

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; was flat rear first floor a dwelling within a single hereditament, in order for the appellant to be awarded 50% discount for an annexe of appeal property; the Council Tax (Reduction for Annexes) (England) Regulations 2013, SI 2977/2013; Appeal dismissed.

RE: Ground Floor, and Flat (rear first floor), 1 Strangways Terrace, Truro TR1 2NY

APPEAL NUMBER: VT00017903

BETWEEN:	RS	Appellant
	and	
	Elmbridge Borough Council	Respondent
	(Billing Authority)	

PANEL: Mrs N Carman (Presiding Senior Member)
Mrs F Rahman-Cook (Senior Member)

CLERK: Mrs H Beresford

HEARING: Remote Hearing on 22 March 2024

APPEARANCES: The appellant
Ms L Johnson (Representative for the Respondent)

Summary of decision

1. The appeal was dismissed. The panel held that Ground Floor, and Flat (rear first floor), 1 Strangways Terrace, Truro TR1 2NY were both single properties. Therefore, Flat (rear first floor) did not qualify for a 50% annexe discount.

Introduction

2. The appeal was brought by the appellant, to challenge the Billing Authority's (BA) decision of 12 July 2023 to refuse to award a 50% discount under The Council Tax (Reductions for Annexes) (England) Regulations 2013 SI 2977/2013 with regards to Flat (rear first floor).
3. The appellant was the owner of 1 Strangeways Terrace. The property had been split into five flats prior to the introduction of council tax in 1993. Each of the flats had been ascribed its own council tax band and with the exception of Ground Floor, 1 Strangways Terrace, (which was occupied by the appellant) each flat had been let to tenants. With effect from 22

November 2013, when the last tenant left, the appellant has been using Flat (rear first floor) himself as what he contended was an annexe to Ground Floor, 1 Strangways Terrace. The other three flats within 1 Strangways Terrace, remain separately let.

4. Flat (rear first floor) is situated directly above the ground floor flat on the first floor. Each flat has its own separate entrance and they are entered separately within the Valuation List as follows:

Ground floor – Band B with effect from 1 April 1993

Flat (rear first floor) – Band A with effect from 1 April 1993

5. With the agreement of the parties, the panel varied the procedure outlined in the Consolidated Practice Statement PS8 - Model Procedure and invited the respondent to present her evidence first to assist the unrepresented appellant.
6. This decision document is not and does not purport to be a verbatim record of proceedings.

Issue

7. The issue in dispute was whether the appellant is entitled to a 50% annexe discount with regards to Flat (rear first floor).

Evidence and submissions

8. The BA had provided the panel with a bundle of evidence, which included all of the evidence and submissions from both parties.
9. The appellant argued that he had moved some of his personal effects into Flat (rear first floor), this included books and some furniture including bookcases and he argued that it fits the definition of an annexe; in particular he stated that:
 - It has been built or adapted for use as a separate living accommodation
 - It has its own cooking and washing facilities
 - It has a separate entrance to the main home
 - It is within the curtilage of the main home
 - It has a functional link with the main home
 - It is in the same ownership as the main home
10. Ms Johnson, representing the BA argued that both flats were separate single properties, with their own entry within the Valuation List, she contended that Flat (rear first floor) was being used as the appellant's second home and not an annexe. Furthermore, Flat (rear first floor) has not been built or adapted for use as separate living accommodation from the Ground Floor (Flat), which is the appellant's main property. Therefore. Ms Johnson requested that the panel dismiss the appeal.

Decision and reasons

11. In reaching its decision, the panel referred to the legislation regarding discounts for annexes namely the Council Tax (Reductions for Annexes) (England) Regulations 2013 SI 2977/2013. The relevant parts of the regulations are as follows:

The Council Tax (Reductions for Annexes) (England) Regulations 2013
Regulation 3 to SI 2013/2977 says:

(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 those 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 be one dwelling within the meaning of section 3 of the 1992 Act;
- (b) a person ("P") is to be regarded as the relative of another if P
 - (i) is the spouse or civil partner of that person, or
 - (ii) is that person's parent, child, grandparent, grandchild, brother, sister, uncle or aunt, nephew or niece, great-grandparent, great-grandchild, great-uncle, great-aunt, great-nephew or great-niece, or
 - (iii) is that person's great-great-grandparent, great-great-grandchild, great-great-uncle, great-great-aunt, great-great-nephew or great-great-niece; and
 - (aa) a relationship by marriage or civil partnership shall be treated as a relationship by blood;
 - (bb) a relationship between two persons who are not married but are living together as a married couple shall be treated as a relationship by marriage and a relationship between two persons of the same sex living together as if they were civil partners shall be treated as a relationship by civil partnership; and
 - (cc) the stepchild of a person shall be treated as that person's child;
 - (dd) the child of the civil partner of a person ('A') shall be treated as A's child; and
- (c) "the person who is liable to pay council tax" includes a person who would be so liable if the dwelling were not an exempt dwelling within the meaning of the Council Tax (Administration and Enforcement) Regulations 1992.

