Case Name: *Andrew Corkish (VO) v Fiona Bigwood* [2019] UKUT 0191 (LC) (21 June 2019)

Topic: Composite hereditaments and meaning of "appurtenance" in rating context

Full Case: click here

Summary: Substantial equestrian facilities (to Olympic standards) annexed to a dwelling were held not to be rateable as they constituted an appurtenance to the dwelling and were, therefore, domestic.

Commentary: The respondent is a successful equestrian and a member of the British team which won a silver medal in the team dressage event at the 2016 Rio Olympics. Between 2006 and 2016 she and her husband lived with their children at a house in West Sussex and in 2013 they built substantial equestrian facilities on land adjoining the house, for their own use. The facilities included a large indoor arena for training purposes and a stable block to accommodate at least 28 horses, but they were never operated as a business.

The VTE had decided that the equestrian facilities should be deleted from the 2010 rating list, on the grounds that they were domestic. The VO appealed that decision.

It was common ground between the parties at the UT hearing that the house, the equestrian facilities and the associated grazing land and paddocks comprised a composite hereditament. As the house was clearly domestic and the grazing and paddocks exempt from rating, the only dispute concerned the status of the equestrian facilities. These had been built pursuant to a planning permission granted in 2007, in place of existing facilities of a similar nature (although much smaller than the buildings existing at the material day). That permission limited the use of the new facilities to "the personal and private use of the applicant and for employees residing in the buildings" and Ms Bigwood's witness statement confirmed that only the family and employees used the facilities, there being no commercial use.

Section 66(1)(b) of the 1988 Act makes clear that domestic property includes "a yard, garden, outhouse or other appurtenance belonging to or enjoyed with [a property used wholly for the purposes of living accommodation]". There were no fences or other structures separating the house from the equestrian buildings and the mature trees fringing the garden did not conceal the one from the other.

The parties had agreed different valuations to meet the possibility of the UT finding (a) that the equestrian facilities were wholly non-domestic, (b) that those stables housing the childrens' horses and those parts of the arena viewing gallery used for family parties were domestic, with the balance of the facilities being non-domestic or (c) that only a hay barn and all-weather paddocks (separated from both the house and the remainder of the equestrian facilities) were non-domestic. Thus, the question for the UT was confined to matters of law.

The Tribunal drew on the long-established legal principle that an "appurtenance" is confined to that which passes on a conveyance to the purchaser without specific mention, which it applied to the modern world by testing whether it would be regarded as "part and parcel" of the principal subject matter of the conveyance. "Appurtenances" used to be confined to

incorporeal rights (such as fishing rights) and excluded land, but in more recent times the Lands Tribunal case of Martin v Hewitt [2003] RA 275 had held that "appurtenance" in section 66 (1)(b) of the 1988 Act was not intended to encompass land or buildings lying outside the curtilage of the property referred to in section 66 (1)(a) (i.e. a property used wholly for the purposes of living accommodation). The concept of "curtilage" is of considerable relevance in the context of listed buildings (where the protection of a listed building extends to buildings within its curtilage) but its precise meaning remains unclear. In Skerritts of Nottingham Limited v Secretary of State for the Environment [2001] QB 58 it had been decided that a stable block was within the curtilage of a listed hotel building, although some 200 metres distant from the latter. Robert Walker LJ noted that stables and other outbuildings are likely to be included within the curtilage of a mansion house.

The VO had argued in the present case that for premises to be "appurtenant" within section 66 (1)(b) they would not only need to fall within the curtilage of the dwelling but also be "not essentially non-domestic". The UT rejected the latter requirement, finding that the stable block and indoor arena were so intimately associated with the house as to be "part and parcel" of it and constituting an integral whole with it and the other buildings around it. No fence separated the house from the equestrian facilities and all the buildings were grouped around the lawn. Access to the whole property was via a common drive.

The VO had sought to demonstrate that the sheer size of the equestrian buildings argued against their being treated as domestic. The Tribunal made reference to Seabrook v Alexander[2014] RA 382, a VTE decision in which stabling for 20 horses, together with an internal arena and a 20 metre by 50 metre manège (a horse training area) adjoining a much smaller farmhouse were held to be wholly domestic, as they were appurtenant to the house. Although not binding on the UT, this decision clearly had an influence on the outcome this case.

In the Tribunal's words, more important is the function of the facilities of accommodating horses belonging to the owners of a private family home, which they keep for their own and their family's pleasure, including for competition. The members did not regard that as functionally different from the use of stables attached to a house belonging to any other equestrian enthusiast and used by their family.

Referring to the decision in Woolway v Mazars [2015] UKSC 53, the UT acknowledged that although the primary test of identifying a hereditament was geographical there will be situations where the functional test will apply (either to break up a geographical unit into several hereditaments or to unite geographically-dispersed units into a single unit of assessment). However, there was no wholly different purpose in this case and, therefore, the equestrian facilities were appurtenant to the house and domestic in nature.

The Upper Tribunal accordingly confirmed the VTE's decision and dismissed the VO's appeal.