



VALUATION TRIBUNAL FOR ENGLAND

Council tax valuation appeal: request to merge; the Council Tax (Chargeable Dwellings) Order 1992; self-contained unit; Corkish (LO) v Wright and Hart [2014] EWHC 237 (Admin); interim decision, appeal allowed.

APPEAL NUMBER: VT00020122

RE: 17 Donald Aldred Drive, Ilkley, LS29 7SG
(the "appeal property")

BETWEEN:	MB	Appellant
	and	
	Joanne Moore IRRV (Hons) (Listing Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 30 July 2024

BEFORE: Mr MH Smith, Presiding Senior Member
Mr WJ Read, Senior Member

CLERK: Mrs D Davies IRRV(Hons) BA (Hons)

APPEARANCES: MB, the appellant
Ms Frances Fisher, on behalf of the Listing Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.
2. The Tribunal panel was satisfied that the part described as the 'annexe' was not a separate self-contained unit and that therefore its entry should be deleted from the valuation list.
3. The Tribunal makes directions at paragraph 22 to determine the valuation of the single hereditament.

Introduction

4. The valuation list has two entries in respect of 17 Donald Aldred Drive: the main house has been listed in band G since 7 February 2002, and the 'Annexe' was added to the list, in band A, with effect from 30 August 2023. The appellant made a proposal to the listing officer on 11 August 2023 that the annexe should be deleted from the valuation list. This appeal has been brought in respect of the listing officer's decision of 30 October 2023 in which she declined to delete the list entry for the annexe.
5. In order to assist the lay appellant, and with the agreement of the respondent's representative, the panel varied the Tribunal's model procedure and invited the Listing Officer's representative to present her evidence first.
6. This statement of reasons is not and does not purport to be a verbatim record of proceedings.

Background

7. 17 Donald Aldred Drive entered the valuation list in band G in 2002. In 2016/2017 the then-owners extended the lower ground floor to add an en-suite shower room to an existing bedroom, and to enlarge the balcony on the floor above. The appellant purchased 17 Donald Aldred Drive on 6 March 2020. The purchase triggered a review of the property's banding.
8. The listing officer determined that the alterations to the lower ground floor created a separate self-contained unit and created a list entry for the 'Annexe'. The effective date in this appeal is 30 August 2023, the date the appeal property entered the list, and the relevant date, the date one must have regard to the physical state of the dwelling, is the same
9. The appellant disputed the new list entry, stating that the area identified forms part of the main house, is not self-contained, and could not be so without major structural works.
10. The listing officer provided a combined evidence bundle which contained contributions from both parties to the appeal. It comprised of plans, photographs, the originating proposal and subsequent listing officer's decision and extracts from legislation.
11. Extracts of and references to the following High Court judgements was also included:
 - *Coleman (LO) v Rotsztein* [2003] EWHC 1057
 - *Salisbury v Bunyan* [2021] EWHC 3136 (Admin)
 - *Jorgensen (LO) v Gomperts* [2006] RA 300
 - *McColl v Subacchi LO* [2001]
 - *Ramdhun v Valuation Tribunal of England* [2014]

In addition, following the hearing, the clerk circulated a copy of the judgement in *Corkish (LO) v Wright and Hart* [2014] EWHC 237 (Admin) and provided the opportunity for the parties to comment if they so wished. No responses were received.

Relevant Law

12. The statutory framework for deciding what constitutes a dwelling for council tax purposes is contained in section 3 of the Local Government Finance Act 1992.

3 Meaning of a “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 of that Act remained in force; and
 - (b) is not for the time being shown or required to be shown in a local or 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 the paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption.

13. Article 3 of the Council Tax (Chargeable Dwellings) Order 1992 provides:

“...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.”

14. Article 2 of the Council Tax (Chargeable Dwellings) Order 1992 contains the definition of a ‘self-contained unit’:

“‘Self-contained unit’ means a building or part of a building which has been constructed or adapted for use as separate living accommodation”.

Discussion

15. The panel was satisfied that, as the area identified as the annexe was occupied together with the other parts of the house as a family home, the appeal property constituted a single hereditament. The issue before the panel was whether the hereditament comprised two self-contained units. In accordance with Article 3 of the Council Tax (Chargeable Dwellings) Order 1992, if there were two self-contained units, each one must be separately banded.
16. The listing officer stated that a self-contained unit would usually have:
- Independent access via its own front door or access from a communal area within the main house.
 - Space for living and sleeping.
 - Washing facilities and a toilet.
 - Basic food preparation facilities.

The listing officer contended that all of these facilities were present within the lower ground floor (the putative self-contained unit) at the appeal property: there was a living room (shown as the 'garden room' on the plans), bedroom with ensuite shower room and a kitchen area. The annexe could be accessed from the hallway of the main house or through exterior doors in the kitchen, lounge and bedroom.

