Neutral Citation Number: [2025] EWHC 113 (Admin)

Case No: AC-2024-LON-002554

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 January 2025

Before :

MR JUSTICE CONSTABLE

- -

Between :

MERCER BOFFEY **Appellant**

- and -

LUCY DYER (LISTING OFFICER) **Respondent**

- -
- -

The Appellant appeared in person
Gareth Rhys (instructed by HMRC Legal Group) for the Respondent

Hearing date: 21 January 2025

- -

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Friday 24th of January 2025.

Mr Justice Constable:

Introduction

1. The Subject Property is a charming Grade II listed detached Queen Anne house, dating from 1780, located in Petersham, an enchanting hamlet nestling idyllically between Royal Richmond Park and a picturesque sweep of the river Thames as it meanders towards the metropolitan hubbub of London and on to the sea. The Appellant, Mercer Boffey, and his wife bought the freehold in fee simple absolute possession as their family home in 2018, and there they have lived since.

2. The Subject Property had been entered into the Council Tax list at Band H on 1 April 1993, and Mr Boffey has paid council tax since purchasing the property.

3. On 15 April 2023, Mr Boffey challenged his liability to pay council tax, and he sought the de-listing of the property from the tax roll, effective since July 2018 when he started paying the tax. The basis of his application was that the Subject Property '*fails to meet the definition of 'hereditament*' *for Council Tax purposes*'.

4. Mr Boffey contended that the Subject Property failed to meet the definition because he owned the property absolutely, it was only used for his family's private accommodation and he had not sought any permission to retain rents as a licenced provider of property. If Mr Boffey was right, of course, it would have rather stark consequences for the lawfulness of many billions of pounds raised by local authorities under successive governments for over three decades, given that he and his family are in no different position in relation to their property to many millions of homeowners around the country. That fact does not, of course, directly affect the correct answer in law.

5. The proposal was rejected by the Listing Officer.

6. Through Form A1, Mr Boffey lodged an appeal with the Valuation Tribunal for England ('VTE'), as provided for pursuant to Regulation 10 of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 ('the CT Regulations'). The matter was listed for a remote hearing in May 2024, pursuant to standard directions, but on 23 April 2023, Mr Boffey applied for the matter to be treated as a complex case within the meaning of PS3 of the VTE's Consolidated Practice Statement, on the basis that the appeal raised a novel, important or contentious point of law with national implications. The Respondent Listing Officer objected on the basis that the substance of the argument raised by Mr Boffey had effectively already been considered and determined in Doyle v Roberts (Listing Officer) [2021] EWHC 659. Mr Boffey filed a revised submission on 13 May 2024.

7. The complex case application came before the President of the VTE, Mr Gary Garland. Having reviewed the substance of the appeal, he issued a notice of his intention to strike out Mr Boffey's appeal on the basis that it had no reasonable

prospects of success. The President issued directions giving Mr Boffey the opportunity to make further representations setting out why the appeal should not be struck out. These were provided by way of a 22-page document dated 31 May 2024. This included an 'Application Notice to Admit Facts', which constituted a list of 38 'facts' which Mr Boffey sought to be answered by the Listing Officer. (The same application has been made in the context of the matter before this Court, by application dated 10 Jan 2025). On 7 June 2024, by an Order with a Statement of Reasons, the President struck out the Appellant's appeal in the VTE on the basis that the appeal had no reasonable prospect of success and that it was in the interests of justice to do so.

8. Mr Boffey appeals to the High Court against this Order. The basis of appeal, as developed in Mr Boffey's written Skeleton Argument, can be summarised broadly as follows:

   (1) it was an error for the VTE to assert 'subject matter jurisdiction' over a property case that may have been outside its competence to adjudicate in which it also lacked the power to order the relief sought;

   (2) the President erred in striking out the original appeal without affording Mr Boffey pre-hearing disclosure, 'potentially violating his due process rights in defending his property from an unfounded claim by a public body'. This complaint relates, at least in part, to the Notice to Admit Facts which was not ordered to be answered;

   (3) the President erred in law, basing his decision on an inconsistent interpretation of well settled law.

9. In response to the Appeal, the Respondent's Notice indicated an intention on the part of the Respondent to apply to strike out the appeal. However, the Respondent sensibly decided, once the matter was listed for hearing on 21 January 2025, simply to contest the appeal substantively. Whilst strictly speaking in these circumstances the further material lodged by Mr Boffey in opposition to the Respondent's strike out/summary judgment application is not relevant, I have taken it into account insofar as it materially adds to the other submissions made in other documents.

