

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation appeal; Local Government Finance Act 1992; The Council Tax (Chargeable Dwellings) Order 1992; The Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009; Self-contained unit; Capable of use as separate living accommodation; Appeal dismissed.

RE: 11 and 11a Bingham Road, Burnham SL1 7EE

APPEAL NUMBER: VT00011740

BETWEEN: YK Appellant
and
Dawn Bunyan Respondent
(Listing Officer)

PANEL: Mrs N C Yang (Presiding Senior Member)
Mrs M J Cole (Senior Member)

CLERK: Ms S Hodgson

ON: 7 December 2022

REMOTE HEARING

APPEARANCES: The appellant
Mr L Dalli of the Valuation Office Agency for the respondent

Summary of decision

1. Appeal dismissed. The panel determined that 11 and 11a Bingham Road were self-contained units with effect from 5 May 2021.

Introduction

2. This appeal had been brought in respect of a proposal submitted by the appellant and which was received by the Listing Officer (LO) on 17 March 2022. The proposal challenged the LO's

decision to enter 11 and 11a Bingham Road into the valuation list as separate entries with effect from 20 May 2020. The appellant sought reinstatement of the original single entry.

3. The LO did not agree to the appellant's proposal and issued a decision notice to that effect 7 June 2022. The appellant submitted an appeal to the Valuation Tribunal against the LO's decision notice on 16 June 2022.
4. The physical state of the property and its locality are taken to be as they were at the "relevant date", which for the purposes of this appeal was 20 May 2020, that being the date on which the flat entered the valuation list.
5. 11 Bingham Road was a semi-detached house located in Burnham in Slough. The house had been in the valuation list as a three-bedroom property in Band D since 1 April 1993. Following a two-storey, side extension, the LO altered the list on 5 May 2021, with effect from 20 May 2020 to include 11a Bingham Road as a self-contained unit in Band A. 11a Bingham Road was listed as having a bedroom and ensuite bathroom on the first floor, a fitted kitchen within a utility room, toilet, and living room on the ground floor. There was a staircase in the side extension linking the two floors and an external entrance on the ground floor.
6. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

7. The issue was whether the 11a Bingham Road constituted a self-contained unit and therefore fell to be treated as a separate dwelling for Council Tax purposes.

Evidence and submissions

8. Mr Dalli for the respondent provided a bundle that included both parties' appeal submissions. It included photographs, floorplans, and planning documents of the subject property, the appellant's proposal and appeal paperwork, relevant extracts of legislation, and relevant case law.
9. Mr Dalli argued that the two-storey side extension was a self-contained unit within the legislation as it contained all of the elements required for separate living accommodation. He stated that following the extension, there was now one hereditament, but two self-contained units and asked for the appeal to be dismissed.
10. The appellant contended that he had received planning permission for a two-storey side extension and that the council considered it to be one single dwelling. He stated that it is only used as one family house and the reason for a second kitchen is to accommodate large family gatherings. The appellant explained that there were two phases to the works and that currently only the first phase had been completed which is why there is no connection between the

extension and the main house on the first floor. He asked for 11a to be re-aggregated with the main house.

Decision and reasons

11. Section 3 of the Local Government Finance Act 1992 defines the meaning of a dwelling as being that which would have been a hereditament in section 115 of the General Rate Act 1967 had it remained in force:

“hereditament” means property which is or may be 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.

12. The Court of Appeal case *John Laing & Son Ltd v Kingswood A.C., Thornbury R.D.C. and Gloucestershire C.V.C.* [1948] sets out the four ingredients of rateable occupation that need to be met to be a hereditament. These are actual occupation, exclusive occupation, beneficial occupation, and the occupation must not be too transient.

13. The panel found that 11a Bingham Road was not a separate hereditament as there was no tenant in rateable occupation on the relevant date. Whether it was a hereditament or not was not in dispute by the parties.

