

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

28 April 2021

Subjects

Seann Sgoil, Achmore, Strome Ferry, Ross-Shire, IV53 8UL

INTRODUCTION:-

This is an appeal against a decision by the Finance Department of the Highland Council as to who is liable for payment of the Council Tax due on the property in question (the Appeal Subjects). The Respondents regarded the period under appeal as being from 20 May 2015 to the present.

The parties agreed to have the appeal dealt with by way of written representations rather than an oral hearing.

The Appellant submitted his initial written representations to the Committee's Secretary on 9 February 2021. The Respondents did likewise on the same date. The Appellant, on 7 March 2021, took the opportunity afforded to him to respond to the Respondents' initial representations. The Respondents did not offer any further submissions in relation to the Appellant's initial representations.

APPELLANT'S CASE:-

The Appellant explained that the Appeal Subjects were owned jointly by him, his brother and his sister. The subjects were inherited by them on the death of their father in 2005.

Sometime in or before 2016 the brother inherited a house in North Uist which he sought to develop as a holiday let business. In April 2016 the brother began to reside in the Appeal Subjects. Since then it has been his main residence. No-one apart from the brother has lived there since then. It being his main residence, the brother was liable for payment of the Council Tax. It followed that the Appellant sought to have the Committee overturn the findings of the Finance Department that the property in Uist, rather than the Appeal Subjects, was the brother's main residence and so liability for the Council Tax on the Appeal Subjects should be shared jointly and severally between the three sibling owners.

The Appellant explained the brother had taken up employment for a period some 10 miles from the Appeal Subjects. At other times the brother worked as a Merchant Seaman spending periods of several weeks at a time at sea. He contended that indicators of one's main residence included where one is registered with a doctor, where one has notable electricity use, where one's clothes and motor vehicles are kept. The fact that the property owned by the brother in North Uist was offered for holiday let was another indicator that not it, but the Appeal Subjects, were the brother's main residence.

On the Appellant's account, the brother was rarely seen in North Uist. According to the Appellant the brother is an "absentee crofter" there. He is under investigation by the Scottish Environment and Rural Affairs Department regarding monies paid to him in relation to the running of a croft in North Uist when, in fact, he is not living there but is living in the Appeal Subjects. The Appellant suggested part of the reason the brother might want to avoid sole responsibility for payment of Council Tax on the

Appeal Subjects was because it would be a piece of evidence pointing to him being absent from his croft on North Uist.

In April 2016 the brother was seen at the Appeal Subjects by the Appellant's partner.

In the summer of 2016 the sign advertising the property for sale, after the Appellant had successfully pursued an action for division and sale through the courts, was removed. The Appellant reported a neighbour as identifying the brother as the person who removed the sale sign.

In February 2017 the Appellant and his partner attended the Appeal Subjects. They found them to be unoccupied. The locks had been changed.

In 2017 the brother advertised for a housekeeper/caretaker for holiday lets at his house in North Uist.

On one occasion the Appellant visited the Appeal Subjects to conduct viewings for potential purchasers of the property. The brother was then in residence. The brother complained the Appellant had disturbed him in "my own home". The brother said "I stay here".

Photographs were produced of motor vehicles said to belong to the brother parked at the Appeal Subjects on a number of occasions.

The BT account at the subjects is in the name of the brother.

The electricity account is also in the name of the brother. A copy account was produced showing payments totalling £774 were made in the period September 2018 to February 2019.

Copy correspondence was produced bearing to show mail was being redirected to the brother at the Appeal Subjects.

A copy vehicle tax reminder relating to one of the vehicles previously referred to as being parked at the Appeal Subjects and addressed to the brother there, dated 31 May 2019, was produced.

Photographs bearing to show the appeal subjects fully furnished and with gents clothes stored there were produced. The general impression from the photographs was of a property which was lived in.

A copy of a letter from Raigmore Hospital, Inverness, addressed to the brother at the Appeal Subjects, dated 13 May 2019 was produced. This, according to the Appellant, was indicative of the brother being registered with a GP in the locality of the Appeal Subjects rather than with a GP in North Uist.

