

VALUATION TRIBUNAL FOR ENGLAND



Council Tax Valuation; house in multiple occupation; tenants in rateable occupation of each room; hereditament test; James v Williams (VO) [1973]; Appeal dismissed.

RE: Rooms 1 to 10 at 37 Beverley Road, Hull HU3 1XH

APPEAL NUMBER: 2004813982/537CAD

BETWEEN:	Mr Lars Cavi	Appellant
	and	
	Mr Chris Sykes	Respondent
	(Listing Officer)	

PANEL: Mr M Heslop-Mullens (Chairman)
Mr M Allingham

SITTING AT: CVS, Beverley Road, Hull

ON: 15 March 2019

APPEARANCES: Mr L Cavi (Appellant)
Mr I Dewhurst (Listing Officer's Representative)

Summary of decision

1. The appeal was dismissed.

Introduction

2. The appeal process began when the appellant served a proposal on the Listing Officer on 11 October 2017. The appellant proposed that the properties at 37 Beverley Road, Hull HU3 1XH, should form one entry in the council tax list, instead of the existing ten band A entries. After considering the merits of the proposal, the Listing Officer determined that the proposal was not well founded. The Listing Officer's decision notice rejecting the proposal was issued on 8 December 2017 and the appellant's appeal was received by the tribunal on 9 February 2018.
3. The appeal property's entry (37 Beverley Road, Hull HU3 1XH) was entered into the council tax valuation list with effect from 22 May 2017 as ten band A hereditaments known as rooms one to ten.

4. The proposal was originally deemed to be invalid by the Listing Officer and the issue of invalidity was considered by earlier panel on 11 June 2018. The panel initially gave an oral decision dismissing the appeal and confirming the Listing Officer's decision that the proposal was invalid. However, before the oral decision was confirmed in writing, the panel reversed its decision and determined that the proposal was validly made. The earlier panel determined that the appellant was entitled to appeal against the Listing Officer's alteration of list, the effect of which was to delete the historic single entry and replace it with ten new entries. There was no appeal against the panel's final determination on the invalidity issue and so the substantive valuation issue came before another panel for determination. The earlier panel's reasons for finding the proposal to be validly made were as follows;

"Decision and reasons

1. *The Vice President's decision in the appeal of Burtfield Estates Limited concluded that the proposal to delete entries was invalid because there had been a determination under article 4 with respect to the appeal properties, effective at the date of the proposals and the exclusion from the right to make a proposal contained in regulation 4(1)(a) of the Appeals regulations applied. Therefore, there can be no appeal to the Tribunal under regulation 10.*

Comparison of this Case and the Burtfield Case

2. *Having considered the Burtfield case in more detail, the facts of this case are different to the case of Burtfield.*
3. *In the Burtfield case the appellant agreed that the bedsits were dwellings, in this case the appellant does not agree that the dwellings are separate dwellings.*
4. *In the Burtfield case demands for council tax for each of the dwellings were submitted for the tax years 2012/2013 and 2013/2014 with the proposal being lodged on 23 October 2013 and the decision notice issued on 19 December 2013. This indicates that no appeal was lodged within six months of the notification of the alteration to the valuation list. The proposal requested a single entry in the valuation list and was not a challenge to a valuation list alteration.*
5. *Mr Dewhurst contended that since the exclusion at the end of paragraph 4(1) (a) applied the legislation did not permit a proposal being made. The relevant text was as follows:*

"excluding property in respect of which a determination of the LO under article 4 of that Order is for the time being effective for the purposes of Part 1 of the 1992 Act"

6. *There was no evidence that an article 4 determination had been made and that it was effective at the date of the proposal. Both these requirements would need to be satisfied according to the Vice President's determination in Burtfield. There was also the question that if such a decision had been made prior to the date of the proposal why it was not notified to Mr Cavi in the decision letter.*
7. *Paragraph 4 of the Appeals Regulations sets out the circumstances and periods in which proposals may be made.*
8. *Mr Dewhurst maintained that paragraph 4(1)(a) applied whilst Mr Cavi's position is covered by paragraph 4(6).*
9. *The full text of both is as follows:*

4(1) Subject to the following paragraphs of this regulation, where a billing authority or an interested person is of the opinion that a list is inaccurate because—

(a) it shows as a dwelling property which ought not to be shown (including property shown as one dwelling which, by virtue of article 3 of the Council Tax (Chargeable Dwellings) Order 1992(1), falls to be shown as a number of dwellings, but excluding property in respect of which a determination of the Listing Officer under article 4 of that Order is for the time being effective for the purposes of Part 1 of the 1992 Act) that authority or person may make a proposal for the alteration of the list.