14. The Council Tax (Chargeable Dwellings Order) 1992 (the “Order”) brought into existence self-contained units as an alternative type of dwelling. Article 2 of the Order provides definitions of “single property” and “self-contained unit”:

“single property” means property which would, apart from this Order, be one dwelling within the meaning of section 3 of the Act;

“Self-contained unit” means –

(a) a building or part of a building;

(b) a caravan; or

(c) a boat

which has been constructed or adapted for use as separate living accommodation.

Article 3 of the Order states:

3. *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.*

15. Mr Dalli stated in open tribunal that the wrong effective date had been used when disaggregating the property. For a self-contained unit the effective date cannot be backdated to when the self-contained unit came into existence, it can only take effect from the date the LO alters the valuation list.

16. Regulation 11 of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 determines the effective date for alterations of the valuation list:

11 Day from which alteration has effect

...

*(6) Subject to regulation 3(2), 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.*

...

17. Mr Dalli confirmed that should the appeal be dismissed; the effective date would be amended to 5 May 2021 when the valuation list was altered.

18. The panel then considered whether 11a Bingham Road was a separate self-contained unit as defined in article 2 of the Order. To be classed as a self-contained unit, it needed to be capable of use as separate living accommodation. The panel noted there was no dispute between the parties that the area described as 11a Bingham Road had a living room, a fitted kitchen in the utility room, one bedroom with a walk-in dressing area, one bathroom, one toilet, and an external entrance.

19. The original planning permission for the extension included a doorway on the first floor between the extension and the existing bedroom and did not include a staircase in the extension. The appellant confirmed that the two-storey side extension varied from the planning documents and a staircase had been installed. This meant there were now two staircases in the hereditament. There was also no access to the extension from the first floor of the main house.

20. There have been a number of High Court decisions over the years relating to the application of the Order. Those identified below were specifically referred to by LO:

R (On the application of Coleman (LO) v Rotsztein HC [2003], in which the High Court determined that the taxpayer's intention in constructing an annexe and the use made of it were not relevant to the question of whether the annexe was self-contained, which depended on what had physically been constructed (the bricks and mortar test).

Batty (LO) v Burfoot & Batty (LO) v Merriman [1995], which established that practicability of sale was not a relevant factor because, although, the basis of valuation was a sale in the open market, it did not follow that a unit that could not be sold separately was not a separate dwelling.

Rodd (LO) v Richings [1995], in which the High Court determined that it was incorrect to regard a planning restriction as exclusively determinative as to whether a unit constituted separate living accommodation.

Gilbert (LO) v Childs [1995], which established that the level of communal living within a property was not a relevant criterion.

McCull v Subacchi (LO) [2001], established that, the fact that one had to pass through the house to reach a flat did not deprive the flat of its character as a self-contained unit.

21. The panel had regard to all the case law before it and found that the overall theme was that the intended or actual use of the dwelling was not relevant when deciding if a self-contained unit was present. The panel must apply the bricks and mortar test to the annexe. Therefore, the appellant's contention that this was used as one family home was not relevant in deciding whether a self-contained unit existed.
22. The panel heard from the appellant that the utility room in 11a Bingham Road housed the only washing machine in the property. He did confirm that a washing machine could still be connected in the main house. It was the panel's opinion that a washing machine was an appliance, and the presence, or lack of presence, did not prevent a dwelling coming into existence. The case law referred to above established that a degree of communal living was not a determining factor in whether a self-contained unit existed.
23. When considering if 11a Bingham Road was a self-contained unit, the panel must have regard to the relevant legislation and case law. The legislation, as stated above, clearly stated that a building or part of a building that has been constructed for use as separate living accommodation is a self-contained unit and is required to be treated in the valuation list as a separate dwelling.
24. Based on the evidence submitted and the arguments put forward by the parties, it was the panel's opinion that the 11a Bingham Road was capable of use as separate living accommodation and therefore passed the test in law of being a self-contained unit.
25. Consequently, the panel found that 11 and 11a Bingham Road were confirmed to be two self-contained units under article 2 of the Order and therefore the appeal was dismissed.
25. The panel noted Mr Dalli's earlier submission that should the appeal be dismissed; the effective date of the self-contained units would be amended to 5 May 2021 to abide with current legislation.

Date: 23 December 2021

Appeal number: VT00011740

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.