Upper Tribunal for Scotland

2026UT38
Ref: UTS/AP/23/0980

FINAL DECISION OF

Sheriff George Jamieson

ON AN APPEAL AGAINST A DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND LOCAL TAXATION CHAMBER IN THE CASE OF

Mr Ian Bell

Appellant

- and -

South Lanarkshire Council

Respondent

FTS Case Reference: FTS/LTC/CT/23/00030

Representation
Appellant: Party
Respondent: Mr Cox, Solicitor, South Lanarkshire Council

Paisley 12 March 2026

Decision

The Upper Tribunal for Scotland Remakes the Decision of the First-tier Tribunal for Scotland dated 5 September 2023 refusing the Appellant's appeal against the decision of the Respondent dated 11 August 2022 refusing the Appellant's application for a reduced council tax banding in terms of regulations 3 and 4 of the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992;

Allows the appeal; Directs the Respondent to grant the Appellant's application and to pay any refund due to the Appellant within six months of the date of this Decision.

Introduction

[1] This is a council tax appeal in connection with the Appellant's entitlement to a reduced council tax banding in terms of regulations 3 and 4 of the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992.

Procedure

[2] By Decision dated 5 September 2023, the FTS refused the Appellant's appeal to the FTS against the decision of the Respondent dated 11 August 2022 refusing the Appellant's application. The FTS refused permission to appeal to the UTS against its Decision on the appeal to the FTS. The UTS granted the Appellant permission to appeal to the UTS by Decision dated 6 December 2023. Therein, the UTS opined that the FTS had erred in law in its approach to the appeal before it as it had applied the wrong approach to the appeal. Its function was not to review the reasonableness of the Respondent's decision but to consider the matter *de novo* on the evidence before it.

[3] By Order No. 1 dated 6 December 2023, the UTS invited parties to consider dispensing with their formal written Response and Reply and to advise the UTS whether they considered the UTS should remake the decision or remit to the FTS for a rehearing.

[4] Both parties agreed to dispense with the formal Response and Reply. For the reasons set out in the Decision on permission to appeal dated 6 December 2023, the UTS formally allowed the appeal and quashed the Decision of the FTS by Decision dated 3 January 2024. The UTS issued Order No. 2 alongside its Decision dated 3 January 2024 regarding further procedure in this case.

[5] In consequence of Order No. 2, the UTS held a preliminary hearing on 1 February 2024 to determine further procedure in the case.

[6] By Order No. 3 dated 29 February 2024, after hearing parties at that hearing, the UTS made the following orders:

1. The decision of the FTS be remade by the UTS.
2. There shall be a site visit of the Appellant's premises by the UTS prior to further procedural directions being issued by the UTS for the determination of the appeal.
3. The date for this visit shall take place after 1 April 2024 on a date to be arranged by the UTS Administration in consultation with the parties and the sheriff clerk at Kilmarnock Sheriff Court.

[7] On 26 April 2024, the UTS had a site visit to inspect the dwelling in the presence of the Appellant, the Respondent's representative Bryan Robertson, the UTS clerk and the SCTS health and safety manager.

[8] By Orders No. 4 and No. 5, both dated 21 May 2024, and Order No. 6 dated 15 July 2024, following upon that site visit, the UTS issued directions for an evidential hearing before the UTS.

[9] On 20 December 2024, the evidential hearing took place in accordance with the case management directions set out in Orders No. 4, No. 5 and No. 6.

[10] At the end of that hearing, Mr Cox requested a short sist of the proceedings to carry out further legal research in relation to "scenario 2". The UTS granted that application by Order No. 7 dated 20 December 2024. It sisted proceedings in the appeal until 31 January 2025 for that purpose.

[11] In the event, Mr Cox requested more time for his research.

[12] By Order No. 8 dated 17 February 2025, the UTS extended the sist until 14 March 2025 to allow parties to consider the UTS's proposals for further procedure.

[13] The parties subsequently agreed with the UTS proposal that the UTS issue its findings in fact so far as "scenario 1" was concerned. Mr Cox's research related to "scenario 2". The UTS's thinking was that if its findings in fact in relation to scenario 1 were favourable to the Appellant, then it might be open to parties to settle the appeal on the basis of those findings in fact in relation to scenario 1, rendering any further procedure, discussion or research in connection with scenario 2 unnecessary.

[14] Accordingly, by Order No. 9 dated 22 April 2025, the UTS recalled the sist of proceedings contained in UTS Order No. 8 dated 17 February 2025, made findings in fact in this case pursuant to section 47(3)(b) of the Tribunals (Scotland) Act 2014 and directed that a hearing be fixed to discuss further procedure in, or progress with the appeal.

[15] That hearing was fixed for 20 May 2025. My findings in fact had been favourable to the Appellant in respect of scenario 1. The Respondent refused to settle the case on the basis of those findings in fact. Therefore, by Order No. 10 of 20 May 2025 and Order No. 11 dated 15 September 2025, the UTS issued directions for and in connection with a further evidential hearing in respect of scenario 2.

[16] The evidential hearing in respect of scenario 2 took place on 15 September 2025.

[17] The UTS made the following directions at that hearing as set out in Order no. 11 dated 15 September 2025:

1. Extends time for the lodging of the respondent's witness statement until today.

2. Allows the witness to give evidence at today's hearing under reservation as to its competence and relevance.
3. Directs the parties to lodge and exchange written submissions on the evidence and the law relating to scenario 2 no later than 27 October 2025; these written submissions will supersede, on the part of the Appellant, his written comments dated 21 February 2025.
4. Directs that the UTS decision on the appeal shall be made without a further hearing.

[18] The parties duly lodged their written submissions in accordance with these directions.

[19] As the UTS directed no further hearing would be required to determine the appeal, this Decision constitutes the UTS's final Decision in respect of the appeal.

YZ (China) v Secretary of State for the Home Department

[20] The exceptional circumstances for the UTS deciding to remake this decision in this case are set out in the UTS Decision on permission to appeal dated 6 December 2023, the UTS Decision dated 3 January 2024, quashing the Decision of the FTS and Order No. 3, dated 29 February 2024.

[21] This was an unusual case insofar as the findings in fact of the FTS were concerned. The FTS made 11 findings in fact. The first 9 are not controversial matters and are not in contradiction to findings in fact made by the UTS in this case.

[22] Finding in fact 10 is vitiated by the incorrect approach adopted by the FTS.

[23] Finding in fact 11 was a mixed question of fact and law. It was an evaluation of whether the Appellant was entitled to a reduced council tax banding in accordance with the 1992 Regulations. It was accordingly open to the UTS to reverse this finding in fact as being "undermined or

otherwise infected by … error of law" (*YZ (China) v Secretary of State for the Home Department* [2017] CSIH 41 (Extra Division) at paragraph 42, per Lord Glennie).

[24] Otherwise, the FTS did not make enough findings in fact to allow for a proper determination of the appeal on a *de novo* assessment of the evidence and law. This has necessitated the UTS doing so. In the event, the UTS has effectively had to rehear this case in order to determine the issues arising in the appeal.

Findings in Fact Made in Order No. 9

[25] These are set out as follows for the sake of completeness. The reasons for making those findings in fact are set out in Order No. 9.

[26] The findings in fact are:

Findings in Fact of General Application

1. The Appellant and his wife purchased the dwelling at 15 Montrose Crescent Hamilton in 1996.
2. The Appellant had been employed as a police officer for many years before retiring on medical grounds in 2012.
3. As a requirement of his increasing ill health, and disability, the Appellant and his wife built an annex to said dwelling sometime between 2010 and 2013.
4. At all material times, this annex consisted of two separate rooms: a bathroom consisting of a shower and toilet; and a lounge/kitchen area which included a pull-down bed and a TV.
5. This annex met the Appellant's needs for ground floor accommodation as relevant facilities in the remainder of the dwelling were located upstairs.

6. The Appellant and his wife separated around April 2019. The Appellant began living apart from his wife in the annex.
7. The annex was entered separately in the council tax valuation list with effect from 1 April 2019 until 30 November 2023 for the council tax years 2019/20, 2020/21, 2021/22, 2022/23 and 2023/24 during the period of the Appellant's separation from his wife.
8. On the Appellant's reconciliation with his wife, and the end of the marriage separation, the property returned to one single unit. All occupants including the Appellant are now resident there.
9. In the period the property was sub-divided and two separate dwellings were in force, two separate council tax accounts were applicable, one for each separate listed dwelling.
10. The Appellant was the liable person for 15A Montrose Crescent, Hamilton as this was his sole residence for this period. This annex included a purpose-built exclusive ground floor extension including a shower, toilet and small kitchen, lounge and murphy bed constructed years before for his specific and sole use in respect of his needs while remaining a full and integral part of the 'family' home.
11. The ground floor nature of the purpose-built extension – incorporating a toilet and bathing facility - was an essential element as the 'main' living accommodation of the dwelling was located on the first and second floors.
12. Upon moving into the annex at 15A Montrose Crescent, the Appellant almost immediately realised that he was now alone and isolated from his family. He was removed from their day-to-day assistance.

13. The facilities contained in this purpose-built extension facility were inadequate to meet his needs.

14. Initially, the Appellant was required to source alternative caring support and not direct family as in the past. The restrictive space in the purpose-built section was not conducive to a positive outcome in this regard. Furthermore, other issues became more overt including: his absolute private and sole essential requirement to immediate and constant access to toilet facilities and its location/access in this space being also required by a 'carer' was at best unsuitable, the need at times to use a larger shower when he required to 'sit' inside the shower and the support required during the night when the space within the purpose built section did not in any reasonable way accommodate same.

