



VALUATION TRIBUNAL FOR ENGLAND

CT Liability appeal — Local Government Finance Act 1992: Section 4 (Dwellings chargeable to council tax) — Town and Country Planning Act 1990: Section 55 (Meaning of “development”) and Section 171A (Expressions used in connection with enforcement) — Council Tax (Exempt Dwellings) Order 1992 [SI 1992 No. 558]: Article 3 - Class T (annexes which cannot be separately let) — meaning of “breach of planning control”; appeal allowed.

APPEAL NUMBER: VT00014823

RE: The Annexe, Westfield, Bath Road, Reading, RG7 5QA
(the “subject dwelling”)

BETWEEN:	BS	Appellant
	and	
	West Berkshire Council (Billing Authority)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Tuesday 17 December 2024 at 10:00 hours

BEFORE: Mr FJ Stuart, Vice President

CLERK: Mr W Hamilton IRRV(Dip) A.Inst.Pa, Deputy Registrar

APPEARANCES: The Appellant-in-person (by telephone)
Mr I Bell for the Respondent Billing Authority (by Microsoft Teams)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.
2. I am satisfied that from 1 April 2018 the subject dwelling was an exempt dwelling and is therefore not chargeable to council tax.

Introduction

3. The Respondent Billing Authority hold the Appellant liable for the payment of council tax in respect of the subject dwelling. The Appellant brings this appeal, contending that the dwelling should be an “exempt dwelling”, thus not chargeable to council tax, on the basis that it is an annexe which cannot be separately let from the main dwelling.
4. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Background

5. The Appellant is the owner of the subject dwelling, together with another dwelling which forms part of the same hereditament, namely Westfield, Bath Road, Reading, RG7 5QA (the “main dwelling”). The subject dwelling was entered into the council tax valuation list from 30 January 2011.
6. It appears that he has been in dispute with the Respondent Billing Authority regarding his council tax liabilities for the subject dwelling and the main dwelling for a number of years.
7. On 1 November 2022, the Appellant wrote to the Respondent Billing Authority challenging his liability for council tax for the subject dwelling. Within that letter the Appellant references “*exemption T*” and that there is “*restricted planning permission*”. He goes on to comment that the dwelling could not be let and was, in any event, not habitable.
8. On 18 November 2022, Mr I Bell wrote to the Appellant confirming that his council tax liability for the subject dwelling had been correctly calculated. In particular, he confirmed that from 21 February 2014 to 31 March 2018 the Appellant was resident in the subject dwelling and received a 25% discount as the only resident in the property. Subsequently, from 1 April 2018, the Appellant receives a 50% discount. Mr Bell also confirms that he has found no evidence of any planning restriction limiting the letting or use of the subject dwelling.
9. On 19 January 2023, the Appellant filed with the Tribunal an appeal against the Respondent Billing Authority’s decision of 18 November 2022. In short, the Appellant continued to pursue his argument that the subject dwelling should be an exempt dwelling as it is an annexe which cannot be separately let from the main dwelling.

Previous proceedings before the Tribunal

10. On 13 August 2024, this matter was previously heard by the Tribunal at a remote hearing.
11. On 27 August 2024, the Tribunal issued a decision, which dismissed the appeal.
12. On 14 November 2024, following an application from the Appellant, I directed a review of the Tribunal’s decision as I was satisfied that a procedural irregularity has arisen in those proceedings, namely that the Tribunal had failed to give sufficient regard to the legislation. Having undertaken that review myself, I set the decision aside and directed that the matter be heard afresh before me.

Variation to the model hearing procedure

13. At the commencement of the hearing, the Deputy Registrar informed me the parties had, at his instigation, agreed to seek a variation of the model hearing procedure. In short, this modification was that Mr Bell would present the case for the Respondent Billing Authority first, followed by questions of him, then the Appellant would present their case, followed by question of them. Otherwise, the procedure adopted remained as set out in PS8 of the Tribunal's Consolidated Practice Statement.
14. Given that the Appellant is a layperson and there is agreement by the parties for such a modification, I considered it was in the interests of justice to grant the modification and directed the modification to the above extent.

Relevant Law*Council tax and "exempt dwellings"*

15. Part I of the Local Government Finance Act 1992 (the "1992 Act") makes provision for billing authorities in England and Wales to levy a tax, known as council tax, in respect of domestic property ("dwellings").
16. Section 4 of the 1992 Act makes provision for which dwellings are chargeable to council tax, known as "chargeable dwellings". It provides—

4 Dwellings chargeable to council tax

- (1) Council tax shall be payable in respect of any dwelling which is not an exempt dwelling.
- (2) In this Chapter—

"chargeable dwelling" means any dwelling in respect of which
council tax is payable;

"exempt dwelling" means any dwelling of a class prescribed by
the Secretary of State.

- (3) For the purposes of subsection (2) above, a class of dwellings may be prescribed by reference to such factors as the Secretary of State sees fit.
- (4) Without prejudice to the generality of subsection (3) above, a class of dwellings may be prescribed by reference to one or more of the following factors—
 - (a) the physical characteristics of the dwellings;
 - (b) the fact that dwellings are unoccupied or occupied for prescribed purposes or are occupied or owned by persons of prescribed descriptions.