4(6) Where the LO has altered the list in respect of a dwelling, a billing authority or an interested person may, within six months of the service of the notice of alteration under regulation 12, make a proposal for either or both of the following—

(a) the restoration of the list to its state before the alteration was made,

(b) a further alteration of the list in respect of that dwelling.

10. *There is a presumption in both that a proposal in respect of an alteration may be made. Paragraph 4(6) gives an absolute right to make a proposal, the limitation being that the proposal can only be for a restoration and/or further alteration in respect of that dwelling. Paragraph 4(1)(a) gives a right to make a proposal as long as the grounds do not amount to a challenge against a Listing Officer's determination under article 4. This exclusion only applies to a proposal made under paragraph 4(1)(a).*

- 11. The panel considers that Mr Cavi was challenging the Listing Officer's notice of alteration within the six-month period. Mr Dewhurst clearly understood that the appellant's desire for the list to show one entry for the whole property was the proposal's fundamental issue hence the reference to article 4. The proposal had been lodged within six months of the taxpayer being issued with the notice of alteration. Unlike in Burtfield, the proposal had not sought to challenge the Listing Officer's Article 4 determination. The effect may be the same as requesting a single entry as in the Burtfield case, but the grounds and considerations are different.*
- 12. The panel's interim decision is that the proposal is valid and satisfies the requirement of paragraph 4(6) of The Council Tax (Alteration of Lists and Appeals) Regulations 2009.*
- 13. When the matter is re-listed to enable a panel to consider the valuation considerations arising from the proposal, the jurisdiction of the panel will be restricted to determining if the appeal property comprises ten hereditaments as the Listing Officer contends or should be shown in the valuation list as a single hereditament. If the panel determines that there are ten hereditaments present, the tribunal cannot interfere with the Listing Officer's determination not to aggregate under Article 4".*
5. The second panel sat on 29 August 2018 and after hearing from the parties decided to adjourn the case with a bespoke direction. The primary reason for the adjournment was that the panel required further information from the parties, in relation to the tenancies of the flats. The panel's intention was to determine the appeal without the need for a further hearing but ultimately it decided that that would not be possible and therefore the panel reconvened with the parties present.
6. Before the panel heard evidence relating to the substantive issues, Mr Cavi was permitted to outline his concerns about the way in which his appeal had been dealt with. Mr Cavi's concerns were noted by the clerk.
7. This is not intended to be a full record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be taken as it having been overlooked.

Issue

8. The issue in dispute concerned whether the properties known as rooms 1 to 10 37 Beverley Road, Hull HU3 1XH should be shown as a separate entries in the valuation list.

Evidence and submissions

9. The appellant, Mr Cavi, provided a bundle of evidence which included: tenancy agreements for each room; evidence of other properties in the area which were houses in multiple occupation (HMO) and which had, nevertheless, been entered into the Valuation List as a single hereditament; details of the length of time each tenant had occupied each room; copies of correspondence with the Listing Officer; the decision notice; notices of entry of the properties into the valuation list; precedent cases for banding large houses in multiple occupation; plans and a structural survey of the subject properties; and Hull City Council's Amenity Standards for licensed HMO's.
10. Mr Cavi argued that essentially there was only one property which he believed to be a HMO. He contended that the 10 'rooms' which had been entered into the Valuation List at band A did not meet the requirements of the 'hereditament test' firstly because occupation of the rooms was not 'exclusive', this was because Mr Cavi reserved the right to move the tenants from room to room if required, thus giving him paramount control of the property. Secondly, Mr Cavi argued that occupation was not of a 'non-transient' nature because the assured shorthold tenancy agreements were open ended with no fixed term other than the requirement that the tenants give one months' notice of their intention to leave.
11. Mr Cavi referred to various properties in the locality which he believed supported his argument that the subject properties should be aggregated and treated as one large HMO. Mr Cavi believed that a precedent had been set in the area. Finally, Mr Cavi contended that the alterations to what had previously been a working men's club had not been structural and therefore did not meet the Valuation Office guidelines for a sufficient level of adaptation when considering conversion and aggregation of residential dwellings.
12. Mr Dewhurst provided a bundle which included: his written submission; a history of the appeal and banding; his case; a copy of the proposal; the appeal papers; a location plan; property details; and details of the legislation and case law to be relied upon including a copy of the Lands Tribunal's decision in *James v Williams (Valuation Officer)* [1973] RA 305. Mr Dewhurst contended that the current bandings of the ten properties are correct and that no alteration to the council tax list was necessary, he argued that the physical characteristics of the ten properties met the four requirements of the hereditament test as he believed that there was exclusive, actual, beneficial and non-transient occupation; as such the properties are required to be shown separately within the council tax list. He requested that the appeal be dismissed.