15. Effective from 1 July 2019, the Appellant began to use additional rooms which, with the agreement of his wife, were allocated to the use of 15A Montrose Crescent, Hamilton from within of the overall property. These rooms had direct secure access from the garden, remaining on the ground floor level. The additional rooms incorporated a room and an attached toilet and shower and were secured from the remaining garden rooms with a lockfast door.

16. This alleviated many outstanding issues for the Appellant as it provided greater general accommodation floor space, a larger shower when required, and a respite sitting/relax/sleeping area when he had caring support.

17. The additional room was critical to him since previously, while as part of the overall family the purpose-built section was adequate because he had constant free access to the main property and practical support from the internal family members.

18. However, on termination of this assistance and access to the 'main' property the limitations of the 'space' became very apparent.

19. Not least of these limitations was the inability of internal movement and general living when the Appellant was utilising the bed after it had been unsecured and located in its sleeping position. This in practical terms, made is all but impossible to have external caring support, and for the Appellant to shower in any reasonably practical or comfortable manner, or with any form of privacy or respectability, a procedure which was frequently necessary on multiple occasions daily.

20. The purpose built section attached to the main home provided a kitchen, sleeping area and toilet and small showering facility while the additional garden rooms were essential in that they provided an appropriate shower room for use and furthermore provided an additional general space to facilitate any form of caring support as the purpose built section was, when formally secured from the 'main' dwelling had restricted floor space to accommodate reasonable living/caring support.

21. The additional garden rooms contained a secondary shower room and toilet which had installed a larger shower suitable for the Appellant's needs. This allowed the Appellant to sit inside on a chair when needed and provided the essential secondary toilet for use by a

carer as the Appellant required sole use of a toilet, and the configuration of the purpose-built section made it practically impossible for carers' use particularly at night.

22. The garden rooms also provided essential general floor space for respite and general relaxation for caring support.

23. The annex to 15 Montrose Crescent was inadequate to support such multiple use on the removal of access to the main dwelling as it was not designed for that purpose.

24. The period April to July 2019 had been "tumultuous and chaotic" for the Appellant. He had felt "trapped and claustrophobic" and "isolated" living in the annex at 15A Montrose Crescent during those three months.

25. The Appellant could still exclusively cook from the annex. He paid for carers to stay with him at night due to his mental health problems. He slept in both the annex and the garden rooms from July 2019, but about 80% of the time in the garden rooms and 20% in the annex. He spent his days in the annex where he could watch TV and use toilet facilities there.

26. The Appellant used the lounge/kitchen area in the annex during the day for rest and at evenings and to watch TV. He had exclusive use of the annex and was able to allow carers and friends to visit the annex. The rooms in the annex were predominately used by him. Although not exclusively, they met his needs such as a social element, shelter, heat, a place to sleep and cook, as an area for relaxation, and as a sitting room.

27. The rooms in the annex met his "basic needs" but were not sufficient to meet all his needs on account of his disability. However, use of the annex did contribute to his well-being, to the point of being an essential component of his well-being. He needed support from others



while alienated from his family next door in 15 Montrose Crescent. The annex provided an area in which friends, carers and visitors could meet with him. This support was of major importance to him. It was critical for him to have that area for any kind of well-being.

28. The annex had been constructed because of his disability as it was essential he had a ground floor area at his disposal. His disability caused him problems with anger management at times. The annex gave him a space in which he could invite someone to be with him, to sit with him and keep him calm, to stop him resorting to the use of alcohol, and generally maintaining his health.

Scenario 1 (leaving the garden rooms out of consideration)

29. The Appellant was a liable person as regards the dwelling 15A Montrose Crescent, Hamilton during the council tax years in question.
30. He was a qualifying individual throughout that period as he was a person who is substantially and permanently disabled.
31. The dwelling was the Appellant's sole residence during the council tax years in question.
32. The dwelling provided the Appellant with a room which was not a bathroom, a kitchen or a lavatory. The room was predominantly used by the Appellant. The room was required for meeting the needs of the Appellant as a qualifying individual resident in the dwelling. The room was of essential or of major importance to his well-being by reason of the nature and extent of his disability.

Scenario 2 (including the garden rooms)

33. The Appellant was a liable person during the council tax years in question.

34. He was a qualifying individual throughout that period as he was a person who is substantially and permanently disabled.
35. The garden rooms were used as an integral part of the Appellant's dwelling during the council tax years in question. They formed part of the Appellant's sole residence during that period.
36. The garden rooms provided the Appellant with a room which was not a bathroom, a kitchen or a lavatory. The room was predominantly used by the Appellant. The room was required for meeting the needs of the Appellant as a qualifying individual resident in the dwelling. The room was of essential or of major importance to his well-being by reason of the nature and extent of his disability..
37. The garden rooms provided the Appellant with a bathroom which was not the only bathroom within the dwelling, if the garden rooms were considered part of the dwelling 15A Montrose Crescent, Hamilton. The room was predominately used by the Appellant. The room was required for meeting the needs of the Appellant as a qualifying individual resident in the dwelling. The room was of essential or of major importance to his well-being by reason of the nature and extent of his disability.

[27] This Decision is concerned with completing my findings in fact in relation to scenario 2, namely whether the garden rooms were considered part of the dwelling 15A Montrose Crescent, Hamilton, this being the focus of the evidential hearing on 15 September 2025 and the parties' subsequent written submissions on this question.



[28] Before considering this issue, I shall first of all set out the applicable law, by reproducing the relevant provisions of the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992, and my previous conclusions in relation to scenario 1.

Applicable Law

[29] The Appellant qualifies for a reduction in council tax under the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992 if he meets the eligibility requirements in regulation 3 of those regulations. The relevant provisions for this appeal are as follows:

> (1) A person is an eligible person for the purposes of these Regulations if:
>
> (a) he is a liable person as regards a dwelling which is the sole or main residence of at least one qualifying individual and in which there is provided:
>
> (i) a room which is not a bathroom, a kitchen or a lavatory and which is predominantly used (whether for providing therapy or otherwise) by, and is required for meeting the needs of, any qualifying individual resident in the dwelling; or
>
> (ii) a bathroom or kitchen which is not the only bathroom or kitchen within the dwelling and which is required for meeting the needs of any qualifying individual resident in the dwelling…
>
> (2) For the purposes of paragraph (1) … references to anything being required for meeting the needs of a qualifying individual are references to its being essential or of major importance to his well-being by reason of the nature and extent of his disability.

[30] A "qualifying individual" is defined in regulation 1(2) as:

> "a person who is substantially and permanently disabled…"

Reasoning of the UTS in Respect of Scenario 1

[31] This was contained in Order No. 9 and is repeated here (with some grammatical changes and corrections) for the sake of completeness.

[32] The Appellant submitted that his appeal should be allowed under either or both of scenarios 1 and 2. The main difficulty for the Appellant in relation to scenario 1 was that he answered in response to my question that the annex only met his basic needs and did not meet what his disability required. Mr Cox submitted this showed the annex alone (scenario 1) did not fulfil the requirements of regulation 3 of the 1992 Regulations as it could not be said the use of the annex rooms was essential to the Appellant's well-being.

[33] The Appellant submitted however that he needed both the annex and the garden rooms to fulfil his essential needs, overall well-being and daily living requirements. The annex had been purposely built in 2013 to accommodate his special disability needs and well-being in conjunction with full access to the main property at that time. He had wrongly believed he could live in the annex alone from 2019 onwards. That did not prove sufficient to meet his needs, leading to the adoption of the additional garden rooms to more fully accommodate his needs.

[34] Taking this evidence and those submissions into consideration, it is necessary to work through the criteria in regulation 3 and determine whether, on the evidence, and the primary findings in fact based on the evidence, the Appellant satisfied those criteria during the council tax years in questions.

[35] The Respondent accepted via its Scott Schedule that the Appellant was the "liable person" for council tax, he was a "qualifying individual" on account of being substantially and



permanently disabled and the dwelling, whatever its extent for council tax purposes, was his sole residence.

[36] In relation to scenario 1, the annex was divided into two main rooms. One of these served as a bathroom and so, there being no additional bathroom in the annex in scenario 1, this bathroom was not applicable for the purposes of regulation 3 of the 1992 Regulations. The other room included cooking facilities which were described as a kitchen, but the room could not be exclusively described as a kitchen given the other facilities in the room, such as the lounge and sleeping area with the pull-down bed for use by the Appellant. This other room was therefore a room that was not "a bathroom, a kitchen or a lavatory" for the purposes of regulation 3 of the 1992 Regulations.

[37] The next question is whether this room was "predominately" used by the Appellant as the qualifying individual whose main residence included this room. The Appellant's evidence, and my finding in fact based on this evidence, is that he had exclusive use of this room in that it was not used by any member of his family in the main building at 15 Montrose Crescent during the council tax years in question. He used the room for his own comfort and to host visitors and carers. The room was therefore "predominately used" by the Appellant during the council tax years in question.

[38] The following question is whether the room was "required for meeting the [Appellant's] needs". This question is in two parts. First was the room "required" for meeting the Appellant's needs? Secondly, did it meet those needs? "Meeting those needs" meant the room had to be



"essential to or of major importance to the Appellant's well-being by reason of the nature and extent of his disability".

[39] Mr Cox submitted on behalf of the Respondent that the Appellant could not satisfy either of these requirements in the absence of independent evidence, such as medical evidence supporting his requirement to make use of the annex room for the purposes of his disability, or of such use being essential or of major importance to the Appellant's well-being.

[40] The first part of this question requires a causal link between the room and the meeting of the Appellant's needs as submitted by Mr Cox (*South Gloucestershire Council v Titley and Clothier* [2006] EWHC 3117 (Admin); *R (Sandwell Metropolitan Borough Council v Perks* [2003] EWHC 1749 (Admin)). However, the existence of such a causal link depends on the facts and circumstances of each case (*Parkham v Portsmouth County Council* [1983] CLY 3133; *Hanson v Middlesborough Council* [2006] EWHC 1700 (Admin)).