10. I thank Mr Boffey for his articulate, courteous and helpful oral submissions in support of his appeal. Mr Boffey's written submissions contained a relatively lengthy list of citations from authority. He was unaware of the need to provide copies of the authorities to the Court. Nevertheless, the appeal hearing was effective and neither Mr Boffey, nor the Court, was particularly hindered by this in light of the content of the oral submissions. Those particular authorities to which reference was made in Mr Boffey orally, I have located and reviewed with care, alongside his various written submissions. I also thank Mr Rhys, on behalf of the Respondent, for his efficient written and oral submissions.

Jurisdiction

11. The CT Regulations set out the procedure for a challenge to the Council Tax list, and appeals to the VTE. The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedurae) Regulations 2009 ('the VTE Procedure Regulations') sets of the powers of the VTE in dealing with appeals, and the ability to appeal from a decision of the VTE.

12. Regulation 4 of the CT Regulations provides that an interested person (which, in the context of a dwelling, includes the owner) may make a proposal to alter the valuation list compiled under section 22 of the Local Government Finance Act 1992 ('the 1992 Act') if it shows as a dwelling property which ought not to be shown. Regulation 5 deals with the manner in which the proposal ought to be made to the listing officer, and the following regulations through to Regulation 9 with the manner in which the validity of the proposal is to be determined by the listing officer, leading to the provision of a decision notice. Regulation 10(1) then provides that the proposer may, within 3 months, appeal against the listing officer's decision to the VTE.

13. Regulation 3 of the VTE Procedure Regulations provides that, in giving effect to the VTE Procedure Regulations and in exercising any of its functions under them, the VTE must have regard to, amongst other things: dealing with appeals in ways which are proportionate to the importance of the appeal, the complexity of the issues, the anticipated costs and the resources of the parties; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; and avoiding delay, so far as compatible with proper consideration of the issues. Regulation 6 provides the VTE with wide case management powers including the ability to regulation its own procedure. Regulation 8 permits the VTE to give directions on its own initiative. Regulations 10(3) and (4) provide that:

> '*(3) The VTE may strike out the whole or a part of the proceedings if-*
>
> …
>
> *(c) the VTE considers there is no reasonable prospect of the appellant's appeal, or part of it, succeeding.*
>
> (4) *The VTE may not strike out the whole or part of the proceedings under paragraph [3(c)] without first giving the appellant an opportunity to make representations in relation to the proposed striking out.*'

14. Pursuant to regulation 29, the power to strike out under regulation 10 and thus disposing of proceedings is explicitly permitted without a hearing.

15. Regulation 43(1) provides that an appeal shall lie to the High Court on a question of law arising out of an appeal under the CT Regulations.

16. It is clear that the appropriate course to challenge the Listing Officer's decision not to remove the Subject Property from the council tax list was by way of appeal to the VTE. Mr Boffey having correctly appealed to the VTE, that body had jurisdiction to determine the matter. As part of that determination process, the President of the VTE had the power to strike out proceedings if it was appropriate to do.

17. In the course of Mr Boffey's submissions, he fairly accepted that the root of his jurisdictional complaint was, in effect, his substantive complaint that he should not be paying council tax (on a correct understanding of the statutory regime) and that as such, if he was correct, the Listing Officer did not have 'jurisdiction' over him. This approach elides the question of whether the Listing Officer had the statutory power to make the determination, and whether the substance of the determination was correct in law.

18. I am entirely satisfied that the Listing Officer and the VTE had the requisite jurisdiction, derived from statute, for making the decisions they did.

Due Process

19. At the heart of Mr Boffey's complaint in respect of due process is his contention that the President ought not to have struck out the appeal at a point at when the Respondent had not been required to answer his 'Notice to Admit Facts' and/or prior to disclosure.

20. It is clear to me that the 'Notice to Admit Facts' was not a document to which it was ever likely that the Respondent would, or indeed should, have been ordered to answer. It can only be described as a somewhat tendentious document in which Mr Boffey had broken his submissions into a series of short statements – not all of fact, but also assertions of law and of the Respondent's state of mind or belief. Whether this replicates a process common in litigation in the United States of America, as Mr Boffey suggested in oral argument, I do not know. It is not an approach which would generally be sanctioned by the Civil Procedure Rules (which are not, in any event, directly applicable in the VTE). Answering the questions would not have remotely advanced the ability of any decision maker properly to determine the appeal, or in considering whether Mr Boffey's arguments stood a reasonable prospect of success.

