

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

INVERNESS, 12 AUGUST 2014

Subjects	Reference Number
House, Flat 1, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452267/3
House, Flat 2, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452268/0
House, Flat 3, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452269/7
House, Flat 4, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452270/7
House, Flat 5, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452271/4
House, Flat 6, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452272/1
House, Flat 7, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452273/8
House, Flat 8, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452276/9
House, Flat 9, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452277/6
House, Flat 10, Strathmhor, 99 Kenneth Street, Inverness, IV3 5QQ	06/07/452278/3

Appellants

Ashington Brooke Ltd

For the Appellants

Mr Mark Peasnell

Respondent

William Gillies, Esq, Assessor

Introduction

The Appellants' case was presented by Mr Mark Peasnall, a Director of the Company and he gave evidence on the Company's behalf. The Assessor presented his own case and led evidence from Fiona Rostock, a Senior Valuer in the Assessor's Office.

It was agreed by the parties at the outset, that since the Grounds of Appeal in each of these ten cases were identical, it was appropriate for them to be dealt with on a conjoined basis, a proposal with which the Committee was happy to agree.

The issue before the Committee was whether the subjects were properly listed in the Council Tax List as ten individual subjects or if they were *unum quid* and should appear as one entry in the List.

The Subjects

The Appellants purchased the subjects early in 2011. Prior to the purchase the subjects had been operated as a Guest House, including owners' accommodation. The owners' accommodation was entered in the Council Tax List with the rest of the subjects being liable for Non-domestic Rates. After acquisition by the Appellants they carried out extensive works to the subjects to render them suitable for contracting with the Highland Council for the provision of accommodation for homeless persons. The Appellants sought and obtained Planning Permission and Building Warrant to convert the subjects into a house of multiple occupation (HMO) for up to ten persons. For the purposes of Planning Permission, Building Warrant and registration as an HMO, the subjects were regarded as being one single property.

Having undertaken conversion works the Appellants secured a contract with the Highland Council for the provision of temporary, emergency accommodation for a period of three years. In terms of this contract, Highland Council pay the Appellants for the exclusive use of the subjects for persons who find themselves homeless and in need of temporary accommodation. The length of the individuals stay can vary from one night to ten months, depending on their particular circumstances.

Occupants have to sign an Occupancy Agreement which is tri-partite, involving the occupant, the Highland Council and the Appellants. Failure by the occupant to comply with the terms of the Agreement renders the occupant liable to summary termination of their right to continue to reside in the subjects.

Each unit within the subjects is for the exclusive use of the particular occupant while resident in the subjects. The occupant is issued with a key for their unit and the Appellants hold a master key allowing them entry, as and when required, to any of the units for inspection or emergency purposes.

Each unit is self-contained being in the nature of a “bed sit” with bedroom, living and kitchen facilities in one room and a separate shower/bathroom/toilet. Some of the units have their shower/bathroom/toilet facilities separate and apart from the unit itself but, where that is the case, each unit has assigned to it the exclusive use of one of the external shower/bathroom/toilet facilities so that there is no need for the sharing of any such facilities. In addition to the above, there is one communal bathroom within the building.

As part of their contract with the Highland Council the Appellants provide residents with a basic breakfast so that the nature of the accommodation can be described as “bed and breakfast”.

Appellants’ Case

The subjects were regarded, for the purpose of Planning Permission, Building Warrant and the regulations concerning HMO’s, as one property and so should be regarded as such for Council Tax Listing purposes.

Although the substantial conversion works carried out on the subjects following their acquisition by the Appellants had resulted in the creation of ten separate bed sit units, it would not be possible to sell the units off as separate flats as they stand at present. Different Planning conditions and Building Warrant provisions would be applied and significant further works would have to be undertaken before they could be sold as individual flats.

The physical layout of the subjects was such that they would not be suitable for permanent, only temporary, accommodation.

The Appellants are in the business of providing temporary, emergency accommodation. They are not property developers and so would not countenance the conversion of the subjects from their present physical layout and use to ten separate flats.