[41] Regulation 3 of the 1992 Regulations does not import any requirement for an applicant or appellant to confirm his evidence by means of "independent evidence" as submitted by Mr Cox as there is no requirement for corroboration in these proceedings (section 1, Civil Evidence (Scotland) Act 1988).

[42] Section 1 of the 1988 Act requires only, in any civil proceedings, for a fact to be established by evidence in those proceedings. This rule of law applies to evidence in proceedings before a tribunal by virtue of section 9 of the 1988 Act, except in so far as, in relation to the conduct of proceedings before the tribunal, specific provision has been made as regards the rules of evidence which are to apply (definition of "civil proceedings", section 9(c)). There is no such exception in

relation to evidence heard by the UTS (see rule 18, Upper Tribunal for Scotland Rules of Procedure 2016).

[43] The Respondent admits the Appellant is a qualifying individual. The Respondent accepts he has a substantial and permanent disability. The Appellant's evidence before the UTS was convincing, credible and reliable. He was the best person to explain his needs and how the applicable room in scenario 1 met those needs. He accurately explained that the room did not fully meet his needs. The additional garden rooms more adequately met the Appellant's needs taken as a whole, and for showering in particular. However, that does not mean the annex room, viewed in isolation, was not essential or of major importance to the Appellant's well-being by reason of the nature and extent of his disability. The room provided space for the Appellant to rest, relax, receive visitors and carers, and alleviate his anxieties and anger management issues, all as described by the Appellant in his evidence.

[44] The room was also required to meet his needs as a disabled person. The facts of his case are unusual. The annex containing the room was specially constructed to provide him with ground floor facilities as a disabled person when it still formed part of 15 Montrose Crescent. After the separation from his wife in 2019, it was the only place he could live and was therefore required to meet his needs as a disabled person. That it quickly proved inadequate, leading to the adoption of the garden rooms, does not mean the room was not required to meet those needs. The room was still required for those purposes, along with the garden rooms, all as described in the appellant's evidence.



[45] I am accordingly satisfied, on the balance of probabilities, that the Appellant satisfied the criteria set out in regulation 3 of the 1992 Regulations in relation to scenario 1. His appeal falls to be allowed in relation to that scenario.

Scenario 2 - Introduction

[46] The UTS made the following comments about scenario 2 in Order No. 9:

> "The Respondent also accepts the Appellant is a liable person and a qualifying individual who used the annex and garden rooms as his sole residence during the council tax years in question. The Appellant's evidence shows that both garden rooms were predominately used by him and required to meet his needs as a disabled person. In this scenario, there was also an additional bathroom in the garden rooms which was essential, or of major importance, for the Appellant's showering needs, and therefore well-being, on account of his disability. The Appellant's appeal would also fall to be allowed on scenario 2, assuming the garden rooms were included in the "dwelling" for the purposes of this appeal. My findings in fact in relation to scenario 2 therefore record the Appellant's eligibility for a disability reduction only if the garden rooms are included within the definition of "dwelling" for the purposes of this appeal."

[47] Order No. 9 sets out a brief summary of the email correspondence at item 6 of the Respondent's bundle of productions. In response to an email query by Mr Robertson, the assessor advised that the garden rooms remained as pertinents to the main house at 15 Montrose Crescent, Hamilton. The Appellant had not referred to them as forming part of the proposed new dwelling 15A Montrose Crescent in his proposal to the assessor dated 21 June 2019.

[48] The appellant made several comments about this correspondence in written submissions to the UTS dated 21 February 2025.

[49] However, I do not need to record those submissions here as the directions in Order No. 11 make it clear that the Appellant's written submissions in connection with this Decision supersede his written comments dated 21 February 2025.

[50] The UTS deliberately did not make any finding in Order No. 9 as to whether the garden rooms formed part of 15A Montrose Crescent during the council tax years in question. It did not, therefore, at that stage, consider the contents of the email correspondence at item 6 of the Respondent's bundle of productions.

[51] Scenario 2 requires the UTS to determine the meaning of "dwelling" as set out in section 72(2)(a)(i) and (ii) of the Local Government Finance Act 1992 Act. These sections defines a "dwelling" for the purposes of council tax in Scotland as meaning any lands and heritages: (i) which consist of one or more dwelling houses with any garden, yard, garage, outhouse or pertinent belonging to and occupied with such dwelling house or dwelling houses; *and* (ii) which would, but for the provisions of section 73(1) below, be entered separately in the valuation roll. Section 42 of the Lands Valuation (Scotland) Act 1854 defines "lands and heritages" as extending to and including, amongst others, "*houses… and all buildings and pertinents thereof*".

[52] Section 6(11) of the Valuation and Rating (Scotland) Act 1956 (now repealed) defined "pertinent" in relation to a dwellinghouse as including "*all land occupied therewith and used for the purposes thereof*".

[53] In addition to these statutory provisions, the UTS requires to consider the Supreme Court case of *Woolway v Mazars* [2015] UKSC 53.

[54] The Appellant relies on this case in support of his appeal to the UTS. The Respondent disputes that *Woolway v Mazars* provides a positive outcome for the Appellant.

[55] In addition, the Respondent submits the garden rooms should be treated as part of 15 Montrose Crescent and not 15A Montrose Crescent, Hamilton, *inter alia* by reason of the assessor's records not including them within 15A Montrose Crescent.

Scenario 2 - Summary of Evidence at the Hearing on 15 September 2025

[56] The purpose of this evidential hearing, as confirmed in Order No. 10, was for the UTS to hear evidence from a representative of Lanarkshire Valuation Joint Board ("LVJB") as to whether the garden rooms formed part of 15A Montrose Crescent, Hamilton for council tax purposes from 1 April 2019 to 20 November 2023 (financial years 2019/20. 2020/21, 2021/22, 2022/23 and 2023/2024).

[57] Order No. 10 referred to the email correspondence at item 6 of the Respondent's bundle of productions and noted Mr Cox would lead evidence from a representative of LVJB to cover these matters, to deal with the Appellant's previous query regarding the admissibility of this evidence.

[58] Item number 6 was in two parts: an email from Mr Roberston to the assessor dated 18 June 2024 asking whether any of the garden rooms were included in 15A Montrose Crescent, Hamiliton as part of the "chargeable dwelling"; and a reply from the assessor dated 28 June 2024 that the garden rooms were a pertinent of 15 Montrose Crescent, Hamilton, and not part of 15A.

[59] As neither of these emails was received as admissible evidence in this case, bearing on the proof of these matters, I now turn to consider the evidence of Jacqueline Dell, who appeared as a representative of LVJB at the hearing on 15 September 2025.

[60] I allowed Ms Dell's evidence to be received under reservation as to its competence and relevance (Order No. 11, paragraph 2), as the Appellant had objections to her giving evidence on behalf of LVJB which he has subsequently set out in his written submissions.

[61] I allowed her witness statement to be received late (Order No. 11, paragraph 1).

[62] Her witness statement records she is currently the Assistant Assessor with LVJB, with suitable qualifications for that role, and over 30 years' experience within valuation boards.

[63] Her statement is in the format of an expert witness statement. She makes the requisite statements to that effect at paragraphs 4 - 10 of her witness statement and offers her opinion the garden rooms were not included within 15A Montrose Crescent, Hamilton for council tax purposes at paragraphs 25 and 26 of her witness statement.

[64] She refers in her statement to LVJB receiving a request from the Respondent on 18 June 2024 as to whether the garden grounds formed part of the chargeable dwelling at 15A Montrose Crescent, Hamilton and her reply dated 28 June 2024.

[65] She quotes her reply dated 28 June 2024 in her witness statement. This is the same email at item 6 of the Respondent's bundle in connection with the hearing on 20 December 2024.

[66] She had consulted LVJB records and noted the garden rooms had not been included within the original application to create 15A Montrose Crescent, Hamilton as a separate dwelling, or the associated planning consent.

[67] She was cross-examined by the Appellant on several matters, some of which I shall deal with later in this Decision, including issues concerning a lodger who used the annex prior to 2019.

[68] She confirmed she had not carried out a site inspection before opining that the garden rooms were a pertinent of 15 Montrose Crescent, Hamilton. The Appellant put it to her that he had updated LVJB of the use of the garden rooms in July 2019, but she replied LVJB had no record of any such notification. She had only become aware of this when the Appellant put this to her.

Scenario 2 – Written Submissions

[69] The Appellant's written submissions dated 19 September 2025 are in two parts:

(a) His submission formally to request Ms Dell's participation and witness evidence be discarded by the UTS; and

(b) His submission is respect of facts and supported case law in relation to the adoption of additional 'rooms' to the section of the home known as 15A Montrose Crescent, Hamilton in this case for the relevant period that this additional valuation entry was in existence i.e. 2019 to 2023.

[70] He submitted Ms Dell's evidence should be disregarded as she was not an independent or "expert" witness. She was from a potentially hostile organisation, namely Lanarkshire Valuation Joint Board (LVJB). Evidence from LVJB should not be accepted at this exceptionally late stage, and her subsequent full participation should be excluded.

[71] In this respect, he submitted:

- The Respondent was advised of the adoption of the additional rooms on 1 July 2019, over 6 years ago (at the date of the hearing on 15 September 2025).



- In the preceding time, of over 6 years, the Respondent had excruciating opportunity to seek the involvement of LVJB but chose not to do so.
- The Respondent has a budget in excess of £800M (as recorded at the date of the Appellant's written submissions) in contrast to the Appellant who had been refused any and all legal assistance in progressing this, and any other legal matters.
- The Respondent wilfully ignored, notwithstanding the resources detailed above, the UTS Order No. 10 in respect of timescales in submitting all submissions which would incorporate the aforesaid period of in excess of SIX YEARS, the Respondent had to involve LVJB.
- Finally, in this timescale and its direct impact, the Respondent had displayed utter contempt and disregard in full knowledge for the overt ongoing challenges, difficulties and consequences these six years and six months the ongoing legal matter has overtly had on the Appellant's direct health and wellbeing.