17. The appellant argued that the layout of the building made it impossible that the annexe was a separate self-contained unit; there was no door between the lower ground floor and rest of the house. He explained that the annexe could not be separated off from the main house, and stated that the landing / hall area formed part of the atrium and as such was an integral part of the overall living space. He said that there was no access to the garden from the house other than through the putative self-contained unit, although he confirmed when questioned that the garden could be accessed via a walkway between the main house and adjacent garage.
18. The appellant stated that there had never been any intention to create an annexe, and the space was not used as such. The listing officer's representative confirmed that the annexe had been identified by examination of the floor plans and with consideration of the names of the rooms. The appellant argued the annexe's kitchen was originally known as a 'utility' and had been renamed on the floor plans after the alterations had been made.
19. The panel had regard to the case law. It understood from *Jorgenson* and *Ramdhun* that the lack of doors and locks did not preclude an area from being 'self-contained'. *Coleman* provided that intention and actual use was not relevant to the question of whether there was a self-contained unit, what was important is what was physically there. This concept was revisited in the High Court judgment of *Corkish (LO) v Wright and Hart* [2014] EWHC 237 (Admin) in which Popplewell J identified six principles, summarised below:
 - i. Is the effect of the construction such as to make the part of the building "reasonably suitable for use as separate living accommodation" – preferring "reasonably suitable" to "capable." What matters is fitness for that purpose by reference to contemporary standard of what is reasonable, not whether it might conceivably be used for such purpose however remote the possibility.
 - ii. The question in (i) is to be answered by reference to the physical characteristics of the building. This had been called the "bricks and mortar test," but that fails to capture the wide range of physical characteristics which may be relevant including services and fixtures.
 - iii. The test is objective: purpose, intention, circumstances and so on are irrelevant.
 - iv. It is for the Tribunal as a matter of fact and degree to determine whether the test is met.
 - v. Actual use may be relevant because it might support a conclusion that its physical characteristics make it suitable for such occupation, but it is not the test and will not usually be a factor of significant weight.
 - vi. Where part of a building is being considered, regard must be had to the characteristics of the rest of the building, such as access.

20. The panel considered the characteristics of the house. It also referred to the definition of a 'self-contained unit' which, as far as it applies to this appeal, is "part of a building which has been constructed or adapted for use as separate living accommodation". Taking this definition along with the established case law, the panel understood that a self-contained unit is something more than the particular configuration of rooms or facilities, and as such, not something that can necessarily be determined by looking rigidly at floorplans.
21. The appeal property, taken as whole, would be a large, detached house with five bedrooms. The panel reviewed the photographs of the rear of the house: two sets of patio doors provide access to the garden and the paved seating areas. Both of these doors are contained within the putative self-contained unit, as is the other rear / side door. The panel found it improbable that a house of this size and type would not have direct access to the garden and its equipment. The panel also expected that a house of this size would have additional family / living areas, the presumed function of the 'garden room'. The panel was of the opinion that the open aspect conferred by the shared atrium undermined the feeling of separateness that would be usual in a self-contained unit to a house of this character.
22. In response to a question from the appellant, Ms Fisher declined to explain the changes that could be made to the appeal property, which the listing officer would determine incorporated the putative annexe into the main house.
23. In view of the above findings the panel determined that the annexe did not constitute a separate self-contained unit and that therefore the appeal property was a single dwelling.

Direction

24. In the absence of any submissions from the parties as to the correct valuation of the subject property as a single dwelling, the Tribunal Panel **directs—**
 - a. Unless the disposal of these appeals is agreed by the parties or this interim decision is appealed to the High Court, the appeals shall be listed to a hearing to determine the correct valuation of the subject property as a single dwelling (which may be heard by the same or different members of the Tribunal) to take place not earlier than eight weeks following the issue of this interim decision.
 - b. the **Respondent Listing Officer** shall, no later than **six weeks prior to the hearing**, serve upon the Appellant her full submission regarding the valuation of the single dwelling; and
 - c. the **Appellant** shall, no later than **four weeks prior to the hearing**, serve upon the Respondent Listing Officer any further evidence he wishes to rely upon before the Tribunal;
 - d. the **Respondent Listing Officer** shall, no later than **two weeks prior to the hearing**, file with the Tribunal and serve upon the Appellant a single paginated bundle (the "consolidated hearing bundle") which consists of—
 - i. the Respondent Listing Officer's submission under sub-paragraph (2), above,

- ii. any further evidence supplied by the Appellant under sub-paragraph (3), above, and
- iii. a rebuttal to any further evidence supplied by the Appellant under sub-paragraph (3), above (should the Respondent Listing Officer choose to make one);
- e. the parties' submissions under sub-paragraphs (2), (3), and (4), above, must be their full case and evidence and must include full copies of any legislation or case law to be relied upon at the hearing;
- f. the parties are at liberty to vary the deadlines for compliance with sub-paragraphs (2) and (3), above, by agreement;
- g. the parties must file any documentation with the Tribunal by email, ensuring that the appeal numbers are included.
- h. Unless otherwise agreed by the parties, service in accordance with the proceeding directions shall be made –
 - i. when serving upon the Appellant, by email and
 - ii. when serving upon the Respondent Listing Officer, by email
- i. either party is at liberty to apply for a variation of these directions.
- j. a failure by a party to comply with a requirement of these directions may –
 - i. in the case of the **Appellant**, result in the striking out of these proceedings or in the exclusion of all or part of their evidence or arguments, or
 - ii. in the case of the **Respondent Listing Officer**, result in their barring from further participation in these proceedings or the exclusion of all or part of their evidence or arguments.

Date issued to parties: 22 October 2024

25. The appeal was put before a new panel on 21 October 2024. The panel members were William Read and David Greensmith (chair).

26. Following the release of the interim decision, together with the above Directions, the parties emailed the clerk to confirm that they had come to an agreement that the valuation band for the single entry for 17 Donald Aldred Drive, Ilkley, LS29 7SG should be band G.
27. The panel ratified the agreement and allowed the appeal, confirming that the correct assessment for the single hereditament was band G, with effect from 30 August 2023.

Order

28. Under the provisions of Regulation 38 (2) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Listing Officer to alter the Valuation List within two weeks of the date of this order to show that 17 Donald Aldred Drive, Ilkley, LS29 7SG comprised a single dwelling that should be assessed at band G, with effect from 30 August 2023.

Right of further 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.