The Appellant also produced a copy RBS Bank Statement for the period 30 April to 2 May 2019 addressed to the brother at his North Uist address. He also produced a partial copy of a letter dated 15 May 2019. The source of the letter is not evident from the copy. It is addressed to the brother at his North Uist property.

RESPONDENTS' CASE:-

In response to the Appellant's case, the Finance Department submitted a number of documentary productions. These included the original decision letter dated 15 August 2019; the Appellant's email of appeal dated 1 September 2019; various items of correspondence between the Finance Department and the brother's solicitors during the period from October 2019 to August 2020 relating to his residence at the Appeal Subjects; an email from Peter Gunn, Team Leader (Revenues) at the Highland Council dated 5 October 2020 confirming the original decision of 15 August 2019; a letter of 28 October 2020 from Sheila McKandie, Head of Revenues and Business Support within Highland Council confirming the original decision and Peter Gunn's review of it.

A statement by Peter Gunn dated 9 February 2021 was also produced. That statement rehearsed the timeline of the appeal process. It did not seek to explain how the decision to refuse the appeal was arrived at. Mr Gunn referred to issues put to the brother via his solicitors and the responses given to these. This correspondence was also referred to by Sheila McKandie in support of the decision intimated in her letter of 28 October 2020.

The Respondents received from the solicitors an email from the brother's accountant with attachment giving the brother's days at sea between 20 May 2013 and 31 January 2020. They also enclosed a list of bookings regarding the letting of the North Uist Property. They said that property lets out approximately 10 weeks per annum while he is at sea.

In response to an assertion put to them by the Finance Department that the locks were changed in the property in July 2019 and the enquiry if the brother had returned to the property since that date, the solicitor stated he had returned there on a number of occasions to undertake gardening and to generally maintain the premises.

He did not recall the exact dates he stayed there between March 2016 and July 2019. However, his residence there was described as “transitory and exclusively for the purposes of occasional maintenance to prevent dilapidation”.

The noted electricity use at the property was attributable partly to the brother’s time there but also it was said he left the heating on in between his stays for the purpose of maintaining the property.

In accepting that he keeps personal belongings at the property it was stated that the Appellant and the sister do also.

The period of employment within 10 miles of the Appeal Subjects previously referred to was said to have been limited to the period April until October 2016.

In response to the suggestion that the brother was having mail re-directed to the Appeal Subjects it was acknowledged this happened but was not evidence that he principally resided there. It was asserted that his primary residence was at the North Uist property.

DISCUSSION & DECISION:-

This appeal turns on whether the Appeal Subjects are the Appellant's brother's sole or main residence. There was no evidence before the Committee suggesting the Appeal Subjects were his sole residence and so the test is further refined in this case as to whether the Appeal Subjects are his main residence. If they are, the brother is solely responsible for paying the Council Tax due. If they are not, the three owners of the property are jointly and severally liable for the Council Tax.

There were no other properties suggested as possible main residences of the brother - it was either the Appeal Subjects or the North Uist property. The Finance Department determined it was the latter and it was against that decision this appeal came before the Committee.

The reasoning in the Finance Department reaching its decision that the North Uist property was his main residence, is far from clear in the papers available to the Committee. Reference is made to the correspondence received from the brother's solicitors. In this respect, in her letter of 28 October 2020, Sheila McKandie referred to the brother having "provided documentation via his solicitor to evidence substantial days at work which coincide with bookings at the property in North Uist".

The print-out of holiday let dates provided via the brother's solicitor cover the period from July 2017 to June 2020. It suggested the property was let out for approximately 40 weeks over that period. As has already been noted, via the solicitors, the brother also produced vouching of his days at sea.

From the letter of 28 October 2020, it would appear Sheila McKandie considered it significant, in reaching the decision that the North Uist property was the brother's main residence, that the documents evidenced "substantial days at work which coincide with bookings at the North Uist property". It is not clear to the Committee how the coincidence of days at sea with some periods when the North Uist property was let was supportive of the proposition that that property was the brother's main residence. That coincidence of dates, in the view of the Committee, was a neutral factor in determining which of the two properties was his main residence.