[72] The Appellant challenged LVJB/Ms Dell's impartiality as a further reason for excluding her evidence from consideration by the UTS. He did so with regard to several factors, some relating to historical disputes and some relating to grievances he had had with LVJB and the Respondent. Thus:

- He considered Ms Dell had maintained LVJB's general position in effective ignorance and irrelevance to countless detailed and varied case law examples, stated that a separate and distinct dwelling was in effect a lockfast cupboard devoid of electricity, natural light, running water, a toilet or bathing facilities (even when access to



elsewhere in a larger dwelling) as long as someone chose to 'live' in this lockfast room/cupboard.

- This 'position' was further aggravated by the 'ordinary man' proposition that they introduced, being an average lay person from the public, unqualified in any law in this regard, just straight forward life experience, who LVJB experts stated that they together with the 'ordinary man' would personally rent as a tenant such a 'separate and distinct dwelling' as described above, but they would further be content for their daughter to be a tenant in same and that an 'ordinary man' would also agree.
- Her position was so partisan, irrational and conflicting to case law, that it was presented and provided to influence the hearing and endeavour to protect LVJB's previous unprofessional conduct.
- Ms Dell conceded she had neither reviewed the plans nor any other specific information in respect of this somewhat complicated matter, nor had any involvement in the past matter when LVJB added two additional entries at my property as a result of a very disgruntled 'lodger' who was required to leave her room rent after approximately 4 weeks very much against her will and who had had contacted HMRC, police, Customs & Excise, local newspapers etc. to highlight her dissatisfaction on being required to vacate her lodger room rent. As a result of her obvious dissatisfaction she was permitted to stay beyond her lodger agreement notice period which resulted in her staying for approximately 6/7 weeks.



- LVJB, who had not been contacted by this disgruntled ex-lodger – were advised indirectly via their partners at South Lanarkshire Council – and while the ex-lodger made it explicitly clear from the initial contact, that she maintained for the following FIVE years, she would not be involved in any way in any legal process, however LVJB attended at the Appellant's home unannounced, scaled a 2m+ perimeter gate, demanded immediate, full and unrestricted entry and only left on threat of police arrival.
- Immediately following this incident, on the basis of an overt hostile ex-lodger who was legally required to vacate her room rent as per her Lodger Agreement, who as stated explicitly stated she would never participate in any legal proceeding – a position she maintained for five years - LVJB added two new entries to the Valuation List 15A & 15B Montrose Crescent, Hamilton which they maintained until 2019 when they were instructed to remove them by a tribunal.
- The Appellant was again required to represent himself and LVJB utilised both a solicitor and a QC. LVJB in the intervening period refused countless written clarification notifications and demanded that the Appellant await the Tribunal. In the intervening period, South Lanarkshire Council (SLC) unlawfully arrested the Appellant's bank account (as confirmed by Sheriff Officers subsequently citing incorrect information), resulting in multiple and still ongoing financial difficulties for the Appellant in respect of credit and increased mortgage availability and increased rates.

- On conclusion of the tribunal, the accumulated sum demanded as a result of the conduct of LVJB and their partners at SLC of approximately £14,000, the Appellant was in fact in credit, and it was only the ex-lodger that was required to pay an outstanding sum. A consequence of the harassment and abuse by LVJB of the ex-lodger, although there is zero evidence of that sum ever being paid.
- Finally in this regard, although ordered by the tribunal to refund the Appellant the sum he was in credit and he endeavoured to pursue this payment, SLC refused to make this payment to him.
- Therefore, to highlight Ms Dell's overt impartiality in her statement presented to the UTS when she stated she 'elected' to omit when she merely stated the dates 15A & 15B Montrose Crescent, Hamilton were now historically recorded on the Valuation List, exposed her sole function to protect the past and ongoing unprofessionalism of LVJB.
- Ms Dell then proceeded to further add a new layer of partisanship and bias on this matter by, as stated, without any reference to evidence whatsoever by offering a proposition that indeed the Appellant's property should again have three valuation entries and that they require to be backdated. To propose this at a formal UTS Hearing, while conceding that she had not had sight of the plans, evidence nor supported her proposal with any facts was appropriate, merely reinforced the Appellant's unfortunate knowledge that LVJB was entirely unaccountable to anyone and to any body.

- The recklessness of LVJB's conduct including in the Appellant's own aforesaid example of taking 37 months to complete a 'simple' Valuation List application when 98/99% were completed within six months and then backdating it without any possible source for accountability, was a typical example.
- Furthermore, and very regrettably, the passage of time from Ms Dell transferring to LVJB in 2024 when she apologised to the Appellant in person and in writing in respect of aspects of LVJB's performance in this matter, has dramatically and diametrically changed, as the Appellant stated it would in his meeting with Ms Dell of 25/9/2024, in her aggressive, irrational and unsupported general defence of LVJB as exampled above.

[73] The Appellant made the following submissions regarding the facts and the principles of *Woolway v Mazars* 2015 UKSC 53:

- *Woolway v Mazars* incorporated decades if not in excess one hundred years of complicated case law including, heritable property and *'unum quid'* – one unit in respect of valuation property or dwelling(s), incorporating both Scottish and English past case law. The determination by the Supreme Court offering tests to consider whether the matter under review should be considered a single unit or two or multiple units.
- The tests given by Lord Sumption at paragraph 12 in the *Woolway v Mazars* case law derived were: the primary test of a Geographic nature, followed by a Functionality Test and that of Effectual Enjoyment to be applied and considered, even if the primary test

establishes geographic separate units, the consideration of the further tests may nevertheless establish a single hereditament.

- The overall property in its entirety was owned by the Appellant and his wife and had been so owned since February 2000 to this date. This included all land incorporated and buildings associated with the entire property.
- As stated at the hearing on 15 September 2025, the 'garden land' between the 'annex' building and the 'main' building was owned by both the Appellant and his wife. Neither has precedent and neither has a negative position.
- However, though not made clear at the hearing on 15 September 2025, there was an informal agreement in 2019 between the Appellant and his wife, to endeavour to avoid all and any possible avenues for disputes, for separate use of wooden garden sheds and more importantly for this submission, laundry drying ropes, which in effect provided a section of the 'garden' each for our exclusive use. This agreement was informal as it was never intended to become a matter of debate in a legal tribunal.
- The primary test in respect of Lord Sumption's i.e. geographical test i.e. contiguous buildings. In respect of this case law, the adopted garden 'rooms and the annex were contiguous by means of the co-owned land and the informal arrangement of the Appellant's use of wooden garden sheds near to the entrance/exit door to the adopted rooms and the informal agreement to use separate areas of the garden for each exclusive use going forward. This created an invisible but nonetheless corridor of exclusive



continuity. However, notwithstanding this primary test, the subsequent secondary and third test affirms the single hereditament.

- As Lord Sumption instructs, should the UTS not confirm the primary test submission in respect of the informal corridor of exclusive continuity in the garden split, the UTS should follow the evidence and the Appellant's submission in respect of the additional tests and conclude that the additional rooms and the annex in the essential circumstances and the ascertainable character of the subjects that existed form an unquestionable one unit of property/one separate and distinct dwelling.
- *Woolway v Mazars* on the failure to find on the primary geographical test of continuity instructed one to follow and consider the functionality test by considering the two questions:
    1. Can the two sections be let separately?
    2. And is one necessary for the effectual enjoyment of the other on the ascertainable character of the subjects?
- On the first question, Lord Sumption made specific reference to several historical Scottish cases:
    1. Para. 8 *Bank of Scotland v Assessor for Edinburgh* were all the 'houses' in question were capable of being separately let?
    2. Para. 9 *University of Glasgow v Assessor for Glasgow* were again all the buildings were capable of being separately let and the primary test – geographic – did not affect its primary role.



3. In these Scottish case laws, the functionality question i.e. Can the two sections be let separately? The answer is yes, and therefore the conclusion is that the matter under consideration (15A Montrose Crescent, Hamilton) is a single unit.

- The evidence in this case was wholly different.
- The additional rooms adopted on 1 July 2019 included in effect one bedroom and shower room with toilet. It did not include any kitchen facility whatsoever and for it to be considered a wholly separate and distinct dwelling on its own merit it would have required access through a secured private property which it did not have and would never have possessed.
- Having previously detailed LVJB's position on what an 'ordinary man' constitutes a separate and distinct dwelling and in addition to the significant insurmountable access via a private property – access that was not granted at any time, the Appellant did not agree with LVJB's position in respect of what legally substantiates a sperate and distinct dwelling and specifically, in respect of the defined functionality question in *Woolway v Mazars*, the additional adopted rooms could not be let separately.
- On conclusion of this second question this leads to the third question i.e. is one necessary for the effectual enjoyment of the other on the ascertainable character of the subjects? To consider this third question, the UTS should consider the ascertainable character of the subjects and the actual facts and circumstances at the time and the necessary interdependence of both separate parts to make an effective whole.



