THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Stables and premises; Corkish v Bigwood [2019] UKUT 191 (LC); appeal dismissed.

Re: Burgh Farm Dressage, Norwich Road, Mattishall, Dereham, Norfolk, NR20 3LL

APPEAL NUMBER: CHG100074804

BETWEEN:	Burgh Farm Dressage	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Ms L Hussein-Venn (Senior Member)
Ms J Morton

CLERK: Miss K Hendry IRRV (Tech)

REMOTE HEARING on Wednesday 17 February 2021

APPEARANCES: Mr S Bicknell (Representing the appellant)
Mr T Barraclough (Representing the Valuation Office)

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of £13,000 with effect from 1 April 2017 and £15,000 with effect from 1 October 2017.

Introduction

2. This appeal has been brought in respect of the following: Burgh Farm Dressage, Norwich Road, Mattishall, Dereham, Norfolk, NR20 3LL which was entered in the 2017 rating list as "Stables and premises" at £15,250 RV with effect from 1 April 2017.

3. The appellant's challenge proposal to the Valuation Officer was made on 17 February 2019. The Valuation Officer issued a challenge decision on 26 June 2020 which stated that the rating list entry was considered to be reasonable, and therefore there would be no amendment made. The appellant's appeal to the Valuation Tribunal for England (VTE) was received on 30 October 2020, and made on the grounds that the RV is excessive.

4. Following the challenge the Valuation Officer revised the RV to £13,000 with effect from 1 April 2017 based on agreed facts. The Valuation Officer agreed that the outdoor loosebox (plan Reference 4) which contained six stables were to be classed as agricultural and therefore valued at £0/m^2. Mr Bicknell confirmed that these needed to be re-entered into the rating list at £315 as they ceased being used for agricultural purposes and are now used as livery stables. Therefore the RV was amended to £15,000 from 1 October 2017.

5. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with the Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

6. Therefore, in pursuance of regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

7. Mr Bicknell appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Bicknell’s declaration of truth included a statement that he was instructed under a conditional fee arrangement.

8. Mr Bicknell declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client’s case.

9. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal’s rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

10. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

11. The assessment comprises livery stables, indoor and outdoor dressage arenas, tack rooms, an outdoor horse walker and wash box. These buildings all lie within a farmyard along with two dwellings which are owned and occupied by the Faircloth family. The farm is some 400 acres in size. The dressage is run by Liza McQuiston, the daughter of Mr and Mrs Faircloth. Between them, they own seven horses which are their own private horses and used for their own recreational use.

12. There are ten indoor looseboxes contained within a second hand building which was moved onto the site in 1995. The building is a steel structure which has concrete block walls to around two metres. The remainder of the building is mainly clad in a single skin corrugated asbestos with some areas of single skin profiled protected metal. There are steel sliding doors at one end, and it is open at the other. The floor down the middle of the building is concrete but the stables are on earth with rubberised matting to stop the areas getting churned up. This building contains ten stables which are used for livery. A lean-to has been

erected at the side of the building to create five more stables. These are where the Faircloth's private horses are kept, the remaining two are kept in the main area and do not have a dedicated stable, they are with the livery horses. The lean-to stables are divided off and not accessible from the main building. They are a separate structure of concrete block walls under an asbestos roof with a concrete floor.

13. Of the two dwellings, Mr and Mrs Faircloth occupy the farmhouse and Liza occupies the bungalow. The bungalow cannot be sold separately from the farm. The farm is exempt under Schedule 5 of the Local Government Finance Act (LGFA) 1988. The dwellings are treated under Council Tax regulations and have separate Council Tax list entries.

14. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

15. The issue before the panel was whether the five stables within the lean-to were appurtenant to the dwelling and exempt from non-domestic rating.

Evidence and submissions

16. The appellant's representative, Mr Bicknell, had provided the Tribunal with both parties' submissions.

17. Mr Bicknell was seeking a revised RV of £11,250 with effect from 1 April 2017, amended to £12,500 with effect from 1 October 2017, and relied on the following evidence:

    a) The five stables contained within the lean-to are used for the keeping of horses for personal use and should be exempt from rating based on the grounds that everything is in one occupation and therefore one hereditament. Even though it is one hereditament, the farm and dwellings will not form part of the entry in the rating list. The main test when considering whether a building should be considered a domestic appurtenance under section 66(1)(b) is would it pass a silent as conveyance. As the hereditament comprises a farm with farmhouses you would typically expect an abundance of farm buildings to be included and with just a small number of those being stables it is not likely they would be separately mentioned.

    b) There is no absolute defined boundary around the parts and there is common access and egress to, from and around them all to get from one part to another. As everything is mixed in, they form one hereditament and its boundary therefore defines the curtilage of the hereditament.

    c) Mr Bicknell referred to *Corkish v Bigwood [2019] UKUT 191 (LC)* referred to as 'Bourne Hill'. The stables in the appeal property are exclusively set aside from the livery stables but are attached to it and lie approximately ten metres from the curtilage of the farmhouse garden, and twenty metres from the farmhouse itself. Like Bourne Hill, the occupation defines the hereditament and these stables fall to be within the hereditament. The hereditament comprises a farm, farmhouses, livery/riding school and the domestic stables. Regardless of how each hereditament is taxed it is still a single hereditament. None of the elements at the property can be sold separately from each other.

d) When you have a composite property, along with an exempt property, then a spatial test is applied when looking at domestic accommodation within the wider hereditament, and therefore the stables do fall within the definition so should be included as domestic and not assessed for non-domestic rating.