21. Mr Boffey, again entirely fairly in answer to questions from me, accepted that there were no facts upon which his legal argument turned which were in dispute. Those facts are limited to the following: Mr Boffey and his wife own the freehold of the Subject Property, fee simple absolute possession, and he lives there with his family. He has not applied to the local authority for a licence to rent out his property, or, indeed, in fact rented his property out.

22. In circumstances where the appeal, in substance, turned on a point of statutory construction, the President's decision to strike out the appeal without considering that Mr Boffey's 'Notice to Admit' document needed answering, or that any particular disclosure needed to be given, was entirely justified and certainly did not amount to any error of law which may properly be argued before this Court.

23. It is also plain, for the avoidance of doubt, that the President had the express power to strike the appeal out of his own initiative and without a hearing, providing that pursuant to Regulation 10(4) he afforded Mr Boffey the opportunity to make representations. This he did. There was no error of procedure. The President also correctly directed himself as to the appropriate test to apply on an application to strike out.

24. The decision to do so was a case management decision.

25. As set out in Royal & Sun Alliance Insurance Plc v T&N Ltd [2002] EWCA Civ 1964 (QB), the Court is afforded a wide discretion in the context of case management decisions and, accordingly, a party seeking to overturn such a decision must overcome a high threshold. The ambit of discretion entrusted to the Judge is generous. An appellate court will only interfere with a discretionary evaluation where an appellant can identify one or more of the follows errors (Azam v University Hospital Birmingham NHS Foundation Trust [2020] EWHC 3384 per Saini J): (1) a misdirection in law; (2) some procedural unfairness or irregularity; (3) that the Judge took into account irrelevant matters; (4) that the Judge failed to take account of relevant matters; or (5) that the Judge made a decision which was "plainly wrong".

26. The appeal before me boils down to the submission that the President erred in law. If he did so, this would be a basis for setting aside the strike-out. If he did not, the appeal will fail.

Liability for Council Tax: The Law

27. The 1992 Act provides for '*certain local authorities to levy and collect a new tax, to be called council tax*'. Pursuant to Section 1:

> *'**1 Council tax in respect of dwellings.***
>
> *(1) As regards the financial year beginning in 1993 and subsequent financial years, each billing authority shall, in accordance with this Part, levy and collect a tax, to be called council tax, which shall be payable in respect of dwellings situated in its area.'*

28. A dwelling is defined in Section 3:

> '***3 Meaning of "dwelling"***.
>
> *(1) This section has effect for determining what is a dwelling for the purposes of this Part.*
>
> *(2) Subject to the following provisions of this section, a dwelling is any property which—*
>
> *(a) by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act if that Act remained in force; and*

(b) is not for the time being shown or required to be shown in a local or a central non-domestic rating list in force at that time; and

(c) is not for the time being exempt from local non-domestic rating for the purposes of Part III of the M2Local Government Finance Act 1988 ("the 1988 Act");

and in applying paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption.'

29. Section 115(1) of the General Rate Act 1967 ('the 1967 Act'), referred to in sub-section 3(2) of the 1992 Act above, states:

'*hereditament' means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list*'.

30. The persons liable to pay council tax is provided for in Section 6:

'***6 Persons liable to pay council tax.***

(1) The person who is liable to pay council tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.

(2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day—

(a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;

…

(f) he is owner of the dwelling.'

31. Mr Boffey accepted that he falls into subsection 6(2)(a).

32. Mr Boffey argues, however, that the Subject Property is not a 'dwelling' for the purposes of section 3(2) of the 1992 Act (and not a 'chargeable dwelling for the purposes of section 6(1)) because:

(1) it is not a hereditament for the purposes of the 1967 Act, because a hereditament implies a financial interest in the property beyond mere occupation;

(2) it is not rateable or 'chargeable' because:

(a) where no permission to rent a property has been granted by the local authority, the property falls outside the 'tax net' of the regulatory bodies; and/or

(b) there is no 'beneficial occupation' of the property in circumstances where the property is not being used for some financial benefit. Beneficial occupation does not include using one's own domestic property wholly for the purposes of living accommodation;

(c) domestic property falling within section 66(1) of the Local Government Finance Act 1988 ('the 1988 Act') is not a dwelling.