- As evidenced due to circumstances the Appellant's use of the overall property was constrained to the annex after April 2019.
- Pre-April 2019 the annex was used as a very useful option but not a restricted only space. Immediately it became apparent that when used as a restricted only space, it was unfit for purpose, and a new informal agreement was reached to include the adoption of the aforesaid annex rooms.
- The adoption of these additional garden rooms was to include a bedroom, and large required shower to incorporate the Appellant's needs. This change was to complement the annex and its objectively ascertainable characteristics of a kitchen area and small seating area and toilet.
- The annex was objectively not fit for purpose for permanent full-time stay, in particular with the Appellant's individual medical needs.
- Therefore, in summary, both sections were absolutely required to complement each other in their ascertainable character, not for what the Appellant chose to use them for what was absolutely necessary for each to complement the other to form a single separate and distinct dwelling for his objectively ascertainable necessary needs.
- In conclusion, the garden rooms and the annex rooms not only fulfilled the primary test but unquestionably answered the functionality test in that it was impossible to let each separately as evidenced, and in respect of effectual enjoyment, each section was required to make an essential whole as evidenced in both the ascertainable character of



the subjects and the Appellant's essential needs in direct contrast to a trivial or inconsequential request.

[74] Mr Cox's written submissions dated 23 October 2025 first addressed two preliminary matters:

(a) The evidence of Jacqueline Dell; and

(b) Previous findings in Order no. 9.

[75] On the first of those issues, the Respondent submitted the Appellant sought to challenge the evidence of Ms Dell, due primarily to its lateness. The Appellant had made various comments impugning bad faith to the Respondent, as well as suggesting this was being done deliberately to cause him as much distress as possible.

[76] The Tribunal's Order No. 10 directed the Respondent to lead evidence from a representative from Lanarkshire Valuation Joint Board on the extent of the dwelling at 15A Montrose Crescent, and, in particular, whether the garden rooms formed part of said dwelling for council tax purposes.

[77] The Order set out various time limits for procedure in respect of the lodging of that statement. At the commencement of the hearing on 15 September 2025, the Respondent accepted a failure to adhere to the time limits but suggested that the evidence should be heard under reservation as to relevancy and the competency.

[78] Given the terms of the witness statement lodged by the Respondent's witness, and the cross-examination undertaken by the Appellant, the relevancy of the evidence (in terms of fulfilling the direction at paragraph 3 of Order no 10) was clear, and that there was little or no prejudice to the Appellant in allowing the evidence to be considered.

[79] The Appellant made much of the apparent delay (6 years, according to him, which is clearly a reference to when he first claims to have submitted details to the Respondent/LVJB in April 2019) in LVJB coming forward to explain their position, but this was satisfactorily explained by Ms Dell in her answers to the Appellant cross-examination on this point.

[80] The Respondent's witnesses never accepted (nor indeed, is it the position of the Respondent) that any such notification of the apparent 'extension' of 15A by the inclusion of the garden rooms was ever made.

[81] Clearly, again, it is and was competent to accept Ms Dell's evidence, notwithstanding its lateness, as it fulfilled the requirements of paragraphs 3, 4 and 5 of Order no.10; that it would be inequitable (given the terms of that Order) for the evidence to be excluded as incompetent solely by reason of time alone, and that it provides appropriate and relevant factual information which will assist the Tribunal in determining the dispute overall. Ms Dell's evidence should therefore be allowed.

[82] On examination of Order No.9, in terms of its paragraphs and draft findings in fact, the Respondent considered the UTS may well have erred in its understanding of the evidence given at the original hearing. Paragraph 15 states that: -

> "*Further agreement was reached effective from 1 July 2019, and additional rooms were allocated to 15A Montrose Crescent, Hamilton from within the annex of the overall property*".

[83] The recollection of Mr Cox and of the Respondent's witness is that no such 'agreement' was ever accepted to have taken place. The Appellant was forceful in suggesting that the Council had been advised of this but upon cross-examination (at the initial hearing on 20 December 2024) as



stated at paragraph 20: - "*No formal process existed or had been utilised to inform the Respondent 15A Montrose Crescent was later extended to include the garden rooms. He denied he had unilaterally determined on the extension of 15A Montrose Crescent to include the garden rooms*.

[84] On that basis, the finding of the Appellant as credible and reliable was somewhat difficult to understand and did not seem to follow logically from the apparent conflict, both in the Appellant's evidence and the UTS's findings.

[85] Further, in paragraph 27, when discussing the evidence of Mr Robertson, it was acknowledged that he (Mr Robertson) gave evidence that: - *"he had not been aware of the Appellant's use of the garden rooms until the proceedings before the FTS in respect of this appeal. In his evidence, the garden rooms remained a pertinent of 15 Montrose Crescent for council tax purposes according to the council tax valuation list*".

[86] Again, the UTS went on to describe Mr Robertson's evidence as credible and reliable, and described it as not being in conflict with that of the Appellant when clearly there was obvious factual conflict on this point alone.

[87] Mr Cox then considered the applicable law, addressing the points set out in paragraph 7 of Order No. 10.

[88] First, the definition of 'dwelling' in section 72(2)(a) of the Local Government Finance Act 1992.

[89] In terms of this section, "dwelling": (a) means any lands and heritages…. (i) Which consist of one or more dwelling houses with any garden, yard, garage, outhouse or pertinent belonging

to and occupied with such dwelling house or dwelling houses; and (ii) which would, but for the provisions of section 73(1) below, be entered separately in the valuation roll.

[90] The relevance of this section in this case would seem to lie in the apparent suggestion from the Appellant that the 'garden rooms' fell to be considered as part of 15A, simply because of their geographical location close by.

[91] However, given that these rooms had always been considered as part of the 'dwelling' known as 15 Montrose Crescent, they could not be considered as also/alternatively part of 15A.

[92] Further, it would also seem more logical, given that that the *status quo* (prior to the creation of 15A as a separate entity in 2019) was that these rooms formed part of 15 Montrose Crescent for assessment and council tax purposes, that they continued to be so treated, rather than being 'attached' to a separately created new entity. This description fitted better with the definition of 'dwelling' stated above.

[93] Secondly, section 42 of the Lands Valuation (Scotland) Act 1854 which *inter alia* provided: 'the expression "lands and heritages" shall extend to and include all lands, houses, shootings, and deer forests, . ., fishings, woods, copse, and underwood from which revenue is actually derived, ferries, piers, harbours, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coalworks, waterworks, limeworks, brickworks, ironworks, gasworks, factories, and all buildings and pertinents thereof…'

[94] This definition supported the 'ordinary' understanding of how buildings (such as the garden rooms) which are clearly pertinents to the main building of number 15 (and always had/have been since their construction) should be treated. It was logical and understandable that they be dealt

with as part of that main property, as they were clearly pertinents of it prior to the splitting off of the new entity 15A.

[95] There seemed to be no particular reason why they should then be treated as 'attached to' 15A rather than where they had always been i.e attached to number 15.

[96] Thirdly, section 6(11) of the Valuation and Domestic Rating (Scotland) Act 1956 (now repealed), defining "pertinent" in relation to a dwellinghouse as including "*all land occupied therewith and used for the purposes thereof*".

[97] This definition did not differ materially from the statutory reference noted above. If there is any relevance to this section, notwithstanding the passage of time, and subsequent statutory changes, then it must be that this supports the inclusion (as had and has always been the case) of the garden rooms as pertinents with number 15, where it had always been, rather than simply becoming associated with number 15A because of some internal arrangement between the Appellant and his wife, of which the Respondent were never formally made aware.

[98] Fourthly, the principle of '*unum quid*', and the decision in *Woolway v Mazars*.

[99] These two points were inextricably interlinked, given that the ultimate decision in the latter case considered the principle of *unum quid* in detail, and by reference to the previous cases, remains a precedent within Scots Law to the current day.

[100] '*Unum quid*' referred to the legal principle that certain properties or entities are considered a single unit for valuation purposes. It allows for properties that are geographically separate but functionally interconnected to be valued together. Accordingly, from that base line, it appears that its importance to this particular case is clear. In seeking to have the 'garden rooms' included as

part of 15A Montrose Crescent, the Appellant sought to bring out the principles from *Woolway v Mazers* and have them applied to his benefit in accordance with those principles.

[101] However, the whole question of the 'garden rooms', and their inclusion in this process was not raised at the outset of this appeal.

[102] Although the Appellant gave evidence that he had 'notified' the Respondent of their unilateral 'inclusion' within 15A, and reiterated that in his 'evidence'/'cross-examination' at the hearing on 15 September,2025, this was in conflict to his responses to cross-examination by Mr Cox at the first hearing on evidence in this case on 20 December, 2024, when (as noted at paragraph 20) of Order No.9,

> "*He (the Appellant) later obtained use of rooms in the garden annex (the garden rooms) originally included within the valuation entry for 15 Montrose Crescent. He acknowledged those outbuildings had been and were now part of 15 Montrose Crescent for council tax purposes. No formal process existed or had been utilised to inform the Respondent 15A Montrose Crescent was later extended to include the garden rooms. He denied he had unilaterally determined on the extension of 15A Montrose Crescent to include the garden rooms. He had brought the Respondent's attention to the extension of 15A Montrose Crescent to include the garden rooms*."

[103] Further, despite the Appellant's evidence that he had brought the use of the rooms to the Respondent's attention, no evidence was heard, or, indeed, could be traced, that the Respondent was advised of the adoption of the additional rooms on 1 July 2019. There has been extensive correspondence between the Appellant and the Respondent over a long number of years, but nothing from him dated 1 July 2019.

[104] There was also no reference in subsequent correspondence from the Appellant referring to it, which would be unusual.

[105] The first indication of the use of the garden rooms that the Respondent received was in an email sent by the Appellant on 23 June 2023 to the First Tier Tribunal, shortly before the hearing before that Tribunal. At no point prior to that, in any correspondence with the Respondent or with the FTS were the garden rooms ever mentioned. Therefore, the Appellant's suggestion made both in his answers to cross-examination on 20 December 2024, and again at the hearing on 15 September, that the Respondent and/or the LVJB 'had had 7 years (sic) to respond' was clearly incorrect, and/or not supported by the evidence.

