The area above the care home, due to Covid has been used for night staff and transient staff to rest before they go to their permanent residence. There is no AST [assured shorthold tenancy] or rent payable. There is no benefit to us. This is simply used as shelter for the staff before they leave, as we as company believe that it is unsafe for staff to drive when they have worked a 12 hr shift, especially when there is no public transport available in such a rural area. In addition there is a fire exit leading from the room, so this has to be left open at all times. In some areas there is not even full head height, so would not be suitable for long term accommodation.”

13. The respondent refused to delete the valuation list entry for the appeal property arguing it was a self contained unit for the purposes of the Council Tax (Chargeable Dwellings) Order 1992.
14. The appeal to this tribunal re-iterated the appellant’s proposal grounds and asked how the use of the appeal property as storage could be proved prior to 10 January 2020, when the appellant had no knowledge of the extra council tax and therefore no reason to keep evidence. It was stated that after 10 January 2020, the area has been used as staff rest rooms for transient or agency staff to rest prior to leaving the premises the same day.
15. Turning to the council tax legislation, the panel noted that council tax is payable in respect of any ‘dwelling’. The meaning of dwelling for council tax purposes is set out in section 3 of the Local Government Finance Act 1992.
16. There are two types of dwelling that can arise under section 3. The most common type of dwelling is the one defined by section 3(2), which refers back to the General Rate Act 1967 and an archaic term, ‘hereditament’. Essentially, each separately occupied property is a hereditament and if it is domestic, it is a dwelling for council tax purposes. For example, in a row of six terraced houses which are all separately occupied, they would be included in the valuation list as six separate dwellings.
17. The respondent was of the view that there was only one hereditament because the whole property was in the same occupation.
18. Unfortunately for the appellant, the legislation has a wider meaning of dwelling for council tax purposes. It not only includes separately occupied properties but can also include parts of them. Section 3(5) of the 1992 Act allowed the Secretary of State to expand the meaning through the introduction of the

Council Tax (Chargeable Dwellings) Order 1992, which enabled one dwelling to be treated as two or more dwellings.

19. In referring to the 1992 Order, Mr Miah referred to article 3A:

“A care home shall be treated as comprising the number of dwellings found by adding one to the number of self-contained units occupied by, or if currently unoccupied, provided for the purpose of accommodating the person registered in respect of it in accordance with ... Part 1 of the Health and Social Care Act 2008, in relation to England and each such unit shall be treated as a dwelling.”

20. This provision gave a special concession to registered care homes so that any rooms occupied by the residents of the care home were aggregated together.

21. The nub of this dispute in this appeal concerned article 3 of the Council Tax (Chargeable Dwellings) Order 1992. This provides:

“...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.”

22. Article 2 of the Order contains 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.”

23. Simply put, where there is only one hereditament or property, it is still possible to have more than one dwelling there, provided it falls within the scope of the 1992 Order.

24. There is a large body of case law connected with this area of law, dating back to 1995. The respondent has referred to several of the High Court decisions.

25. The panel having regard to the case law, was aware that the effect of the construction or adaptation had to be such as to make the relevant building or part of a building reasonably suitable for use as separate living accommodation. This question was to be answered by reference to the physical characteristics of the building, often called the ‘bricks and mortar test’.

26. This is an objective test. The test is not concerned with when, how or why those characteristics were achieved. The purpose of the construction or adaptation, or the intention of the owner is irrelevant. The test is addressed to the result of the building work, not the circumstances in which it was carried out. The use of the premises and whether there were lockable doors was not important to this test.

27. The plans and photographs were of assistance to the panel as it showed the arrangements and layout at the appeal property. This allowed the panel to give full consideration to the physical characteristics.
28. The panel found that the appeal property was clearly self-contained as it had the following physical features:
- Independent access via a communal passageway
 - A kitchen area with sink and worktop as well as kitchen cabinets
 - A bathroom
 - Two further rooms
29. From the plan provided one could draw a ring around the area in question without any difficulty, and the respondent evidence had included such a plan on page 26 of the bundle.
30. The appellant has referred to a lack of separate meters but the panel noted that case law has established that this was not an important factor.
31. Having regard to all the physical characteristics, the panel was satisfied that the appeal property could be used separately from the rest of the property. While recognising that the appellant had chosen to allow it for staff use within the home, the panel held that it remained reasonably suitable for use as separate living accommodation. The respondent had therefore been correct to create a new entry in the valuation list.
32. The panel recognised that the appellant had not anticipated the change to the valuation list, and that a backdated council tax bill for 10 years was problematic.
33. The respondent argued that Cherwell Council believed that the arrangements at Heathfield House had been like this prior to 1 April 2010. Mr Miah acknowledged that backdating does not usually arise in disaggregation cases but the respondent had done so because the Council had shown that the original unit shown in the valuation list, namely Flat at Heathfield House, had been physically split.
34. Following advice from its clerk, the panel had regard to regulation 11(6) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009, which stated the following:

“(6) ... where an alteration—

(a) is made to correct an inaccuracy in a list; and

(b) the inaccuracy was to show as one dwelling property which should have been treated as two or more dwellings by virtue of article 3 of the Council Tax (Chargeable Dwellings) Order 1992,

the alteration shall have effect from the day on which the alteration is entered in the list.”

35. Mr Miah said the respondent believed backdating could take place because an error in the list was being corrected. However, no legislation was cited by Mr Miah.
36. The panel considered regulation 11(6) to be clear and the alteration could only take effect from the day on which the respondent altered the valuation list. This date was 24 January 2021.

Order

37. Under the provisions of regulation 38(2) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the respondent to change the effective date of entry in the valuation list for Self Contained Staff Flat at Heathfield House, Bicester Road, Bletchington, Kidlington, Oxon OX5 3DX from 1 April 2010 to 24 January 2021.
38. Under regulation 38(9), the respondent must comply with this order within two weeks of the date of its making.

Date: 23 May 2022

Appeal number: VT00007677