12. The explanatory notes at the end of the regulations explain this further as:

Section 13 of the Local Government Finance Act 1992 makes provision for reduced amounts of council tax to be payable if certain conditions prescribed by the Secretary of State are fulfilled.

These Regulations relate to England and prescribe a 50% reduction in the amount of council tax payable (on top of any discounts under sections 11 or 11A and/or any premiums under section 11B) for people living in annexes provided they are related to the person liable to pay the council tax of the main dwelling (or the person who would be so liable were it not for an exemption or 100% discount or reduction), and for people living in dwellings with annexes which are unoccupied provided they are using those annexes as part of their main residence.

13. The appellant had contacted the Valuation Office Agency and had been advised that the flats are assessed as self-contained units using the definition of a self-contained unit being a building or part of a building that has been adapted to make it capable of forming a separate unit of living accommodation, but there was no confirmation as to whether these flats are assessed under the Local Government Finance Act 1992 or under The Council Tax (Chargeable Dwellings) Order 1992.
14. The panel referred to the photographs and plans which had been provided by the appellant as well as facts regarding 1 Strangways Terrace, Truro, given in oral evidence by him as follows:
- The property comprises five flats
 - Each flat has its own lockable entrance from common areas within the property (with the exception of the basement flat which has its own access from outside).
 - Each flat has its own utility bills and council tax bill/banding.
 - There is no internal access between the flats
 - No structural or other alterations have been made to Flat (rear first floor) since the last tenant left in 2013.
 - There is no direct access between Ground Floor (flat) and Flat (rear first floor)
 - The flats are let on assured shorthold tenancies for a period of six months
15. The panel was satisfied, taking into consideration the above that Flat (rear first floor), was not an annexe attached to a main dwelling. The entry for Ground Floor, and Flat (rear first floor), appeared to have been inserted into the Council Tax List under section 3 of the Local Government Finance Act 1992. Section 3 states:

3 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”); and in applying paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption.

(3) A hereditament which—

(a) is a composite hereditament for the purposes of Part III of the 1988 Act; and

(b) would still be such a hereditament if paragraphs (b) to (d) of section 66(1) of that Act (domestic property) were omitted, is also, subject to subsection (6) below, a dwelling for the purposes of this Part.

(4) Subject to subsection (6) below, none of the following property, namely—

(a) a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property used wholly for the purposes of living accommodation; or

(b) a private garage which either has a floor area of not more than 25 square metres or is used wholly or mainly for the accommodation of a private motor vehicle; or
(c) private storage premises used wholly or mainly for the storage of articles of domestic use, is a dwelling except in so far as it forms part of a larger property which is itself a dwelling by virtue of subsection (2) above.

(5) The Secretary of State may by order provide that in such cases as may be prescribed by or determined under the order—

(a) anything which would (apart from the order) be one dwelling shall be treated as two or more dwellings; and

(b) anything which would (apart from the order) be two or more dwellings shall be treated as one dwelling.

16. The panel found that Flat (rear first floor) was a separate single hereditament, contained within a building with other separate hereditaments. Both Ground Floor, and Flat (rear first floor), were separate in that they could be let separately and did not have any links with each other. No connecting doors or passageways linked both flats together. The only thing that linked these two flats was that they were owned and occupied by the same person. They had separate entrances, Ground Floor, could not access Flat (rear first floor), internally and vice versa.
17. The appellant argued that previously the BA had accepted that one of the other flats in the building was an annexe this was the flat known as Flat (front ff). Ms Johnson accepted that the appellant had told the BA that this was an annexe, but the BA had not accepted that description and had considered the flat to be a second home. This was evidenced by a copy of the relevant council tax bill which was in the bundle of evidence. In any event the matter was never pursued because the flat was relet.
18. As such, the panel held that Flat (rear first floor) was not an annexe attached to another dwelling and occupied by a person related to the person liable to pay the council tax charge of the main dwelling, as described in the regulations.
19. The panel held that Flat (rear first floor) was not an annexe, but a hereditament in accordance with S.3 of the LGFA 1992. Therefore, Flat (rear first floor) did not meet the criteria for an annexe discount and the panel dismissed the appeal.

Date: 15 April 2024

Appeal Number: VT00007852

Appeal rights:

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.