THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Preliminary Decision: NDR, valuation, deletion of entry, LGFA 1988, domestic, preliminary hearing, short stay means 28 days or less.

Re:

KING'S WARDROBE APARTMENTS, WARDROBE PLACE, LONDON EC4V 5AF (1)

PRINTING HOUSE SQUARE, GUILDFORD, SURREY GU1 4AJ (2)

*A*PPEAL NOs: 503028215572/053N10 (1)
361525202164/537N10 (2)
361525493396/538N10 (2)
361525202622/537N10 (2)
361525202016/537N10 (2)

BETWEEN: BRIDGE STREET LIMITED (1)
ROOM SPACE LIMITED (2) Appellants

-and-

MR DAVID JACKSON (1)

MR ANDREW RICKETTS (2)

(VALUATION OFFICERS) Respondents

BEFORE: Mr G GARLAND (President of the Tribunal)

SITTING AT: THE TRIBUNAL OFFICES, 120 LEMAN STREET, LONDON

ON: 28 NOVEMBER 2017

APPEARANCES:

The Appellants were represented by Mr Cain Ormondroyd of Francis Taylor Building.

The Appellants provided witnesses and statements:

Ian Charman, Partner of Turner Morum LLP,

Toby Brewin, General Manager Kings Wardrobe Apartments,

Linda Evans, employee of Room Space Ltd.

The Respondent Valuation Officers were represented by Mr Matthew Donmall of One Crown Office Row.

Summary of Decision

1. I find on the preliminary issue that 'short stay' means periods of 28 days or less.

Introduction

2. These appeals concerned whether the hereditaments in question were non-domestic, and so subject to 'business' rates, or domestic dwellings and therefore subject to council tax. The particular issue to be decided is the definition of "short periods" under section 66 (2B) of the Local Government Finance Act 1988 (the Act) which I set out below:

   s.66 Domestic property.

   (1) Subject to subsections (2), (2B) and 2E below, property is domestic if—

   (a) it is used wholly for the purposes of living accommodation,

   (b)…

   …

   (2B) A building or self-contained part of a building is not domestic property if—

(a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more, and

(b) on that day his interest in the building or part is such as to enable him to let it for such periods.

(2C) For the purposes of subsection (2B) the relevant person is—

(a) where the property in question is a building and is not subject as a whole to a relevant leasehold interest, the person having the freehold interest in the whole of the building; and

(b) in any other case, any person having a relevant leasehold interest in the building or self-contained part which is not subject (as a whole) to a single relevant leasehold interest inferior to his interest.

(2D) Subsection (2B) above does not apply where the building or self-contained part is used as the sole or main residence of any person.

(2E) Property is not domestic property if it is timeshare accommodation within the meaning of the Timeshare Act 1992.

…

(8A) In this section—

"business" includes—

(a) any activity carried on by a body of persons, whether corporate or unincorporate, and

(b) any activity carried on by a charity;

"commercially" means on a commercial basis, and with a view to the realisation of profits; and

"relevant leasehold interest" means an interest under a lease or underlease which was granted for a term of 6 months or more and conferred the right to exclusive possession throughout the term.

(9) The Secretary of State may by order amend, or substitute another definition for, any definition of domestic property for the time being effective for the purposes of this Part.

3. Directions were issued by me on the 5 September 2017 and I am grateful for the way the parties have professionally prepared their cases and complied with those directions making my task much the easier.

4. In brief the Appellants contend that 28 days forms a useful rule of thumb indicating the cut-off point for 'short periods'; the Respondents contend it means lettings for periods of less than six months. This divergence of view has never been tested before in litigation and no assistance could be found in precedent.

Background

5. By way of background the following facts were agreed between the parties.

The Serviced Apartments Sector

6. The hospitality sector, in addition to hotels, includes 'serviced apartments'. 'Serviced apartment' is the umbrella term for a type of furnished apartment available for letting, which provide varying ranges of amenities, housekeeping and a range of services for guests and where typically taxes and utilities are included within the rental price.

7. 'Serviced apartment' as an expression for a long time was relatively little used outside the corporate relocation and business travel markets which is where they have traditionally been aimed. Most online booking sites such as lastminute.com, booking.com, hotels.com and the like have long offered

serviced apartments generally within their booking options, but with no separate category – most are just labelled ‘apartment’ and offered as another option alongside regular hotel rooms.

8. The sort of facilities one might expect from a serviced apartment include:

    a. A fully fitted kitchen, usually with both dishwasher and washer/dryer;

    b. One or more separate bedrooms, or in studio apartments, a designated sleeping area;

    c. A living area, sometimes incorporating a separate dining area;

    d. One or more bathrooms and WCs;

    e. TV, Wi-Fi and the latest in-room technology;

    f. All utilities included i.e. water & electricity;

    g. A weekly cleaning/housekeeping service and whenever a customer vacates a room.

