THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 16 June 2015

Subjects	Reference Number
House, 16 Harrapool, Broadford, Isle of Skye, IV49 9AQ	**04/05/024082/3 331663**
The Appellant	The Respondent
	The Assessor

DESCRIPTION

The Appeal Subjects were referred to by both sides as a "Granny Flat". The Appeal Subjects adjoined the Appellant's house at 16 Harrapool. The main house, with which this Appeal was not directly concerned, was built in 1982. The Appeal Subjects were built on to the end of the main house between 1992 and 1995. The Appeal Subjects are therefore semi-detached from the main house. The Appeal Subjects are of timber frame and concrete block construction under a pitched, concrete tiled roof. The accommodation, on one floor, comprises Hall, Lounge, Kitchen, Bathroom and 2 Bedrooms. The Appeal Subjects and the main house have their own main entrances. There is no internal, adjoining, door connecting the two. They have separately metered electricity supplies.

When the Appeal Subjects were built, the Assessor decided they should be regarded as a *unum quid* (i.e. single valuation unit) with the main house and so they were not

made the subject of a separate entry in the Council Tax List. In 2010 the Assessor determined the Appeal Subjects should have a separate entry in the Council Tax List and on 2 October 2010 he issued a notice that with effect from 27 April 2007 the Appeal Subjects should be entered in the List at Band A. It was against the decision of the Assessor to separately list the Appeal Subjects that this Appeal was taken.

EVIDENCE FOR THE APPELLANT

The Appellant presented his own case and gave evidence on his own behalf. Helpfully, he provided the Committee with a typewritten note of his submissions.

The Appeal Subjects were added on to the main house as accommodation for the Appellant's mother. She lived there from 1992 until her death in 2005. She was keen on her independence and privacy and it was for that reason there was no internal door connecting the two properties. However, The Appellant and his wife "kept an eye on" his mother, they spent time with her every day and she always ate her meals with them.

After the death of the Appellant's mother in 2005 and until 2007, the Appeal Subjects were available for use by visiting members of his family – he has four children and six grandchildren – and friends. On average, the Appeal Subjects would be occupied on that basis one or two weeks per month. The rest of the time the Appeal Subjects lay empty. Those using the Appeal Subjects did so free of charge, the Appellant stating he knew his hospitality would be reciprocated in due course. The kitchen in the Appeal Subjects is small. The kitchen in the main house is large and has a range. Usually the occupants of the Appeal Subjects would eat with the Appellant and his

wife in the main house. Depending on the numbers visiting, the Appellant and his wife would sometimes decant from the main house into the Appeal Subjects and give the main house over to the guests. When that happened they and their guests would also eat communally in the main house.

In 2007 one of the Appellant's son's, and his wife and family came to live at 16 Harrapool. At one stage the Appellant's son and his family occupied the main house with the Appellant and his wife moving into the Appeal Subjects; then their occupations were reversed for a time before returning to the original arrangement whereby the Appellant's son and his family lived in the main house and the Appellant and his wife occupied the Appeal Subjects. Irrespective of who was staying where, the Appellant and his wife and the Appellant's son and his family all ate together in the kitchen of the main house. The meals were prepared "by whoever was at the cooker". The Appellant's son and his wife contributed to the household budget by paying the Council Tax for 16 Harrapool (i.e. the main house and the Appeal Subjects).

Around 2011, after the Appellant's son and his family no longer lived at 16 Harrapool, the daughter of a long standing family friend of the Appellant and his wife, began to stay in the Appeal Subjects from time to time. She was a hotel worker. She was itinerant in her working pattern. When working in hotels in Skye she lived at 16 Harrapool, mostly in the Appeal Subjects but sometimes in the main house depending on what other family members or friends of the Appellant were staying at 16 Harrapool.

Her working hours were 10 am to 11 pm. She ate breakfast with the Appellant and his wife every day in the main house and on her days off she cooked the meal and they all ate together "as a family" in the main house. The Appellant considered the idea of charging her for her accommodation but instead favoured an option which he referred to as "barter-a-room". Essentially this meant that she helped with tasks around the croft.

Under cross-examination, the Appellant stated that the only time "money changed hands" between him and the boarder was on occasions when she used her credit card – a facility the Appellant and his wife did not themselves have – to buy goods for them and they, the Appellant and his wife, would pay her back in cash.

He also stated that for a time the boarder and her boyfriend were both on the Electoral Register as residing at 16 Harrapool.

EVIDENCE FOR THE ASSESSOR

The Assessor led evidence from Angus Bethune, a Member of the Royal Institution of Chartered Surveyors and a Senior Valuer in the Assessor's Department.

Mr Bethune stated that when the Appeal Subjects were added to the main house it was decided not to list them separately on the Council Tax List. This was due to it being understood the flat was occupied by the Appellants's mother who was elderly and dependant on the care of the Appellant and his wife. Therefore, the decision was taken based on the nature of the occupation at that time rather than the physical characteristics of the Appeal Subjects. Mr Bethune did not suggest - nor did the

Appellant – that the physical characteristics of the Appeal Subjects had changed in any way since their construction. Mr Bethune did not say if the Assessor was aware, at the time he decided not to enter the Appeal Subjects separately on the list, what the nature and extent was of the care the Appellant and his wife gave to the Appellant's mother.