33. Although Mr Boffey contended that his argument was a novel one, in his application to have the matter dealt with as a complex case by the VTE, he presses upon the Court the very same conclusion as that contended for, and rejected, by Fordham J in Doyle, which deal with materially similar facts. Doyle was concerned, as is this case, with whether living accommodation which involved no business element can constitute a chargeable 'dwelling' for the purposes of liability to council tax under the 1992 Act.

34. In Doyle it was argued that on the legally correct interpretation of section 3(2) of the 1992 Act, read with section 115(1) ('hereditament') of the 1967 Act, living accommodation can only be a dwelling for the purposes of council if there is a business element; such that 'dwellings' as defined in section 3 of the 1992 Act are 'non-domestic properties'. Mr Boffey, in oral submissions, initially stated that he did not challenge Doyle and sought to distinguish it on the basis that the 'Business Thesis' point argued in Doyle did not include the element that, in his case, he had never applied to the local authority for a licence to be able to let out his property as a licenced landlord. This is no point of distinction. As Mr Rhys rightly submitted, there can be no doubt that if Mr Boffey's argument is right, Doyle was wrongly decided. At paragraph 23, Fordham J found in terms, '*a unit of property used wholly for the purposes of living accommodation attracts council tax by reference to that use…. It is true of a flat or house which is rented from a private landlord. But it is also true of such a flat or house with an owner-occupier. They can all be hereditaments*.' If this is right, it deals with Mr Boffey's case head on. The decision in Doyle is not binding on me. Was, therefore, Doyle correctly decided?

35. I have no hesitation in finding that it was.

36. The starting point, both in Doyle and in this case, is the definition of hereditament. This was considered by the Supreme Court in Woolway v Mazars [2015] UKSC 53. That case dealt with how different storeys under common occupation in the same block were to be dealt with in the rating list for the purposes of non-domestic rating. At paragraph 4, Lord Sumption observed that, "*Hereditament*" is a somewhat archaic conveyancing term which as a matter of ordinary legal terminology refers to any species of real property which would descend upon intestacy to the heirs at law. He then referred to the definition within section 115(1) as the statutory definition, and the fact that absent further definition, the meaning is left to be elucidated by the courts. At paragraph 46, Lord Neuberger observed in the same case that the definition at 115(1) is, at least to some extent, a circular definition, but alighted on the expression 'unit of property'. He continued:

> '*Normally at any rate, both as a matter of ordinary legal language and as a matter of judicial observation, a hereditament is a self-contained piece of property (ie property all parts of which are physically accessible from all other parts, without having to go onto other property), and a self-contained piece of property is a single hereditament.*'

37. Put simply, '*hereditament*' is a word concerned with enabling the identification of a particular unit of property for the purposes of taxation. The word does not of itself inherently speak to the circumstances in which such a property may, or may not, pursuant to statute be subjected to tax. At the heart of Mr Boffey's argument seems to be the submission that by deciding to use the word 'hereditament' by reference to the 1967 Act (rather than, for example, a word in its own right), the word has become imbued with the necessary characteristics of a hereditament which is, itself, rateable under the 1967 Act. This is the argument dealt with expressly at paragraph 18 of Doyle, and it is wrong for the very reasons articulated by Fordham J. In short, there is nothing in the 1967 Act which indicates that the 'general rate' provisions of the 1967 Act were limited to a context in which the property was used for a financial gain (a 'business' context in the language of the argument in Doyle). It is simply wrong to say that a conventional dwelling – a privately-owned house or flat, occupied for the purposes of living accommodation with no element of financial reward or benefit – fell outside the scope of 'hereditament' under section 115(1).

38. Fordham J also rejected the argument advanced before me by Mr Boffey (at para 26(d) of his skeleton) that Schedule 13 of the 1967 Act is to be used to curtail the ordinary meaning of a 'dwelling-house' from extending to include a standard, privately-owned house used for the purposes of living accommodation. Fordham J was correct to do so. Section 13 is obviously dealing with special or marginal cases (such as the letting of rooms), not for providing an exhaustive checklist to define what constitutes a 'dwelling-house'.

39. Paragraphs 26(a) and (b) of Mr Boffey's written skeleton argument focus on the difference between 'use' and 'occupation', and the concept of beneficial occupation. In those submissions, Mr Boffey emphasises, as he did orally, the absolute right in every Englishman (and it need not be clarified that this would include an American living lawfully in his English 'castle') is that of property: which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. The question before this Court does not, of course, even begin to tug at this absolute right: the question is, rather, what on a proper construction of the statutory regime for council tax are 'the laws of this land'.