Kings Wardrobe

9. The buildings currently on site are of brick (partially rendered) and slate construction and, aside from nos 2-5, parts of which still survive from the original c1680 redevelopment, date from the early 19th Century and late 19th Century. They were originally a group of individual houses arranged around a private courtyard.

10. At the very end of the 20th Century, initially no 6 and then progressively the remainder of Wardrobe Place was converted from various uses as offices, houses and private apartments into a single development of serviced apartments. The first phase (known as 6 WP) went into operation on 17 January 2000.

11. The main reception and porterage area is located at the end of the internal courtyard together with various storage and other support facilities (other than a small management office). The apartments offer a 24 hour reception desk,

wi-fi internet access is available at an additional charge, weekly cleaning is provided and covered car parking is available nearby off-site.

12. Initially the hereditament was entered into the 1995 Rating List from 17 January 2000. Following appeals both the 1995 and 2000 Rating List entries were deleted by agreement. On 13 May 2013 a Valuation Officer's Notice brought the hereditament back into the list at an RV of £357,000 with effect from 1 April 2010 (also the material day for the appeal before me);. There then followed an increase in assessment from 5 January 2011 (the appeal on this entry was adjourned). The VO has excluded from the assessment apartments A01 and A12 as they were the permanent residences of two occupiers. Appeals have been lodged against both notices of alteration.

13. Details of selected apartments are as follows:

    a. 29 – is a one bedroom apartment on the second floor with separate bedroom, living room, kitchen (separated by glass sliding door), bathroom and WC. It has its own front door from the common parts of the complex leading into a separate hallway with hot water cylinder, storage cupboards. It has an area of 61m^2. It is described as a fairly typical layout of any one bedroom residential apartment you might find in London.

    b. A110 - is a one bedroom apartment on the first floor with separate bedroom, living room, kitchen (separated by glass sliding door), bathroom and WC. It has its own front door from the common parts of the complex leading into a separate hallway with hot water cylinder, storage cupboards. It has an area of 56m^2.

    c. B02 - is a one bedroom apartment on the ground floor with separate bedroom, living room, kitchen (separated by glass sliding door), bathroom and WC. It has its own front door from the common parts of the complex leading into a separate hallway with hot water cylinder, storage cupboards. It has an area of 49.23m^2.

    d. A03 - is a large two bedroom apartment on the ground floor with two separate double bedrooms, living room, kitchen (separated by glass

sliding door), two bathrooms with WCs. It has its own front door from the common parts of the complex leading into a separate hallway with hot water cylinder, storage cupboards. It has an area of 81.01m^2.

Printing House Square

14. Printing House Square is a residential development in Guilford, Surrey consisting of in excess of 100 units.

15. The history of the lead apartments was as follows:

    a. No. 4 was entered into the Rating List with effect from 4th January 2011 (also material day);

    b. No. 6 was entered into the Rating List with effect from 27th September 2011 (also material day);

    c. No. 7 was entered into the Rating List with effect from 4th January 2011 (also material day);

    d. No. 69 was entered into the Rating List with effect from 17th May 2010 (also material day).

16. Details of selected apartments are as follows:

    a. 69 – one bedroom apartment of 34.93 m^2 with an allocated parking bay;

    b. 6 – two bedroom apartment of 61.03 m^2 with an allocated parking bay;

    c. 4 - two bedroom apartment of 37.63 m^2 with an allocated parking bay (I did question the area and number of bedrooms at the hearing but was unable to be assured that it was correct, although nothing turns on the point);

    d. 7 - one bedroom apartment of 43.48 m^2 with an allocated parking bay.

Decision and reasons

17. I found that the ‘short periods’ referred to by the parties and contained within section 66 (2B) of the Act meant for the purpose of this preliminary decision 28 days or less. I decided on this rather than the previous one month as it provided the certainty sought rather than being a different number of days depending on which month of the year was in question.

18. Both parties agreed that neither legislation nor case law had addressed this point. Indeed the practice of the Valuation Office Agency for 20 years has been to accept the definition as one month or less and it was only from the 2010 Rating List that a new interpretation had been introduced.

19. The starting point of deciding the issue was reading the whole, or at least the relevant sections of s. 66 of the Act. The first thing to say is that it was not disputed between the parties that the appeal hereditaments met the criteria of s. 66(1). That’s the starting point which I say is important.

20. Now moving on to the s. 66 (2B) which stated ‘A building or self-contained part of a building is not domestic property if’ and then ‘in particular if …’. There were a few elements that were drawn to my attention as clues as to the correct interpretation that needed to be addressed. In principle they were that the building was available ‘for letting commercially’ and for ‘short periods totalling 140 days or more’.

