

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax valuation appeal; proposal to merge care units in a property which were separately assessed for council tax into one entry in the valuation list; section 3 of the Local Government Finance Act 1992; Rawsthorne v Parr [2009] EWHC 2002 (Admin); hereditament test; John Laing & Son v Kingswood Assessment Committee [1949] KB 344; appeal dismissed.*

RE: 32 Barton Close, Helston, Cornwall TR13 8LL  
Ground Floor Flat, 32 Barton Close, Helston, Cornwall TR13 8LL  
First Floor Flat, 32 Barton Close, Helston, Cornwall TR13 8LL  
("the appeal properties")

APPEAL NUMBER: VT00011203

|          |                                 |            |
|----------|---------------------------------|------------|
| BETWEEN: | CS                              | Appellant  |
|          | and                             |            |
|          | Dal S Virk<br>(Listing Officer) | Respondent |

SITTING: Remotely via Microsoft Teams Conference Call

ON: 22 May 2023

PANEL: Mr S Levy (Senior Member)  
Professor P Catterall

CLERK: Mr S Fletcher IRRV (Hons)

APPEARANCES: CS (Appellant)  
Mr A Wakley (Respondent's representative)

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## DECISION and STATEMENT OF REASONS

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### Summary of decision

1. Appeal dismissed. The panel confirmed that the separate list entries in respect of the appeal properties should remain.

## **Introduction**

2. The appeal process began with a proposal that was served by the appellant on the Listing Officer (LO) on 6 December 2021. The appellant sought the merger of the appeal properties in the valuation list into one entry. The LO deemed the appellant's proposal to be not well founded and issued a decision notice to that effect on 27 January 2022. The appellant appealed that decision to the Tribunal on 26 April 2022.
3. 32 Barton Close, Helston, Cornwall TR13 8LL was originally entered into the valuation list at band C with effect from 1 April 1993. Following an extension to 32 Barton Close, the LO determined there were two further properties in existence and entered them into the valuation list. The band of the 32 Barton Close remained unchanged with effect from 7 November 2021. Ground Floor Flat was entered into the list at band A with effect from 7 November 2021. First Floor Flat was entered into the list at band A with effect from 4 June 2020. Consequently, there were three separate assessments for council tax at the property.
4. This decision document is not and does not purport to be a verbatim record of proceedings.

## **Issue**

5. The issue for the panel to determine was whether or not the property which comprised three separate council tax assessments fell to be assessed as a single entry.

## **Relevant law**

6. Part I of the Act makes provision for billing authorities in England and Wales to levy a tax, known as council tax, in respect of domestic hereditaments ("dwellings") within their area.
7. Section 3 of the Act provides the 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”);

...

8. Section 115(1) of the General Rate Act 1967 provides:

(1) In this Act, except where the context otherwise requires, the following expressions have the following meanings respectively, that is to say –

“*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.”

9. Thus, under the statutory scheme, in appeals of this nature, the first step was to determine whether separate hereditaments existed. The essential elements of rateable occupation which have to be met in order for a hereditament to exist have been considered by the courts in a number of different statutory contexts.

10. In *John Laing & Son Limited*, Tucker LJ said at 350:

“Mr. Rowe has said that there are four necessary ingredients in rateable occupation, and I do not think there is any controversy with regard to those ingredients. First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period....”

## **Evidence and submissions**

11. Arguments and factual evidence for both the appellant and respondent were subsumed into a combined evidence bundle. This included the appellant’s original proposal and subsequent appeal form, the respondent’s decision, relevant legislation, a planning report, photographs of the appeal properties and various pieces of correspondence between the parties,
12. The following case law and a decision of the Valuation Tribunal for England (VTE) was either referred to by, or circulated to prior to the hearing, the parties:

*Rawsthorne (Listing Officer) v Parr* [2009] EWHC 2002 (Admin)

*James v Williams* [1973] RA 305

*John Laing & Son Limited v Kingswood Assessment Committee* [1949] KB 344

*Burtfield Estates v Dixon* (VTE: 0655664341/254CAD and ors, 2016)