One factor from this evidence which appears not to have been taken into account by the Finance Department is that for approximately one-half of the periods when the property was let, the brother was not at sea. It might be thought to be a relevant, and potentially significant, issue where the brother lived during those periods of let. It appears that question was not put to him.

Through his solicitor, the brother asserted the North Uist property was his primary residence. He produced no evidence, however, to support this.

In her letter of 28 October 2020, Sheila McKandie stated "There can be a number of contributory factors when considering an individual's sole or main residence, the Council will consider a number of factors, for example where they are registered to vote, where they are registered for health or dental services."

The brother has not stated where he is registered to vote and it appears he has not been asked.

He has not stated where he is registered with a GP or a dentist and it appears he has not been asked. However, on this point, the copy correspondence from Raigmore Hospital addressed to the brother at the Appeal Subjects dated 13 May 2019 which was produced by the Appellant suggests that for health services purposes he is registered at the Appeal Subjects.

Through his solicitor, the brother produced two invoices for maintenance work carried out at the Appeal Subjects in July 2020. These were, it was said, in a covering email to the Finance Department “.....to demonstrate that - consistent with his position - his presence at the property has been for the purpose of carrying out repairs and preventing further dilapidations.” On the face of them, these invoices are for routine maintenance works. They may well have been consistent with the position stated by the brother’s solicitors. However, they are equally consistent with the brother having these repairs carried out to the Appeal Subjects as his main residence. Although not referred to by the Respondent, the Committee also had regard to the two items of correspondence produced by the Appellant, dated in April and May 2019, which were addressed to the brother at the North Uist property.

Against all of these factors, the Committee considered the evidence produced by the Appellant seeking to prove that the Appeal Subjects were the main residence of the brother. The following evidence from the Appellant was thought to be of particular significance:-

- (a) That the brother removed the “for sale” sign from the property;
- (b) An assertion that the brother had changed the locks went unchallenged;

- (c) The reference by the brother to the Appeal Subjects as “my own home” and “I stay here”;
- (d) That the North Uist Property was advertised for let for significant periods of time;
- (e) That in 2017 the brother advertised for a housekeeper/caretaker for holiday lets at his house in North Uist;
- (f) That during approximately one-half of the periods when the North Uist property appears to have been let out, the brother was not working at sea;
- (g) The BT account for the Appeal Subjects being in the brother’s name;
- (h) The electricity account for the Appeal Subjects being in the brother’s name and the extent of the usage of electricity in the Appeal Subjects;
- (i) The re-direct of mail to the brother at the Appeal Subjects;
- (j) The vehicle tax reminder addressed to the brother at the Appeal Subjects;
- (k) The letter from Raigmore Hospital addressed to the brother at the Appeal Subjects.

While none of the individual pieces of evidence listed above were considered, in and of themselves, to be conclusive of the issue at hand, taking them in combination, the Committee was satisfied that, as between the North Uist property and the Appeal Subjects, the latter was established as being the main residence of the brother.

As to the period affected by this appeal, it was suggested by the Finance Department the period should run from 20 May 2015 to the present. There was no evidential basis for the period starting in May 2015. The evidence presented by the Appellant related to a period beginning in April 2016. Therefore, the Committee finds that from 1 April

2016 to 31 March 2021, the Appellant's brother had his main residence at the Appeal Subjects and so is solely responsible for payment of Council Tax during that period. The Committee trusts the Finance Department will give prompt attention to any consequential adjustments and/or repayments of Council Tax to the Appellant and his sister following this decision. The Committee would not expect the position of the brother being solely responsible for payment of Council Tax in respect of the Appeal Subjects to change in the present or in future financial years unless persuasive evidence that he no longer has his main residence at the Appeal Subjects, is presented to the Finance Department.

The solicitor for the Finance Department, in written submissions, quite properly drew the attention of the Committee to two reported cases - R (Williams) -v- Horsham District Council [2004] EWCA CIV 39 and Highland Council -v- Highland & Western Isles Region Valuation Appeal Committee [2008] CSIH 48. It is disappointing that, 13 years on from the second of those decisions, the same department has been found wanting in similar fashion. It appears to know the relevant enquiries to make to help determine the issue of main residence but neglects to make them.