40. Neither the concepts of 'occupation' nor 'beneficial occupation' are of relevance to the proper construction of 'dwelling' under the 1992 Act. This is plain from the list of people liable to pay council tax: an empty property which is otherwise a dwelling for the purposes of the 1992 Act is one in respect of which the 'owner', not in residence, may become liable. Indeed, the provisions for long-term empty dwellings (see Section 11B of the 1992 Act) would be irreconcilable with some inherent principle that an owner's occupation (beneficial or otherwise) of a dwelling is a pre-requisite to liability of the imposition of council tax.

41. Furthermore, the concept of 'beneficial occupation' is, insofar as it is relevant at all, not a phrase that imports the need for a tangible financial 'benefit' to derive from occupation. Whilst the cases from which Mr Boffey has quoted in his Skeleton Argument were, in their particular contexts, dealing with actual or equivalent financial benefit, this is plainly not determinative. As Mr Boffey appeared to accept in argument, the word 'beneficial' will mean different things in different contexts. For example, 'beneficial occupation' is a phrase sometimes used in the construction industry to define or convey a point at which the building may be considered ready for occupation and to be used for the purpose for which it was built. In the context of a domestic house, 'beneficial occupation', in this context, would mean no more than capable of being lived in as a domestic house. What 'beneficial occupation' will mean in a commercial property intended to be let may mean something else in terms of the necessary state of completion in order for occupation to be considered 'beneficial'. Whether occupation is beneficial is derived from the occupier being able to use the property for its intended purpose. It has nothing intrinsically or necessarily to do with deriving a financial or financially equivalent benefit. Thus, even if the phrase were relevant to the construction of the 1992 Act, I would find that in the context of a wholly domestic property, 'beneficial occupation' may be derived from simply the domestic occupation of the property; the proverbial roof over one's head.

42. This is wholly consistent with Doyle, in which Fordham J found that occupation of property merely for the purposes of private accommodation can be a hereditament, and as such a dwelling under the 1992 Act.

43. It also follows that the suggestion that a request for and/or grant of permission by a local authority for a property to be rented pursuant to a licence is somehow a necessary precursor to the premises being a 'dwelling' for the purposes of the 1992 is without statutory or any other foundation. It is explicit nowhere. It is not implicit in the word 'hereditament' or 'dwelling'. It is simply irrelevant to the statutory obligation to pay council tax in accordance with the 1992 Act.

44. Mr Boffey's argument that the meaning of 'dwelling' under section 3(2) of the 1992 Act cannot include domestic property by analogy to the structure of the 1988 Act is equally misguided. The case of Reeves v Northrop [2013] EWCA Civ 362 made clear that property used solely for the purposes of living accommodation, with no business element, was encompassed within the word '*dwelling*' in section 3(2). Moreover, as pointed out by Fordham J in Doyle when faced with a similar argument, the 1992 Act reaches back to the 1967 Act, and in particular section 115(1) considered above, not the 1988 Act.

45. In support of the same argument, Mr Boffey relied upon the following text from Atkins Court Forms, Council Tax Vol 11(4) Practice C: 12. 'Properties not constituting dwellings', which is in effect a short narrative based on the wording of the 1992 Act itself:

> *'The following categories of property cannot in themselves constitute dwellings for council tax purposes, except in so far as they form part of a larger property which is a dwelling: a yard, garden, outhouse or other*

> *appurtenance which belongs to or is enjoyed with property used wholly for the purposes of living accommodation;*'

46. This wording (taken directly from section 3(4)(a) of the 1992 Act) is entirely supportive of the fact that a dwelling may be a property used wholly for the purposes of living accommodation. It is dealing with the sort of property which will often 'belong to or is enjoyed with' a dwelling, such as a garage or a garden. Such an 'appurtenance' is *not* a dwelling, *except* insofar as it forms part of a larger property which *is* a dwelling, which by implication would include property used wholly for the purposes of living accommodation.

47. In these circumstances, the President of the VTE was entirely correct in his conclusion that as a matter of law, Mr Boffey's appeal against the listing officer's refusal to delist the property stood no real prospect of success. Having formed that view, he was well within his case management powers to exercise the right given to him to strike out the appeal without hearing. Indeed, he was obviously correct in the circumstances of this case to do so.

48. The appeal is dismissed.