[106] Before examining *Woolway v Mazars* in any detail, there must be an issue over credibility. It was impossible for both Mr Bell and Mr Robertson to be seen as wholly credible. They both provided different views as to what information was provided, and when. They cannot, therefore, factually, both be correct, credible and reliable. Only one could be the correct view.

[107] It was worth beginning from the point that the 'garden rooms' have always been considered as part of 15 Montrose Crescent. That has always been the stated position, and what is being suggested in this case by the Appellant is that we should deviate from that interpretation and assessment of the situation.

[108] According to the decision of the Supreme Court in *Woolway v Mazars*, the basis of whether to treat subjects as an '*unum quid*' turned on three principles. At paragraph 17, Lord Sumption stated:

The geographical test and the functional test are different and in some respects inconsistent. They cannot both operate in parallel unless there is some rational framework of principle for distinguishing their respective spheres. The English and the Scottish cases are agreed that the potential inconsistency is to be resolved by acknowledging the primacy of the geographical test and the subordinate character of the functional test. But what does this mean? The answer to the question must surely be supplied by the tribunal of law which posed it".

[109] This view was supported by the other judges in the Supreme Court, and similar *dicta* could be found from Lord Gill at paragraph 41:

"It was suggested on behalf of the valuation officer that in the application of the geographical test the decisive criterion is contiguity. That is an extreme position that I do not accept. Properties that are discontiguous but nonetheless geographically linked, may constitute one hereditament if the occupation of one part would be pointless without the occupation of the other."

[110] And from Lord Neuberger at paragraph 52:

"Thus, if one property could not sensibly be occupied or let other than together with the other property, I think that the two properties could, and indeed normally should, be properly treated as a single hereditament."

[111] The use of the word 'enjoyment' as used in the phrase 'effective enjoyment' must be viewed from an objective viewpoint, as Lord Sumption indicated. That requires the UTS to ask itself whether use could be made of the one set of subjects (the garden rooms) separately from any other property. At least some of the evidence from the Appellant at the hearing on 15 September 2025 during his cross-examination of Ms Dell in particular led to some suggestion that those garden

rooms 'could' stand alone, but the objective view of those rooms is that they did require other buildings for their effective enjoyment.

[112] All of which led to the conclusions to be drawn from *Woolway v Mazars* as it applies here. If the primary geographical test is applied, then the garden rooms require to be considered along with other property as a part of the one unit (*unum quid*) for valuation purposes.

[113] On the secondary functional test, on the application of the 'effective enjoyment' rule, then again, the garden rooms require to be part of another valuation unit.

[114] The major difference between the parties here on this particular point was that the Appellant says they should be taken along with 15A, and the Respondent says they should be along with 15. The *de facto* position as per the valuation list as it currently stands, and as it always has stood for a long number of years, long prior to there being any 15A entry in existence was that the garden rooms fall to be part of 15 Montrose Crescent.

[115] For the Appellant to succeed, he would need to prove that he has somehow varied the *de facto* position. He has readily admitted as per the previous quote from paragraph 20 of Order No. 9, quoting the Appellant's evidence:

> '*No formal process existed or had been utilised to inform the Respondent 15A Montrose Crescent was later extended to include the garden rooms*.'

[116] As has been noted, evidence for the Respondent from both Mr Robertson and Ms Dell confirmed this to be the position, despite the Appellant vigorously challenging Ms Dell to the contrary.

[117] Although the Appellant tried to suggest to the contrary, the fact remains that any 'incorporation' of the garden rooms into 15A was unilateral, and although it cannot be denied that (for practical and living purposes) those rooms were used by the Appellant, in the absence of any formal notification or variation of the on the valuation list having been initiated, then it would appear to be logical and correct that the garden rooms could not be part of 15A for council tax purposes.

[118] Finally, 'evidence' (in the form of the discursive cross-examination of Ms Dell by the Appellant at the hearing on 15th September) came from the Appellant to the effect that the 'access' to the garden rooms could only be made by using a 'shared access' which he stated was owned jointly by the Appellant and his wife. Under reference to Lord Sumption in *Woolway v Mazars* at paragraph 12 already quoted, when laying out his 'principles', he stated:

> *"If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments."*

[119] Lord Gill developed this point in *Woolway v Mazars*, under reference to the older Scottish authority of *Bank of Scotland* ***v****. Assessor for Edinburgh (1891) 18 R 936*, where he stated at paragraph 35:

> *"On that occasion the court, consisting of Lord Wellwood and Lord Kyllachy, decided that where the bank premises and the staff dwellinghouse were not internally connected, they should be entered in the roll as separate lands and heritages. In my view, that was correct. The absence of an internal connection*

between the residential unit and the bank premises meant that to reach the bank the occupier of the dwellinghouse had to leave the building and go by the street to the public entrance of the bank."

[120] Applying these views to the facts and circumstances of the current case, the geographical test in *Woolway v Mazars* did not apply as the 'shared access' element meant that one could not have accessed the garden rooms from the remaining parts of 15A without crossing an area not in the Appellant's exclusive ownership or control.

[121] Nor did the Appellant succeed on the functional test either. The garden rooms, as noted above, had formed a part of 15 Montrose Crescent for valuation purposes for a number of years. Even if the UTS were to accept that those rooms were 'necessary for the effective enjoyment' of 15A, which was denied, that test required the situation 'on the ground' to be viewed objectively, and not simply to be a creation of the Appellant's own making. Clearly, they had not been at the time of the Appellant's original request to have 15A as a separate council tax entry, and it was disingenuous for the Appellant to then try and make them such to succeed in this Appeal.

Discussion on Preliminary Issues

[122] I will firstly deal with the Respondent's two preliminary issues, but in reverse order.

[123] First, the Respondent submits that the UTS made a finding in fact in Order No. 9 that: "*Further agreement was reached effective from 1 July 2019, and additional rooms were allocated to 15A Montrose Crescent, Hamilton from within the annex of the overall property".*

[124] This is a misunderstanding of Order No. 9.

[125] Paragraphs [10] to [19] of Order No. 9 summarise the Appellant's evidence (as set out in his witness statement) in connection with the initial hearing on 20 December 2024.

[126] Accordingly, paragraph [15] of Order No. 9 does not contain any finding in fact of the UTS.

[127] The findings in fact of the UTS are set out at paragraph [36] of Order No. 9.

[128] Finding in fact 15 records that: *"Effective from 1 July 2019, the Appellant began to use additional rooms which, with the agreement of his wife, were allocated to the use of 15A Montrose Crescent, Hamilton from within of the overall property."*

[129] There was no finding in fact made in Order No. 9 that the Appellant had reached agreement with the Respondent or LVJB to allocate the garden rooms to 15A Montrose Crescent, Hamilton.

[130] The Appellant's cross-examination was recorded at paragraphs [20] and [21] of Order No. 9, including the Appellant's admissions at paragraph [20] that the garden rooms were "now part of 15 Montrose Crescent for council tax purposes" and "no formal process existed or had been utilised to inform the Respondent 15A Montrose Crescent was later extended to include the garden rooms". The Appellant also stated he "had brought to the Respondent's attention to the extension of 15A Montrose Crescent to include the garden rooms".

[131] No findings in fact were made in Order No. 9 in relation to these admissions and statements as they relate to scenario 2 and these are therefore matters for this Decision.

[132] Similarly, at paragraph [27] of Order No. 9, the UTS recorded Mr Robertson's evidence to the effect: *"he had not been aware of the Appellant's use of the garden rooms until the proceedings before the FTS in respect of this appeal. In his evidence, the garden rooms remained a pertinent of 15 Montrose Crescent for council tax purposes according to the council tax valuation list*".

[133] The UTS did not make any findings in fact in relation to this evidence in Order No. 9 as this evidence related to scenario 2.

[134] I accordingly reject Mr Cox's criticisms that I erred in the assessment of the evidence in connection with Order No. 9.

[135] I found both witnesses, the Appellant and Mr Robertson to be credible witnesses, whereby "credible" means they were both doing their best to tell the truth. There was no fundamental contradiction in their evidence on this important matter at the hearing on 10 December 2024.

[136] Secondly, Mr Cox then dealt with the Appellant's statement in cross-examination at the hearing on 20 December 2024 that he had brought the use of the garden rooms to the Respondent's attention. Mr Cox notes in his written submissions in connection with this Decision that no evidence was heard, or, indeed, can be traced, that the Respondent or LVJB were advised of the adoption of the additional rooms on 1 July 2019.

[137] Mr Cox submitted in this regard that there has been extensive correspondence between the Appellant and the Respondent over a long number of years, but nothing from him dated 1 July 2019. There was also no reference in subsequent correspondence from the Appellant referring to it, which would be unusual. The first indication of the use of the garden rooms that the Respondent received was in an email sent by the Appellant on 23 June 2023 to the First Tier Tribunal, shortly before the hearing before that Tribunal.

[138] These comments seem consistent with what is recorded at paragraph [27] of Order No. 9, namely Mr Robertson had *not been aware of the Appellant's use of the garden rooms until the proceedings before the FTS in respect of this appeal. In his evidence, the garden rooms remained a pertinent of 15 Montrose Crescent for council tax purposes according to the council tax valuation list*.

[139] This does not in my view detract from the Appellant's credibility. I was entitled to find the Appellant to be a credible witness, but this does not mean I had to make a finding in fact in relation to every statement he made, whether in his witness statement or in cross-examination at the hearing on 20 December 2024, particularly where it was not supported by documentary evidence.

[140] I made no findings in fact on these issues, one way or another, in Order No. 9, so I do not accept that I erred in assessing this part of the evidence in Order No. 9.

[141] Secondly, the Appellant asks me to exclude the evidence of Ms Dell on a number of grounds. In this respect he firstly submits that the Respondent was advised of the adoption of the additional rooms on 1 July 2019, over 6 years ago (at the date of the hearing on 15 September 2025), and in the preceding time, of over 6 years, had excruciating opportunity to seek the involvement of LVJB but chose not to do so.