21. It is the second of those points that counsel for the Appellants said gave a clear indication that the Respondents’ contention was wrong. The statute referred to ‘periods’ not ‘period’. The Respondents reminded me that The Interpretation Act 1978 stated at s.6 that ‘words in the singular include the plural and words in the plural include the singular’. In isolation, I agreed with the Respondents; nothing can be taken from the point as it could be one period rather than two or more.

22. However, the section continued with ‘totalling 140 days or more’. I took two points from this wording, first by expressing the term totalling; it would appear I was looking at more than one period. Second it referred to 140 days or more. The Respondents sought short periods to be the maximum of one day less than six months which was either 181 or 182 days, depending on which

six months (if I had found in the Respondents favour I would have made a decision on the number of days rather than a six month minus one day rule). The contentious area of 2B then became 'periods of up to 181 days which total 140 days or more'. I agree with the Appellants that this produces a rather curious outcome. It was not decisive though, as explained by the Respondents, it stated 'or more', so two periods of 181 days in any year would meet the criteria. However, it does seem to me a most unnatural way of reading the legislation and in my view not what parliament could have intended.

23. One other matter which was raised at the hearing in relation to the legislation was in connection with (2D) which states 'Subsection (2B) above does not apply where the building or self-contained part is used as the sole or main residence of any person.' It raised with me the question of whether four weeks as proposed by Mr Ormondroyd, was also sufficient. This is because it needed to be a period for which someone might have their sole or main residence in the property. I noted that council tax was a daily charge and therefore accepted that the four weeks proposed would just about fall within that definition, as if it didn't it would make that section redundant.

24. The only case law provided was in relation to *R* v. *St Pancras AC* (1877) 2 QBD which for students has been much quoted in respect of issues of rateable occupation. In this case a single sentence picked up the point of:

"*It must be an occupation which has in it the character of permanence; a holding as a settler not as a wayfarer."*

25. Whilst in its day a splendid judgment which stood the test of time, I don't see it as being particularly helpful in deciding the matter before me in this present case.

26. There was one further argument that was put to me which I disposed of quite quickly. The treatment of other tax regimes such as VAT and Corporation Tax in the context of one month was simply not helpful.

27. In conclusion, and in the absence of legislation or case law, I have taken a view on the basis of the argument and evidence before me. I must add that a lot of the evidence provided was produced sometime after the material day, in some occasions up to seven years after. I raised those concerns with the parties but it was explained away on the basis that nothing had changed since the material day. I was intrigued by Mr Ormondroyd's 'rule of thumb' approach which was original in outlook and possibly practical in application but in my opinion a more reasoned approach has to be found to answer the question.

28. Mr Donmall was looking for legal certainty and practicability in defining short periods. The problem was all his supporting evidence was in respect of short lets or short tenancies. All were in a residential context and not for commercial letting and not what the legislation required. They were of no assistance. Furthermore, whilst it seemed practical to conclude that anything up to six months was short stay and anything longer was a tenancy, it seemed to me to start from the wrong point. The question was 'what is short stay?' Not an assumption that if the starting point was a residential tenancy for six months or more, anything less must be a short period. Moreover if it was such a period what would be the point of the provisions at issue in this case? It seems to me there would be no point to them.

29. There then follows what I could best describe as a 'business rates' approach by Mr Donmall and interestingly not even a 'non-domestic' approach. Mr Donmall argued that other businesses were rated for property which was not domestic and therefore so should these ratepayers. With the greatest of respect to Mr Donmall, this was where in my humble view he missed the point. The question wasn't 'is this a business? In fact s.(2B) recognised that they were a commercial enterprise. Taking the words in their true sense and meaning, the question was 'are they non (or not) domestic?' It would be wrong to pigeon hole everything up to the granting of a lease at six months as non-domestic as that is not the test to be taken. If that was the case then it would appear to me to be little purpose in the test at s. (2B) and almost make it redundant or replaced by something along the lines of 'any letting which is

for a period of less than six months and not on a residential basis must be non-domestic'.

30. Turning for a moment back to Mr Ormondroyd's arguments, this has difficulty as he relies on the actual occupations of his client's properties which I am not convinced provided any real assistance. As stated by Mr Donmall, this ran the risk of taking the cart before the horse.