13. The respondent's representative contended that three dwellings were identified at the property in accordance with section 3 of the Act. He was satisfied that the four ingredients of rateable occupation, as per *John Laing & Son Ltd*, were present at each of the flats, and each flat thus constituted a hereditament that had been correctly entered into the council tax valuation list.
14. The respondent's representative further submitted that the respondent had given proper regard to all the circumstances of the case in relation to the discretionary powers to aggregate separate occupations in a dwelling under Article 4 of the Council Tax (Chargeable Dwellings) Order 1992 [SI: 1992 No. 549] ("the CDO"). The respondent had chosen not to apply discretion to aggregate the separate hereditaments into a single dwelling in this instance.
15. The appellant contended that the areas considered as separate dwellings by the respondent were not separate, and instead part of the main property. The areas described by the respondent as flats were developed as care units, which the appellant had constructed as part of a project to assist the Local Authority with care in the community and bed blocking in both hospitals and care homes.
16. He argued that the units were incapable of being considered as self-contained. They contained facilities such as a worktop, sink and space for storage however all food and was prepared and cooked in the main house kitchen. Residents of the care units were able to use and enjoy the facilities in the main house.
17. The appellant also argued he was bound by planning restrictions which supported that the care units were part of the main house. The planning department considered the units as not fully self-contained. They could not be sold separately to the main house. A resident's sole or main residence must also have been elsewhere.
18. The appellant understood that the respondent had a discretionary power to treat the separate hereditaments as one dwelling and sought for the respondent to do so.

### **Decision and reasons**

19. The panel referred to *Rawsthorne* where it was held it was necessary to initially consider whether any rooms comprised dwellings as defined in section 3 of the Act, before moving on, (if necessary), to consider the provisions of the CDO.
20. The panel ascertained whether the rooms constituted separate hereditaments under section 3 of the Act. The panel considered the four ingredients to constitute rateable occupation in *John Laing & Son Limited* and upheld the respondent's determination that each room constituted a hereditament and was therefore a dwelling in its own right.

21. The panel made findings of fact during open Tribunal. The appellant confirmed that individual tenancy agreements were issued for the units. Those were private agreements between the appellant as the landlord and the respective tenants. The agreements comprised of a minimum term of six months, and residents had often stayed beyond that initial term. Care providers came into the units to provide care however, the appellant had no contractual relationship with them. Cornwall Housing assisted the appellant in sourcing potential residents to the units, and a relative of the appellant had also resided in one of the units.
22. The units were contained in an extension to the main property which was formally a garage. No internal access to the units was available through the main house. Access to the units was externally through a main lockable door and both doors to access the units were also lockable. The appellant confirmed that toilets were also contained within the units. The units also comprised living space and a separate space with a bed.
23. The panel found that all four ingredients of rateable occupation were satisfied for both the ground floor and first floor flat. The rooms were capable of actual and beneficial occupation, as evidenced by the rooms being occupied by tenants who used them as places to live, sleep, reside and rent was being charged for the use of the rooms. It was clear to the panel that occupation of the rooms was exclusive to each individual tenant, and locks were present on each of them affording them a substantial degree of privacy. The panel was aware that there was no fixed definition of transience in law, however, it considered that a period of six months was sufficient to satisfy that occupation of the rooms was not too transient, and the appellant had stated that residents had continued to reside in the units in excess of that initial term.
24. The panel noted that the rooms did not have cooking facilities, and that the appellants were afforded the enjoyment of facilities in the main house. However, it did not consider that to be a determinative factor as to whether the rooms constituted hereditaments. In forming that view, the panel referred to the Lands Tribunal decision of *James v Williams* in which a number of flats were held to be separate hereditaments even though they shared some facilities.
25. The panel appreciated that the appellant was frustrated as it was apparent, he was not initially aware, or advised, that the units may be chargeable for council tax. The panel acknowledged that the appellant considered the planning restrictions amounted to the flats as part of the main house, however the panel deemed any such restrictions in this instance to be irrelevant when determining the existence of hereditaments.
26. The panel understood that the respondent had discretion to aggregate multiple hereditaments into a single dwelling in accordance with Article 4 of the CDO. The panel was aware that the respondent had chosen not to do so in this instance and following the Vice-President of the VTE's decision in *Burtfield Estates*, it did not have jurisdiction over the respondent's exercise of that discretion under the CDO.

27. In view of the foregoing, the panel was satisfied that the appeal properties were individual hereditaments and the council tax valuation list correctly showed three dwellings in respect of each one.

28. Consequently, the appeal was dismissed.

**Date:** 2 June 2023

**Appeal number:** VT00011203

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### **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.

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