18. The Valuation Officer, Mr Barraclough relied upon the following evidence:

a) In order for the five stables to qualify as being domestic, they must be appurtenant to the dwelling. The stables fall outside the curtilage of the dwelling itself and therefore do not fulfil the definition of being appurtenant to the house under section 66(1)(b) of the Local Government Finance Act (LGFA) 1988. The term “curtilage” is defined as an “area attached to dwelling-house.”

b) Mr Barraclough referred to the nature of “other appurtenance” which was discussed in the case of *Martin and Others v Hewitt (VO)* [2003] RA 275 – in particular paragraphs 7 to 21. At the end of paragraph 25, the President of the Lands Tribunal states:

> “That, in my view, is a clear indication that “appurtenance” in s66(1)(b) was not intended to encompass land or buildings lying outside the curtilage of the property referred to in s66(1)(a).”

c) The dwelling was never built with attached stables, they were later additions / conversions. The stable block is sited outside the domestic curtilage and thus remote from the house so cannot be considered to be appurtenant to the dwelling.

d) This appeal differs from Bourne Hill which determined only hobby use existed. However, the stables are not ancillary to the farm but that of a separate livery business and interspaces within a building with other commercial livery. There is no natural flow from the dwelling to the stables. In Bourne Hill it was found that there was no fence or barrier, the stables were grouped around the lawn. Whereas at the appeal property the dwelling and stables are separated by fencing and hedging as well as the access road to the farm.

e) Mr Barraclough pointed out in the representative’s submission that he himself had said that “With the subject property, if you look at the domestic stables solely in relation to either of the dwellings then, if looking at either dwelling in isolation, those stables would, of course, fall outside the natural curtilage of those dwellings.”

19. Mr Barraclough sought for the tribunal to confirm £13,000 RV with effect from1 April 2017. Amended to £15,000 with effect from 1 October 2017.

Decision and reasons

20. After due consideration of all of the evidence submitted by the parties, the panel determined that the appeal should be dismissed.

21. The panel had regard to the relevant legislation as outlined:

22. By section 41(1), Local Government Finance Act 1988, the valuation officer for each billing authority is required to compile and maintain a local non-domestic rating list. By section 42(1) the list must include each hereditament situated in the authority's area which is a "relevant non-domestic hereditament" at least some of which is neither domestic property nor exempt from local non-domestic rating and which is not shown in a central non-domestic rating list.

23. By section 64(8) of the 1988 Act a hereditament is "non-domestic" if either (a) it consists entirely of property which is not domestic, or (b) it is a composite hereditament. A hereditament is composite if part only of it consists of domestic property (section 64(9)).

24. Section 66(1) of the LGFA 1988 under which a dwelling was classed as domestic, and attached council tax under the Local Government Finance Act 1992, if –

    a) It is used wholly for the purposes of living accommodation,
    b) It is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with the property falling with (a) above…

25. In *Martin v Hewitt (VO)* , a case under section 66 of the 1988 Act, the Lands Tribunal (George Bartlett QC, President) held that boathouses on Lake Windermere, which were separated from the houses belonging to the ratepayers by a public highway and by intervening land belonging to third parties, were not appurtenances of those houses and were rateable as non-domestic property;

    > ""Appurtenance" in s.66(1)(b) was not intended to encompass land or buildings lying outside the curtilage of the property referred to in s.66(1)(a)."

26. The term "curtilage" is defined as an "area attached to dwelling-house."

27. The panel had regard to the Bourne Hill case and distinguished the facts from that case when considering this appeal:

    a) In Bourne Hill it was found that the whole property was used for domestic purposes, the stables and associated buildings were for the enjoyment of the appellant's hobby on a grand scale, there was no business involved, unlike the appeal property which operates as a livery business.

    b) Furthermore in Bourne Hill, it was found that "No fence or other barrier separates the equestrian buildings from the house, and together with the barn and groom's accommodation they were all grouped around the lawn". However in the appeal property, it was found that the garden of the dwellings were fenced and hedged off from where the stables were. This was also separated by the main route access to the farm. The stables were situated more within the non-domestic aspect of the farm, next to the tack room, wash-box, outdoor looseboxes, horse walker and outdoor arena. The lean-to stables were also adjoined to the main building of the other ten stables contained for use within the livery.

28. It is for these reasons the panel concluded that the five stables were remote from the domestic curtilage and therefore not appurtenant to the dwelling. The stables were considered to be sited within the farm / livery. The farming land and associated areas and facilities have a distinct and separate use from the domestic dwelling.

Date: 25 February 2021

Appeal number: CHG100074804