31. Whilst not an authority, I have taken note of paragraph 4.7 of the Government's Practice Note on '*Non-Domestic Rates: The Boundary between the Community Charge and Non-Domestic (Business) Rates: Definition of Domestic Property:*

"*4.7 In practice, it will be clear to most people that the provision of accommodation for short periods to individuals whose sole or main residence is elsewhere is intended to refer to accommodation for holidaymakers or business travellers or those working or looking to work away from home, either during the week or for longer periods – or more likely, a combination of all of these. It is not expected that it will be taken to refer to longer-term lets as a second home to the same person (or a small number consecutively) which are granted by way of lettings for consecutive short periods …"*

32. This helped draw one's attention on what was to be decided. After careful consideration I concluded that short stay meant periods of 28 days or less. I decided this using my own knowledge on such matters and with the help of the witness statements and documentary evidence of the parties. Clearly holidaymakers (who as a general rule tend to have at the very maximum a four week break at any one time) would fall into this category, as well as those on short-term work (business traveller). It seemed to me that once 28 days have passed, as argued by Mr Ormondroyd, what you had was a 'home from home'. It was something more than a short stay occupation. Invariably a number of items will be in the building other than the single small suitcase, which is the usual travel companion of the business traveller. There would be significant amounts of food in storage and other home comforts such as books, films, maybe gaming equipment for the younger generation and

integration into the social life in the area. What it becomes is a place where one was as relaxed, happy and comfortable as one might be at home. Living accommodation within the true sense of the words. It seems to me that is what the provisions in question were trying to identify, though unhelpfully do not give the clear guidance to the question before me

33. One interesting point raised by Mr Donmall was that the length of the let was not necessary coterminous with the length of the stay. I have to say that I don't think this point helps either side and indeed if anything would undermine the certainty he seeks for his client's desire to see. . The legislation at 2B does not require the person to have their sole or main residence at the property, indeed it stated later that this was not what was being considered, and as such occupancies were covered at 2D. Occasional absences, provided the property remained within the occupier's entitlement to use, did not damage my decision.

34. Mr Donmall also argued from the aspect of the hierarchy of liability contained within s.6 of the Local Government Finance Act 1992. That point didn't even get out of the starting blocks. This section only comes into play once a hereditament has been identified as a dwelling, indeed as he criticised Mr Ormondroyd for, Mr Donmall clearly put the cart before the horse in attempting to bring this point into play. Furthermore, a dwelling which was no-one's sole or main residence is as much a dwelling as one which was.

35. As the Appellants explained, the serviced apartments were aimed at longer lets for those on contract work of a fixed-term where what they were looking for was a home environment. Their aim was to fill a gap in the market between short occupations and the granting of tenancies. Although they may also be supplemented by shorter periods. They sought to bridge a gap between short stay and tenancies.

36. As a final test, I have considered Mr Charman's 'person on the Clapham Omnibus' or maybe more aptly in this case 'what the reasonable onlooker with knowledge of the material facts would consider was a short stay' for a serviced apartment. It seemed to me that a period of almost six months would not be considered 'short stay' and something more by any reasonable

person ceased with the correct information. Certainly up to 28 days would be aptly described as short stay with a return home or to another location at the end of the period or even at weekends. I did contemplate three months being the answer but at the material day would 90 days be considered short stay? My answer was no, three months or 90 days would in my view be too long

37. As I mentioned to the parties my decision is based on factual matters at the material day. It may be that things have progressed since then and as society changes, work patterns develop or alter and therefore peoples understanding or attitude to what might be 'short stay' could change; however, for present purposes I am satisfied that 28 days or less is a perfectly reasonable period to satisfy the definition for this type of property.

38. Finally, in conclusion I find the article from Property Week provided by the Respondents quite helpful to support my view:

"*There are two distinct types (of serviced apartments), as the answer to the definition question makes clear.*

One type sees itself as part of the hospitality industry, but offering longer-stay options with less service. The apartments tend to offer more space, probably with a kitchenette, for those who want to be more self-sufficient when away from home. This type of arrangement might suit a business traveller spending a week or two in a foreign city, or it could be what a family with young children is looking for in a long weekend break. The key point is that those who stay there are those who might otherwise stay in a hotel, so it is aimed at the hospitality market.

Not so the second type, which is more closely related to the residential market in that it works on even longer-term stays – perhaps several weeks or months – and often caters for businesspeople working away from home for a extended period who want a serviced flat. This is a temporary corporate accommodation service. It is somewhere to make a home for a relatively short period and is, in effect, a rented flat with extra supporting services."

39. This confirmed my view that it was quite wrong to simply compartment matters in to leases of six-months or more, or anything less.

40. I noted that from the evidence provided that the parties tended to focus in these appeals on what actually occurs in each hereditament rather than the intention of the owner. The Upper Tribunal decision in *Godfrey & Godfrey* v. *Simm (VO)* RA/15/1999, the VTE decision in *Bridgestreet Accommodations* (appeal no. 599016785879/539N05 May 2011) and the Government's Practice Note all focus on intention. If the Valuation Officer assesses buildings and self-contained accommodation on that basis I believe the certainty and predictability sought is provided.

41. As this was a preliminary matter decision there is no order attached.

42. However, I direct that the parties advise me within 28 days of this preliminary decision whether the appeals can be settled, or a further hearing is required to address the second and any subsequent points, or the assistance of the Upper Tribunal is needed to resolve matters.

Mr G Garland - President

Mr J Bestow - Registrar

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