Decision and reasons

13. The panel considered the relevant legislation:

14. The definition of a dwelling for council tax purposes is contained within section 3 of the Local Government Finance Act 1992. Section 3 provides that a dwelling is domestic property that includes living accommodation which would have constituted a separate hereditament under Section 115 (1) the General Rate Act 1967. For the purposes of that Act, a hereditament was usually defined by the extent of a person's rateable occupation. If parts of a single property were separately occupied then they would often have constituted separate hereditaments, even if the parts were not self-contained. On the other hand, several properties would usually have fallen to be treated as a single hereditament if they were contiguous and in one occupation, even if each was self-contained.

15. The statutory definition of a hereditament can be found within section 3 of the Local Government Finance Act 1992, which is as follows;

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.

16. When looking at a 'property', it is necessary to consider whether or not the domestic unit is a hereditament. If it is a hereditament the panel was not required to then go onto consider if it is a self-contained unit. If it is not a hereditament in its own right, Article 3 of The Council Tax (Chargeable Dwellings) Order 1992 comes into effect.

17. Section 3 of the 1992 Act further provides that the definition of a dwelling may be amended by order. The Council Tax (Chargeable Dwellings) Order 1992 SI 549 ("the Order") requires any "single property" (i.e. any single hereditament) containing more than one self-contained unit of accommodation to be divided or "disaggregated" into as many dwellings as there are self-contained units within it. A self-contained unit is defined under Article 2 of the Order as "a building or part of a building that has been constructed or adapted for use as separate living accommodation".

18. Whether or not a property passes the hereditament test depends on whether or not there is rateable occupation. There are four ingredients in constituting the test of rateable occupation:
- Actual occupation;
 - Beneficial occupation
 - Exclusive occupation,
 - Occupation for not too transient a period
19. The panel found that the properties met the requirements of the hereditament test each of the four ingredients of rateable occupation were found to be prevalent:
- Actual occupation – each tenant was in actual occupation of the property.
 - Beneficial occupation – each tenant benefitted from use of the property and the use of the communal areas which was evidenced by the payment of rent. They need a place to reside, so their occupation of their respective room was clearly of benefit to them.
 - Exclusive occupation – each tenant was given a key to their room and had an exclusive right of occupation and no other person was entitled to occupy their room. Mr Cavi argued that he had the right, as the landlord, to move his tenants from one room to another, if he saw fit, but in practice this had not happened as there was no factual evidence provided to support this assertion.
 - Occupation for a not too transient period – the panel were satisfied that the evidence submitted showed that each tenant had an open-ended assured shorthold tenancy agreement allowing them to stay in the property for an unlimited time period. Mr Cavi had supplied evidence of the length of time each tenant stayed in occupation, on average this amounted to a minimum of six months and some tenants stayed much longer.
20. The panel referred to the authority cited by the Listing Officer, *James v Williams (Valuation Officer)* [1973] RA 305, this judgment supported the Listing Officer's case. It related to a domestic rating case where the same principles applied to the unit of assessment for taxation under s24 of the General Rate Act 1967. In that appeal the Lands Tribunal held that the Valuation Officer was correct in not assessing the four flatlets as a single assessment having regard to four factors – the degree of sharing common facilities, the degree of adaptation and self-containment, the capability of accurate identification and the degree of transience of occupation. In the case before it the panel found that each of the properties were exclusively occupied, separately identifiable, self-contained to the extent that each had its own bathroom and only kitchen facilities were shared, and as to transience the panel had established that the rooms were occupied for periods of time which meant that each tenant's occupation had a degree of permanence.
21. The panel noted that Mr Cavi had provided comparable evidence of large HMO properties which had been entered into the Valuation List as single hereditaments. Mr Cavi argued that he had been treated less favourably, in comparison with other landlords. This may or may not be the case but the panel only had the jurisdiction to determine if his property had been correctly assessed on the basis that it comprised 10 hereditaments. If it was, his appeal must be

dismissed. The appeal could not be allowed simply because other houses in multiple occupation had been treated differently. Whilst uniformity of assessment was desirable, it should not be sacrificed for uniformity of error.

22. The panel gave careful consideration to the legislation, case law, and all of the evidence placed before it and found that 37 Beverley Road, Hull HU3 1XH was comprised of ten separate hereditaments.
23. In appeals of this nature, the burden of proof rests on the appellant to prove his case. In the appeal before it, the panel held that it had been provided with insufficient evidence to demonstrate that the properties did not comprise ten hereditaments.
24. In view of the foregoing, the panel upheld the Listing Officer's decision to list rooms 1 – 10 37 Beverley Road, Hull HU3 1XH as separate hereditaments and separate entries in the Valuation List. Accordingly, the appeal was unsuccessful and dismissed.

Date: 4 April 2019

Appeal Number: 2004813982/537CAD