



## 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 dismissed.*

APPEAL NUMBER: VT00021059

RE: Annexe, Bradford Farm, Uplowman Road, EX16 7DQ  
(the “appeal property”)

BETWEEN: AF Appellant

and

Lucy Formela-Osborne  
(Listing Officer) Respondent

SITTING: *remotely using Microsoft Teams*

ON: 5 December 2024

BEFORE: Mr JM Imperato, Presiding Senior Member  
Mrs H Newman-Newing, Senior Member

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

APPEARANCES: The appellant  
Ms Sarah-Jane Nesbitt, on behalf of the listing officer

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## DECISION AND STATEMENT OF REASONS

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### Decision

1. The appeal is dismissed.
2. The Tribunal panel determined that there should be no change to the entry in the valuation list (“the list”) for the appeal property.

### Introduction

3. The valuation list has two entries in respect of Bradford Farm, Uplowman Road, Tiverton, Devon EX16 7DQ: the main house has been listed in band G since 1 April 1993, and, in

August 2023 the 'Annexe' was added to the list, in band A, with effect from 1 April 2023. The appellant made a proposal to the listing officer on 28 September 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 19 December 2023 in which she declined to delete the list entry for the annexe.

4. 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.
5. This statement of reasons is not and does not purport to be a verbatim record of proceedings.

### Background

6. Several years ago the appellant re-purposed two rooms in what he referred to as 'the main property', creating a bedroom, bathroom and kitchen area out of a former utility room and storage room. Initially intended for use by visiting relatives, the rooms were subsequently advertised as a holiday let.
7. The appellant was contacted in August 2023 and asked to complete a questionnaire to determine whether the appeal property met the criteria to be listed in the non-domestic rating list. The questionnaire was not returned and therefore the appeal property was brought into the council tax valuation list with effect from 1 April 2023.
8. The effective date in this appeal is 1 April 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 as the annexe forms part of the main house, and is not self-contained, having no separate access and sharing services with the main house. He stated that the appeal property would no longer be let.
10. The listing officer provided a combined evidence bundle which contained contributions from both parties to the appeal. It comprised of a location plan, floorplan, external photographs, a copy of the holiday let listing, the originating proposal and subsequent listing officer's decision and extracts from legislation.
11. Extracts of and references to the following High Court judgments were also included:
  - *Coleman (LO) v Rotsztein* [2003] EWHC 1057
  - *Salisbury v Bunyan* [2021] EWHC 3136 (Admin)
  - *McColl v Subacchi LO* [2001]
  - *Hayes v Humberside Valuation Tribunal & Kingston Upon Hull CC* [1998]
  - *Corkish (LO) v Wright and Hart* [2014] EWHC 237 (Admin)
  - *Gilbert (LO) v Childs* [1995]

## 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”.

15. The Local Government Finance Act 1988, section 66:

(2B) A building or self-contained part of a building is not domestic property if—

(a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more, . . .

(b) on that day his interest in the building or part is such as to enable him to let it for such periods.

(c) the whole of the building or self-contained part of the building was available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more

in the year prior to the year beginning with the end of the day in relation to which the question referred to in paragraph (a) is being considered, and

(d) the short periods for which it was so let amounted in total to at least 70 days.

## Discussion

16. The panel was satisfied that the provisions of section 66(2B) did not apply in this case. It noted that there was no dispute about whether the annexe and the main property were in one occupation, and so the panel was satisfied that they were one hereditament.
17. The panel then addressed the issue of self-contained units, understanding from Article 3 above that the listing officer must treat an area within a property as a separate self-contained unit where it has either been adapted for, or is capable of, use as separate living accommodation. The issue in this appeal was whether the appeal property was capable for use as a separate living accommodation.
18. The listing officer stated within the evidence submission 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.

It was the listing officer's contention that all of the above facilities were present in the annexe.

19. The panel referred the appellant to the floorplan provided within the evidence submission and asked him to identify the annexe. The panel noted that it did not have its own separate access but understood from *McColl v Subacchi* that shared access did not deter an area from being a self-contained unit.
20. The appellant stated that he had reverted to using the rooms as storage and utility almost as soon as he had received the listing officer's notice of the annexe's list entry. He had advised the listing officer in September 2023 that he would de-list the annexe from the holiday lettings site and that there was at that time one outstanding booking which was for the New Year period.
21. The panel asked the listing officer's representative where the bathroom was located. She was unable to identify it on the floorplan. The appellant explained that he had installed (but since removed) a standalone shower. He stated that there was no toilet within the annexe. It was on the other side of the building and was, in his words 'an outside toilet', being in a stone building with a rat-trap. The panel understood from the floorplan that the only way into the room was from a door in the courtyard. The appellant confirmed this, and he explained that the facility had not been exclusive to the users of the annexe, having been shared with the beekeepers who used the grounds. When questioned as to why holidaymakers would choose to rent accommodation without an inside, private toilet he stated that some people sought the 'back to nature' experience.

22. The listing officer's representative was unaware of the location of the toilet and, within her closing statement, requested an adjournment in order for an inspection to take place. The panel noted from written and oral evidence that the appellant had requested a visit more than once. It declined to adjourn the hearing, considering that it had sufficient information before it to determine the appeal. Ms Nesbitt acknowledged that an inspection would have been useful and apologised for the omission.
23. The panel referred to the case law. It understood from *Coleman* 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.
24. The panel applied these principles to the facts at the appeal property, having regard to the physical characteristics of the premises, as at the relevant date, 1 April 2023, and concluded that at that time the annexe was "reasonably suitable for use as separate living accommodation". There was somewhere to live, sleep, wash and prepare food. Although the toilet facility was basic and shared, it was available. The panel acknowledged that it may have reached a different decision if it had had before it evidence that the shower had been removed as at the relevant date.
25. In view of the above findings and conclusions, the Tribunal panel is satisfied that the appeal property is correctly assessed as a single hereditament, comprising two units of accommodation, each capable of use as separate living accommodation. The panel therefore dismissed the appeal.

**Date issued to parties: 2 January 2025**

**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.