17. The Secretary of State has made provision for the classes of “exempt dwelling” under Section 4 of the 1992 Act through the Council Tax (Exempt Dwellings) Order 1992 [SI 1992 No. 558] (the “Exempt Dwellings Order”). So far as is relevant to these proceedings, it provides—

2

- (1) For the purposes of this Order—

...

“single property” means property which would, apart from the Council Tax (Chargeable Dwellings) Order 1992 be one dwelling within the meaning of section 3 of the Act;

...

“an unoccupied dwelling” means ... a dwelling in which no one lives...

3

A dwelling is an exempt dwelling for the purposes of section 4 of the Act on any particular day if on that day it falls within one of the following classes—

...

Class T: an unoccupied dwelling which—

- (a) forms part of a single property with another dwelling; and
- (b) may not be let separately from that other dwelling without a breach of planning control within the meaning of section 171A of the Town and Country Planning Act 1990;

Breach of planning control

18. Section 171A of the Town and Country Planning Act 1990 (the “1990 Act”) provides a definition of a breach of planning control. So far as is relevant, it provides—

171A Expressions used in connection with enforcement

- (1) For the purposes of this Act—

- (a) carrying out development without planning permission; or
- (b) failing to comply with any conditions or limitations subject to which planning permission has been granted,

constitutes a breach of planning control.

19. Section 55 of the 1990 Act provides a definition of the meaning of development for the purposes of the Act. So far as is relevant, it provides—

55 Meaning of “development” and “new development”

- (1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in use of any building or other land.

...

- (3) For the avoidance of doubt it is hereby declared that for the purposes of this section—

- (a) the use as two or more separate dwellinghouses any building previously used as a single dwellinghouse involves a material change of use of the building and of each part of it which is so used;

Appeal to the Tribunal

20. Section 16 of the Act establishes a right of appeal to this Tribunal. So far as is relevant to this case, it provides –

16 Appeals: general

- (1) A person may appeal to [the Valuation Tribunal for England] if he is aggrieved by—
 - (a) any decision of a billing authority that a dwelling is a chargeable dwelling...

...

Discussion

21. There is little dispute regarding the factual position. The subject dwelling was originally constructed in 1983 to be a playroom as an appurtenance to the main dwelling. The Appellant resided in the dwelling for a period, the main dwelling having been affected by flooding. From 1 April 2018, the subject dwelling has been unoccupied and unused (and the Appellant contends is uninhabitable).

22. Although the Appellant may dispute the inclusion of the subject dwelling in the council tax valuation list (which is a separate matter which they may, should they wish, take up with the Listing Officer at the Valuation Office Agency), it is clear that the subject dwelling forms part of a single property with the main dwelling. The outcome of this appeal turns on paragraph (b) of Class T: *could the subject dwelling be let separately from that other dwelling without a breach of planning control?*

23. Both the Appellant and Mr Bell referred to the email from a planning officer at the Respondent Billing Authority dated 17 November 2022. The key part of that email was as follows—

“... after careful study, no condition restricting or limiting the use was found on any of them [the planning applications]. I would add that any annexe alleged to have been let separately is liable to be investigated by the planning enforcement team. This is because regardless of the fact no such condition was applied, to let

or rent an annexe separately to its main dwellinghouse is usually a breach of planning, including short lets i.e Airbnb.”

24. For the Respondent Billing Authority, Mr Bell contends that this email, referring to the first sentence, demonstrates that there is no restriction or condition preventing the subject dwelling being separately let.
25. However, upon questioning, Mr Bell struggled to reconcile that position with the second and third sentences and in my view sought to place an overstretched interpretation of “usually” in that context. It was his contention that, notwithstanding his view the subject dwelling did not satisfy paragraph (b) of Class T, should the subject dwelling be separately let, it would be for the planning team to investigate whether any breach of planning conditions had occurred.
26. That is inherently circular: the subject dwelling cannot both be free from any restriction upon its letting, and liable for investigation for a breach of planning conditions, should it in fact be separately let. Further, it cannot be right that in order to demonstrate the subject dwelling is exempt, he must put in place circumstances which would mean the dwelling then fails to meet the criteria for that exemption.
27. The Appellant, correctly in my view, read those second and third sentences as demonstrating there would be a breach of planning control were they to separately let the subject dwelling.
28. Section 55(1) and (3)(a) of the 1990 Act makes it absolutely clear that to begin using a single dwellinghouse as two or more separate dwellinghouses constitutes a material change in use of those buildings, which is “development” for the purposes of that Act. Section 171A of the 1990 Act then defines as a breach of planning control “development” without planning permission. Indeed, I believe that is exactly what the planning officer was getting at in the second and third sentence of his email extract above.

Disposal

29. In view of the above findings, I am entirely satisfied that the subject dwelling fulfils the criteria of Class T at Article 3 of the Exempt Dwellings Order from 1 April 2018 and is thus not a chargeable dwelling from that date.
30. Accordingly, I order—
 - (1) The Respondent Billing Authority’s decision that the subject dwelling is a chargeable dwelling from 1 April 2018 is reversed and the Appellant’s liability for council tax in respect of the subject dwelling from 1 April 2018 is quashed; and
 - (2) the Respondent Billing Authority must comply with this decision within two weeks.



VICE PRESIDENT

Date approved for issue: 18 December 2024

Date issued to parties: 18 December 2024

Right of further appeal

Any party 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 directly to the High Court within four weeks of the date of this notice.
