

VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; the Council Tax (Reductions for Annexes) (England) Regulations 2013 (SI 2013 No 2977); definition of an annexe; appeal dismissed.*

Re: Flat 2 Seaton House, Seaton Road, Camberley, Surrey GU15 3NG

APPEAL NUMBER: VT00010687

BETWEEN

PD

Appellant

and

Surrey Heath Borough Council

Respondent

(Billing Authority)

PANEL: Ms N Chesterman (Presiding Senior Member)  
Mr PJ Hickson (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING:

ON: 24 August 2023

APPEARANCES: The appellant

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**Introduction**

1. This appeal was brought in respect of the billing authority's (BA's) decision dated 17 January 2022 which determined that Flat 2 Seaton House, Seaton Road, Camberley, Surrey GU15 3NG (the appeal property) was not eligible for a 50% discount due to being an annexe. The BA stated that it did not qualify for a 50% reduction as an annexe being used by the occupier of the main house in accordance with the Council Tax (Reductions for Annexes) (England) Regulations 2013 (SI 2013 No 2977) (the 2013 Regulations). The appellant submitted that the appeal property was an annexe and therefore qualified for the 50% discount.

2. On 23 September 2022 this matter had been postponed at the request of the BA as they had failed to submit a bundle and required time to do so. Upon the clerk contacting the BA it confirmed that it had still not provided an evidence bundle and would not be attending the hearing although it did apologise to the Tribunal.
3. At a hearing on 10 March 2023 a preliminary issue was raised by the appellant that he had been awaiting the BA's evidence bundle to determine the legislation and case law they intended to rely on in support of the decision. He explained that he had been required to find the relevant legislation in order to present his case which had been difficult as he was a lay man and was not well versed in council tax legislation. He did however confirm to the panel that he wanted to proceed with the hearing as it had already been postponed once already.
4. The first hearing of this matter took place on 10 March 2023 when the appellant attended but the BA did not. The panel heard submissions from the appellant and found the BA's approach to this case disappointing as it had failed to compile a bundle even after being granted a postponement to do so. In not attending the hearing the BA had denied both the panel and the appellant the opportunity to ask it any questions relevant to its case. Notwithstanding this, the panel acknowledged that the burden of proof in evidencing the appeal lay with the appellant in any event.
5. Upon retiring at the end of the hearing the panel determined that they did not have sufficient information in connection with the appeal property to make a fair and reasoned decision in this case. Neither the appellant nor the BA had provided any details about the physical layout of the appeal property, there was no visiting officer's report and no plans had been introduced into evidence. The panel therefore determined that these further questions should be answered by reconvening the hearing rather than conducting a site visit.
6. The panel reconvened on 24 August 2023 and want to express their appreciation to the appellant for attending again to answer the further questions. The panel excluded any evidence that the BA may have wanted to enter and barred it from attending the reconvened hearing due to its non-cooperation in this case and its non-attendance at the hearing on 10 March 2023. The appellant had also confirmed in evidence that the BA had not inspected the property and so the panel took the view that the BA's evidence would have been limited in any event.
7. As a preliminary issue, the appellant raised concerns that he had wanted to be informed of the questions the panel wanted to ask in advance of the hearing. The fact that he had not been sent the questions left him concerned that he had not been able to prepare fully for the hearing.
8. The panel explained to the appellant that any questions a panel may wish to ask are never given to either party ahead of the hearing. The questions were factual questions which, as the appellant lived at the property, he should be

able to answer without being given notice of the questions. The appellant therefore agreed to the hearing continuing.

9. The appellant was also concerned that the panel did not take the role of the BA and ask the questions that the BA may have asked had they been present at the hearing. The panel confirmed that they had to be able to ask questions in order to make a sound and correct decision in connection with the case and would not be asking any questions on 'behalf' of the BA but only to make findings of fact about the appeal property to enable them to come to a fair and just decision.
10. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

## Issues

11. The issue in dispute was whether the appeal property was entitled to a 50% reduction from council tax under the 2013 Regulations

12. The 2013 Regulations state the following:

### *'3 - Prescribed conditions*

- (1) The following conditions are prescribed for the purposes of these Regulations.*
- (2) The dwelling –*
  - (a) forms part of a single property which includes at least one other dwelling; and*
  - (b) is being used by a resident of that other dwelling or, as the case may be, one of those other dwellings, as part of their sole or main residence; or*
  - (c) is the sole or main residence of a relative of the person who is liable to pay council tax in respect of that other dwelling or, as the case may be, one of the other dwellings.'*
- (3) For the purposes of paragraph (2)—*
  - (a) "single property" means a property which would apart from the Council Tax (Chargeable Dwellings) Order 1992(a) be one dwelling within the meaning of section 3 of the 1992 Act;*