Mr Peasnall referred, by way of comparison, to two properties in Inverness which were operated on a similar basis to the Appeal Subjects – 42 Union Street and 39 High Street, Inverness. Each of these properties was the subject of a single entry in the Council Tax List.

Assessor's Case

Mrs Rostock accepted and agreed with Mr Peasnall's description of the physical characteristics of the subjects and the use to which the subjects are put – namely, provision of temporary emergency accommodation for homeless persons placed there by the Highland Council.

In her view, the fact the subjects were regarded as one single unit for Planning Permission, Building Warrant and HMO purposes, was not inconsistent with them being ascribed individual entries on the Council Tax List. This was because different legislation, regulation, definitions and considerations applied to each.

As regards the physical characteristics, there were ten separate units, each in occupation by different individuals. Therefore, they were ten separate units of occupation. Each occupant has the right to the exclusive use of their unit while in occupation.

Having regard to the standard Occupancy Agreement issued to residents in the subjects, it is apparent a rent is paid by (or on behalf of) each of them.

Under cross-examination, Mrs Rostock conceded the rights of tenure enjoyed by residents of the subjects were significantly less than, for example, those of a statutory assured tenant. Nonetheless, the mode of occupation and use of the units made them susceptible to individual entries in the Council Tax List.

In his submissions, the Assessor made reference to Section 72 of the Local Government Finance Act 1992 which states:-

“(1) Council Tax shall be payable in respect of any dwelling which is not an exempt dwelling.

(2) In this part ‘dwelling’ –

(a) means any lands and heritages –

(i) which consist of one or more dwellinghouse with any garden, yard, garage, outhouse or pertinent belonging to and occupied with such dwellinghouse or dwellinghouses; and

(ii) which would, but for the provisions of Section 73(1) below, be entered separately in the Valuation Roll;

(b) and includes –

(i) the residential part of residential subjects; and

(ii) that part of any premises which has, in terms of Section 45 of the 1980 Act, been apportioned, as at 1 April 1989, as a dwellinghouse; and

(c) does not include a caravan which is not a person’s sole or main residence.”

He also referred the Committee to certain passages from the standard textbook, Armour on Valuation for Rating – paragraph 10-05 for the geographical test;

paragraph 10-11 as regards the functional test; paragraph 10-14 in relation to the actions and intentions associated with occupation.

The Assessor submitted the unit of valuation should not exceed the unit of occupation. In this case the unit of occupation is the space behind the locked door of each bed sit.

As regards the notion of who was the paramount occupier, the status of the individual residents as paramount occupier was not usurped by the degree of the access rights the landlord had to each individual unit – such rights of the landlord being limited to the purposes of routine inspection and dealing with emergencies.

Finally, the Assessor referred the Committee to two previously decided cases – Lothian Regional Assessor –v- Viewpoint Housing Association Ltd, 1983 S.C.130 and Lothian Regional Assessor –v- Link Housing Association Ltd, unreported, 23 March 1984.

As for the comparisons mentioned by Mr Peasnell, the Assessor submitted each case fell to be decided, having regard to its own facts and circumstances. Since no evidence had been given to the Committee as to the facts and circumstances of the comparisons referred to, the Committee could not determine if the comparisons were apt or not. He invited the Committee to dismiss the Appeal.

Decision

The Committee was grateful for the preparation by both parties of their cases and for the succinct and considered manner of their presentation.

The fact that the subjects were regarded as one unit for Planning Permission and Building Warrant purposes and for the purposes of their registration as an HMO, was a factor which weighed lightly in the balance when considering the matter for the purposes of Council Tax listing. This is because different legislative and regulatory provisions apply in these different areas.

For Council Tax purposes, of primary interest to the Committee had to be the provisions of section 72 of the Local Government Finance Act 1992 and the decisions in the Viewpoint Housing Association Ltd and Link Housing Association Ltd cases. The Committee was assisted in this interpretation and application of the law by the various references to Armour on Valuation for Rating.

Having regard to the evidence adduced by the parties and the statutory and other authorities to which it was referred, the Committee determined that the subjects were properly listed individually on the Council Tax List. The Appeals therefore are refused.