By August/September 2010 Mr Bethune was considering the matter of entering the Appeal Subjects separately on the Council Tax List. At that time one of his colleagues, Peter MacIntosh, visited the Appeal Subjects. Inquiries made by Peter MacIntosh confirmed information which the Assessor's Office had received to the effect that, at that time, the Appellant's son and his wife were living in the main house and the Appellant and his wife were living in the Appeal Subjects. Mr Bethune was unaware if Peter MacIntosh had obtained information as to how those living in the main house interacted, if at all, with those living in the Appeal Subjects.

SUBMISSIONS FOR THE APPELLANT

Mr Robertson had nothing to put to the Committee beyond what was given by him in evidence.

SUBMISSIONS FOR THE ASSESSOR

Mr Gillies referred the Committee to Sections 71 and 72 – in particular Section 72(2)(a)(ii) - of the Local Government Finance Act 1992.

He accepted that he was not empowered to alter the Banding of a property, no matter how extensively it may have been altered in the meantime, unless and until it was sold. The property at 16 Harrapool had been in the ownership of the Appellant since 1982 and remained so. However, Section 71 required the Assessor to consider entering subjects separately in the Council Tax List if and when particular circumstances arose. Here the "trigger" for considering a discrete entry for the Appeal Subjects was information which he had come by suggesting the Appeal Subjects were in separate occupation.

In determining whether the Appeal Subjects should be regarded as a separate unit of value from the main house, the primary test is the geographical test.

In this connection he drew the attention of the Committee to the following facts:-

(a) The properties have separate entrances;

(b) There is no internal access between the two;

(c) They are separate occupiable units, each having its own Bathroom, Kitchen and Bedrooms;

(d) The Appeal Subjects are capable of being let separately.

He conceded there had been no alterations to the physical characteristics of the property since the Appeal Subjects were built. Until 2007 the Assessor had regarded the two as a *unum quid*. For this reason it was necessary to look at the details of the occupation and the actings and intentions of the parties.

He stated that if the Committee accepted the Appellant's evidence that throughout the period from 2007 whoever was occupying the Appeal Subjects had lived communally with the occupants of the main house then it would be open to the Committee to find the Appeal Subjects and the main house were a *unum quid*.

However, in his submission, there was sufficient doubt arising from contradictory evidence in the testimony and productions tendered by the Appellant to allow the Committee not to accept his account as to the nature of the occupation of the two units. The Assessor invited the Committee to dismiss the Appeal.

DECISION

As the Assessor fairly and correctly conceded, since there had been no change in the physical characteristics of the two properties since the decision was taken to regard the Appeal Subjects as a *unum quid* with the main house (in this connection the Committee noted the evidence of Mr Bethune that this had been a conscious decision of the Assessor at the time and there was no question of it having been an error or oversight) it was necessary to focus instead on the details of occupation and the actings and intentions of the parties.

The Committee found the Appellant to be a credible and reliable witness. To the extent that his evidence was at variance with that advanced by the Assessor, the Committee preferred his evidence. The extent to which the Assessor led evidence contradictory to that of the Appellant was limited. Mr Bethune referred to information he had gleaned from Mr MacIntosh, a colleague who had visited the Appeal Subjects in 2010. It was shortly after Mr MacIntosh's visit that the decision

was taken to enter the Appeal Subjects separately in the Council Tax List. According to Mr Bethune, Mr MacIntosh confirmed information previously received by the Assessor's Office that the Appellant's son and his wife were living in the main house and the Appellant and his wife were living in the Appeal Subjects. This was entirely consistent with the account given by the Appellant in his evidence. Mr Bethune conceded that he did not have anything in the information provided by Mr MacIntosh indicating how the occupants of the two properties interacted with each other.

There was therefore really nothing in the evidence presented on behalf of the Assessor to contradict the account given by the Appellant. The Committee regarded that account as coherent, consistent and credible in its essential elements. It amounted to a picture of the occupants of the Appeal Subjects – whether that be the Appellant's mother, the Appellant and his wife themselves, the Appellant's son and his family or the boarder and her boyfriend – living en famille with whoever happened at that time to be occupying the main house.

The Committee had particular regard to the fact that the Appeal Subjects had a very small kitchen and no dining area whereas the main house had a large kitchen capable of accommodating, for meals, occupants of both properties.

Evidence from the Appellant that he and his wife moved regularly between the two properties depending on who was staying with them was indicative of the two properties being a *unum quid*.

That it was agreed by the Appellant's son and his wife that they should pay the Council Tax for both properties and the "barter-a-room" arrangement which the Appellant had with the boarder were consistent with a common arrangement, particularly where the parties involved are related or are friends, whereby the owner is paid, in cash or kind, for "the digs".

Therefore, having regard to the evidence presented in relation to the use of the Appeal Subjects with the main house, the Committee decided that they ought to be regarded as a *unum quid*. There had not been a material change in that regard since 2005 when the Appellant's mother died. Therefore, the Committee allowed the Appeal and directed that the Appeal Subjects be deleted from the Council Tax List with effect from 27 April 2007.