[142] This first objection to the admissibility of her evidence is based on this delay, and allegations the Respondent wilfully ignored the time limit for lodging Ms Dell's witness statement, with an adverse effect on the Appellant's direct health and wellbeing. However, Order No. 10 permitted the Respondent to lead such evidence and although it was not lodged on time, the UTS exercised discretion and allowed the evidence to be lodged late. The Appellant cannot re-run this particular objection at submissions stage.

[143] The Appellant's second objection is based on the Respondent's budget in contrast to the Appellant who had been refused any and all legal assistance in progressing this, and any other legal matters. This is not, however, a relevant reason for refusing to admit evidence as such



disparities are common in litigation contexts, it being the function of the UTS in this case to ensure "equality of arms" between the parties.

[144] The Appellant's third objection was based on Ms Dell being an impartial witness. Some of his submissions in this regard are not, in my analysis, attacks on her impartiality *per se.* They are submissions asking that I reject parts of her evidence as not being credible and reliable. I will deal with those issues later in this Decision.

[145] Meantime, I do not regard certain others matters raised by the Appellant in his cross-examination of Ms Dell and his submissions as relevant to the exclusion of the evidence she gave to the UTS in accordance with Order No. 10.

[146] Such matters included the actions of the disgruntled ex-lodger in the period 2014 - 2019, and all the misfortunes that befell the Appellant during this period arising from those actions, earlier tribunal proceedings, the arrestment of the Appellant's bank account, refusal of a refund by the Respondent, delay in completing a valuation list application, and any apparent change in Ms Dell's position after meeting with the Appellant on 25 September 2024.

Consideration of the Evidence at the Hearing on 15 September 2025

[147] I first consider whether the Appellant notified the Respondent (or LVJB) of his use of the garden rooms in July 2019. His position in this regard was developed in his cross-examination of Ms Dell. He put to her that he had notified the Respondent (not LVJB) of the adoption of the garden rooms on 1 July 2019.

[148] Mr Cox objected to this on the ground the Appellant was "telling a different story". However, I allowed the Appellant to continue with this line of questioning. He put it Ms Dell that he had already updated the Respondent between 1 April and 10 July 2019.

[149] Ms Dell replied that she was unaware of any such application having been forwarded by the Respondent to LVJB; normal procedure would have been to inform LVJB of any change in the extent of a dwelling chargeable to council tax. She confirmed the latter point in re-examination, namely that any such application required to be made directly to LVJB, and that no such application was made.

[150] The Appellant accepted this in his evidence at the hearing on 20 December 2024. Paragraph 20 of Order No. 9 recorded the Appellant as accepting:

> "*No formal process existed or had been utilised to inform the Respondent 15A Montrose Crescent was later extended to include the garden rooms. He denied he had unilaterally determined on the extension of 15A Montrose Crescent to include the garden rooms*.

[151] Further, in paragraph 27 of Order No. 9, Mr Robertson gave evidence that:

> *"He had not been aware of the Appellant's use of the garden rooms until the proceedings before the FTS in respect of this appeal. In his evidence, the garden rooms remained a pertinent of 15 Montrose Crescent for council tax purposes according to the council tax valuation list*".

[152] While I am satisfied the Appellant may genuinely have believed he notified the Respondent of the addition of the garden rooms in July 2019, this is not consistent with the evidence of Mr Robertson on 20 December 2024 or Ms Dell on 15 September 2025, neither of whom had any record of such a communication, and it has not been supported by any documentary evidence in the

proceedings before the UTS. In my view, the Appellant has therefore not proved this fact on the balance of probabilities.

[153] This does not reflect adversely on the other aspects of the Appellant's evidence relating to the use of the annex and the garden rooms, given at the hearing on 20 December 2024, which I still regard as convincing, credible, and reliable.

[154] I turn now to consider Ms Dell's evidence, with reference to the Appellant's criticisms of that evidence, which I analyse in terms of its credibility and reliability, rather than being impartial *per se*. These were:

- He considered Ms Dell had maintained LVJB's general position in effective ignorance and irrelevance to countless detailed and varied case law examples, stated that a separate and distinct dwelling was in effect a lockfast cupboard devoid of, electricity, natural light, running water, a toilet or bathing facilities (even when access to elsewhere in a larger dwelling) as long as someone chose to 'live' in this lockfast room/cupboard.
- This 'position' was further aggravated by the 'ordinary man' proposition that they introduced, being an average lay person from the public, unqualified in any law in this regard, just straight forward life experience, who LVJB experts stated that they together with the 'ordinary man' would personally rent as a tenant such a 'separate and distinct dwelling' as described above, but they would further be content for their daughter to be a tenant in same and that an 'ordinary man' would also agree.

- Ms Dell conceded she had neither reviewed the plans nor any other specific information in respect of "this somewhat complicated matter" of whether the garden rooms were to be considered a "pertinent" of either 15 Montrose Crescent or 15A Montrose Crescent, Hamilton.

[155] I also take note here of some additional things Ms Dell stated in her evidence.

[156] Firstly, I note Ms Dell did not make a site visit or study the architect plans before opining on the garden rooms forming part of 15A Montrose Crescent, Hamilton.

[157] She stated she hadn't seen the plans, but then she had seen the plans of the annex. She said she did not need to conduct a site visit to give an opinion.

[158] In my opinion, while it was within her professional judgment whether or not to conduct a site visit, she would probably have benefitted from such a visit as did the UTS on 26 April 2024.

[159] The arrangements in question are complex, if not unique. However, this criticism does not *on its own* serve to undermine her opinion evidence (given as she said in cross-examination, she appeared as an "expert witness"), but it is a relevant factor is assessing that evidence.

[160] There is some ambiguity in my mind whether she studied plans or not before forming her opinion, but in the absence of a site visit, this would have seemed to me to be to be helpful, if not essential.

[161] In the event, she stated she had consulted "the plans of the annex" and I am satisfied with that explanation, though this does not necessarily mean she studied the layout of the communal area and garden rooms as well.

[162] I found more serious issues with her evidence, however. I have noted her as stating *Woolway v Mazars* was not relevant in Scotland. That would be a surprising statement, given both the Appellant and Respondent rely on that case in their written submissions to the UTS in connection with this Decision.

[163] This does not help the UTS in accepting her further statement that the garden rooms and 15A Montrose Crescent "couldn't form part of a *unum quid*".

[164] Ms Dell then went on to maintain that there would be three council tax units consisting of the annex at 15A Montrose Crescent, Hamilton, the communal area, and the garden rooms. I found this unconvincing, as I am not satisfied the communal area would have qualified as a dwelling.

[165] I do not have a note suggesting Ms Dell would regard a lockfast cupboard with no facilities as a separate dwelling. I believe that position was advanced by a different witness in a related appeal *Bell v LVJB*, heard on 5 September 2025.

[166] I have therefore not taken that submission into account in assessing the credibility and reliability of Ms Dell's evidence.

[167] In assessing her evidence overall, I accept Ms Dell was doing her best to tell the truth and was therefore a credible witness in relation to factual issues such as whether the Appellant had notified either the Respondent or LVJB of the addition of the garden rooms to 15A Montrose Crescent, Hamilton. As she had access to the records of LVJB in this regard, I also accept her evidence on this point as being reliable.

[168] However, I did not find her "expert" evidence to be convincing as she had not carried out a site visit, had incorrectly stated *Woolway v Mazars* was not relevant in Scotland, and gave an



unconvincing account in cross-examination of why the garden rooms were not a *unum quid* with 15A Montrose Crescent, Hamilton and rather formed one of three separate council tax units.

[169] Moreover, I am not sure why Ms Dell presented herself as an expert witness. She was not speaking to matters of value, but in part to matters of law, which are matters for the UTS, not the witness. Her witness statement does not refer to the *Woolway v Mazars* principles, and her brief comments in that regard were made in cross-examination. It was not enough that she asserted an opinion as to the legal and factual situation in her witness statement in the absence of such analysis.

[170] In setting aside her opinion evidence in this case, I am not impugning Ms Dell's impartiality, reputation, or honesty. Rather, issues such as *unum quid* are matters for determination by the UTS.

Discussion on Parties' Submissions on the Definition of "Dwelling"

[171] I start from the proposition that council tax, when introduced, was intended to replace valuation for rating in respect of dwellings (in place of the failed experiment with the "community charge" which had briefly preceded council tax). This interrelationship between the council tax and the valuation roll is referred to in section 72(2)(a)(ii) of the Local Government Finance Act 1992.

[172] In terms of this section, "dwelling": (a) means any lands and heritages…. *and* (ii) which would, but for the provisions of section 73(1) below, be entered separately in the valuation roll. Section 73(1) of the 19992 Act states that dwellings are not to be entered in the valuation roll in respect of the financial year 1993 - 94 or any subsequent financial year.



[173] There is no definition of "lands and heritages" in section 72(2)(a) of the 1992 Act (or elsewhere in the 1992 Act). However, this is a key definition for valuation for rating found in section 42 of the Lands Valuation (Scotland) Act 1854 which *inter alia* provides:

> "the expression "lands and heritages" shall extend to and include all lands, houses, shootings, and deer forests, fishings, woods, copse, and underwood from which revenue is actually derived, ferries, piers, harbours, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coalworks, waterworks, limeworks, brickworks, ironworks, gasworks, factories, and all buildings and pertinents thereof..."

[174] The relevance of this section in this case is to demonstrate that "pertinents" of houses and buildings are included within the term "lands and heritages" (see *Assessor for Lothian Region v Rowe* 1991 SC 257 (LVAC) at 260).