### *'4 – Calculation of amount payable*

- (1) Subject to paragraph (3) the amount of council tax payable by a person liable to pay an amount to a billing authority in respect of a dwelling which fulfils either if the conditions prescribed in regulation 3 and each day on which that condition is fulfilled shall be calculated in accordance with the formula in paragraph (2).*
- (2) The formula is –*

A

*Where A is the amount determined under section 10 of the 1992 Act or under that section read with section 11, 11A or 11B of that Act (4).'*

13. Under section 11 of the Local Government Finance Act 1992, the amount of council tax that was payable on an unoccupied property was 50% but this was subject to any determination that had been made by the BA under section 11A or 11B if the appeal property fell within a class of dwelling as prescribed by the Secretary of State by Order. The relevant secondary legislation containing the prescribed classes was the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 as amended.

### **Evidence and Submissions**

14. The appellant's bundle of evidence included details of the appeal property, and the appellant's submissions.
15. The BA had failed to provide a bundle of evidence.

### **Decision and reasons**

16. The appellant explained that he owned both Flat 1 and Flat 2 Seaton House which were on the same Land Registry title and he lived in Flat 1. The appeal property is the first floor of the building with Flat 1 being the ground floor. The appeal property had been under separate occupation under the previous owner but once the appellant purchased the appeal property he began to use it as one property. He explained that the appeal property would not conform with present day building regulations and therefore in order to let it separately a small amount of work would be required but he conceded it was not major structural work.
17. He submitted that he was the owner of the whole building, which he argued was a single property comprising of more than one self-contained unit. He explained that he occupied the appeal property as part of his sole or main residence and he was therefore entitled to the 50% discount under the 2013 Regulations due to the appeal property being an annexe. Upon being asked, he confirmed that he was unaware of what the position was in relation to selling the appeal property separately as the planning permission to separate the appeal property was granted before his ownership commenced.
18. He submitted that the appeal property is, in his view, an annexe and referred the panel to the definition of an article 3 dwelling under The Council Tax (Chargeable Dwellings) Order 1992 (SI No 549). He drew the panel's attention to the fact the BA had not provided any evidence of the reasoning behind the Valuation Office Agency decision to list it separately. It was not therefore clear on which grounds they had made the finding that it should be entered into the valuation list separately. He further quoted a section from the Council Tax Manual issued by the Valuation Office Agency in which it states:

*"Subsection 3.23*

*Annexes, for example can switch between different legal routes; whether an annexe is a 'Section 3 dwelling' or an 'Article 3 dwelling' will depend on who occupies it. Any change to the legal route will not, however, require alterations to the Valuation List entry"*

19. The appellant therefore disputed that each flat constitutes a hereditament as the BA had not taken into account the matter of control and actual occupation. He explained that he used the appeal property for 'normal daily life', taking baths and reading in it. He had his own possessions in the appeal property and generally used it as an extension of his living space.
20. Upon being questioned the appellant confirmed that the appeal property could be entered without entering his own flat and there was only an internal door separating them. There was also however an external entrance to the appeal property via a fire escape. The panel also noted there were separate utility meters. The appellant confirmed that the kitchen and bathroom were still present in the appeal property but that, in his opinion, did not stop the appeal property being an annexe.
21. The panel was aware that the burden of proof was the appellant's on the balance of probabilities and that in this case he had failed to discharge that burden. The appeal property was only used by the appellant on an occasional basis. The panel found that the appeal property was capable of being occupied separately with only a minimum amount of work to bring it up to the required building regulations standards and already had its own entrance which did not involve entering through the flat the appellant occupied. The panel also found separate utility meters to be a factor.
22. The panel found that the appeal property was a single hereditament and so a dwelling contained within a building with another separate single hereditament in accordance with section 3 of the Local Government Finance Act 1992. It therefore did not meet the criteria to be considered to be an annexe and subsequently did not qualify for an annexe discount.
23. The panel therefore dismissed the appeal.

**Date:** 20 September 2023

**Appeal number:** VT00010687

### **Right of appeal**

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.