[175] Indeed, this is carried forward in the definition of dwelling in section 72(2)(a)(i) of the 1992 Act itself: namely, any lands and heritages: (i) which consist of one or more dwelling houses with any garden, yard, garage, outhouse or pertinent belonging to and occupied with such dwelling house or dwelling houses. The now repealed section 6(11) Valuation and Domestic Rating (Scotland) Act 1956 defined "pertinent" in relation to a dwellinghouse as including "*all land occupied therewith and used for the purposes thereof*".

[176] I will return to a discussion of "pertinent" later in this section of this Decision. Meantime, I examine Mr Cox's submissions on the foregoing sections of the 1854, 1956 and 1992 Acts. Taken together, Mr Cox submits the relevance of these sections "would seem to lie in the apparent suggestion from the Appellant that the 'garden rooms' fell to be considered as part of 15A, simply

because of their geographical location close by". However, given that these rooms had always been considered as part of the 'dwelling' known as 15 Montrose Crescent, they could not be considered as also/alternatively part of 15A.

[177] Further, it would also seem more logical, given that that the *status quo* (prior to the creation of 15A as a separate entity in 2019) that these rooms formed part of 15 Montrose Crescent for assessment and council tax purposes, that they continued to be so treated, rather than being 'attached' to a separately created new entity. This description fitted better with the definition of 'dwelling' stated above.

[178] This definition supported the 'ordinary' understanding of how buildings (such as the garden rooms) which were clearly pertinents to the main building of number 15 (and always had/have been since their construction) should be treated. It was logical and understandable that they be dealt with as part of that main property, as they were clearly pertinents of it prior to the splitting off of the new entity 15A.

[179] There seemed to be no particular reason why the garden rooms should then be treated as 'attached to' 15A rather than where they had always been i.e attached to number 15. The garden rooms should be treated as pertinents with number 15, where they had always been, rather than simply becoming associated with number 15A because of some internal arrangement between the Appellant and his wife, of which the Respondent were never formally made aware.

[180] I find these submissions to be somewhat unreal. They do not take account of changes in occupation over time, or the reality that the garden rooms were occupied exclusively by the Appellant during the taxable years in questions. The actual concept which the UTS is engaged in

considering in this case is best expressed in the now repealed 6(11) of the Valuation and Domestic Rating (Scotland) Act 1956 which defined "pertinent" in relation to a dwellinghouse as including "*all land occupied therewith and used for the purposes thereof*".

[181] Section 72(2)(a)(i) of the 1992 Act is to the same effect: any lands and heritages: (i) which consist of one or more dwelling houses with *any garden, yard, garage, outhouse or pertinent belonging to and occupied with such dwelling house or dwelling houses*.

[182] I now turn to consider the case of *Woolway v Mazars* (*Woolway (Valuation Officer) v Mazars LLP*) [2015] UKSC 53; [2015] AC 1862 as the concept of *unum quid* remains relevant to a consideration of what constitutes a dwelling.

[183] This is so, given the use of the expression "lands and heritages" in both legislative schemes (see *Assessor for Lothian Region v Rowe* 1991 SC 257 (LVAC) at 260).

[184] *Woolway v Mazars* was a decision of the Supreme Court of the United Kingdom in connection with the definition of a "hereditament" for the purposes of the General Rate Act 1967 applicable in England and Wales. The law in England and Wales was found to have been in an unsatisfactory state. Lord Neuberger, for example, referred to the Scottish cases discussed by Lord Sumption and Lord Gill as being "far more satisfactory" (paragraph 60). The Rating (Property in Common Occupation) and Council Tax (Exempt Dwellings) Act 2018 modified the law in England (but not Wales) in reaction to the decision in *Woolway v Mazars*. No similar changes were introduced in Scotland. *Woolway v Mazars* therefore remains a highly persuasive account of Scots law in connection with this case before the UTS. Both parties relied on it as setting out an accurate

statement of Scots law which was applicable to defining a dwelling for the purposes of council tax in Scotland.

[185] The principles established in *Woolway v Mazars* apply where distinct spaces under common occupation form a single hereditament (lands and heritages in the Scottish context).

[186] The primary test is geographical, based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity. Where, however, two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other.

[187] This last point is commonly tested by asking whether the two sections could be let separately. The question whether the use of one section is necessary to the effectual enjoyment of the other depends on the objectively ascertainable character of the subjects (Lord Sumption, paragraph 12). The geographical test is the "primary" test to which the "functional test" is subordinate (Lord Sumption, paragraph 17).

[188] Contiguity is not decisive in respect of the primary geographical test. Properties that are discontiguous but nonetheless geographically linked, may constitute one hereditament if the occupation of one part would be pointless without the occupation of the other (Lord Gill, paragraph 41), or if one property could not sensibly be occupied or let other than together with the other property (Lord Neuberger at paragraph 52).

[189] Mr Cox's submissions on the application of the geographical test were that, viewed objectively, the garden rooms required to be considered along with "other property" as a part of

the one unit (*unum quid*) for valuation purposes. On the secondary functional test, on the application of the 'effective enjoyment' rule, then again, the garden rooms required to be "part of another valuation unit".

[190] However, the *de facto* position as per the valuation list was that the garden rooms were part of 15 Montrose Crescent. The Appellant had not utilised any formal process to include the garden rooms in 15A Montrose Crescent, Hamilton. His 'incorporation' of the garden rooms into 15A was unilateral, and although it could not be denied that (for practical and living purposes) those rooms were used by the Appellant, in the absence of any formal notification or variation of the on the valuation list having been initiated, then it would appear to be logical and correct that the garden rooms could not be part of 15A for council tax purposes.

[191] This is an important submission, but it is not relevant at this stage. The question of whether the garden rooms were included within 15A Montrose Crescent, Hamilton is one of fact, for determination by the UTS, "the tribunal of law" in this case (Lord Sumption, paragraph 17).

[192] I refer in this regard to two findings in fact made by the UTS in Order No. 9. In finding in fact 15, the UTS held that:

> *Effective from 1 July 2019, the Appellant began to use additional rooms which, with the agreement of his wife, were allocated to the use of 15A Montrose Crescent, Hamilton from within of the overall property. These rooms had direct secure access from the garden, remaining on the ground floor level. The additional rooms incorporated a room and an attached toilet and shower and were secured from the remaining garden rooms with a lockfast door.*

[193] In finding in fact 35, the UTS held that:

The garden rooms were used as an integral part of the Appellant's dwelling during the council tax years in question. They formed part of the Appellant's sole residence during that period.

[194] The Respondent does not appear to dispute these points as is evident from Mr Cox's submission that it could not be denied that (for practical and living purposes) the garden rooms were used by the Appellant during the council tax years in question.

[195] It is also important to bear in mind that the Appellant and his wife separated around April 2019, and he began living in the annex then (finding in fact 6).

[196] The annex was entered separately in the council tax valuation list with effect from 1 April 2019 until 30 November 2023 during the period of the Appellant's separation from his wife. The Appellant began using the garden rooms from 1 July 2019 when it became apparent the annex on its own was not sufficient to meet his needs (findings in fact 12, 13, 14 and 15).

[197] Thus, on the face of matters, the Appellant was occupying the garden rooms as an *outhouse or pertinent belonging to and occupied with such dwelling house or dwelling houses* from 1 July 2019 to 30 November 2023, satisfying the definition of "dwelling" in section 72(2)(a)(i) of the 1992 Act.

[198] There is no dispute the Appellant was occupying the garden rooms in terms of this section. He and his wife owned the garden rooms in common (finding in fact 1 and the Appellant's written submissions) and they had both agreed to his exclusive usage of the garden rooms during his period of occupancy (finding in fact 15), therefore in both a legal and factual sense the garden rooms also satisfied the requirement in the section that they *belonged to* 15A Montrose Crescent, Hamilton. In the older language of the now repealed section 6(11) of the Valuation and Domestic

Rating (Scotland) Act 1956, the garden rooms were a "pertinent" in relation to 15A Montrose Crescent, Hamilton as they comprised "*all land occupied therewith and used for the purposes thereof*".

[199] So much seems a matter of common sense and reality to me.

[200] I go on to consider, however, the concept of "*unum quid*" as developed by the Supreme Court in *Woolway v Mazars*. I firstly consider the geographical test. I do not take into account the Appellant's submission that the clothes' line created contiguity between the annex and the garden grounds as that was not a matter advanced in evidence before the UTS.

[201] The annex and garden rooms were separated by a communal garden area which afforded access to the garden rooms and 15 Montrose Crescent, Hamilton, and so were not contiguous. However, I find they were part of the one dwelling as the occupation of one part would be pointless without the occupation of the other (Lord Gill, paragraph 41) and because the annex could not sensibly be occupied other than together with the garden rooms (Lord Neuberger at paragraph 52).

[202] I make this finding because the Appellant could not tolerably have lived in the annex on its own. This would have created an unsatisfactory quality of life for him. He needed both spaces to meet his needs as a disabled person.

[203] The Respondent refused to accept the geographical test applied because access to the garden rooms could only be made by using a 'shared access' which the Appellant stated was owned jointly by him and his wife. Under reference to Lord Sumption in *Woolway v Mazars* at paragraph 12 already quoted, when laying out his 'principles', he stated:

"If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments."

[204] This simply does not apply here. Lord Sumption was citing one possibility in an entirely different context, which was a "strong indication", but not a determining factor in all cases. This case does not involve "adjoining houses in a terrace" or "vertically contiguous units in an office block". It involves a very unusual arrangement whereby parts of what had been a larger dwelling were allocated to, by agreement of the spouses as joint owners, to their separate occupation.

[205] Lord Sumption also stated in paragraph 12 of *Woolway v Mazars* that application of the principles was not a "mere mechanical exercise". Rather, the application of the principles commonly called for "factual judgment". Given the UTS is considering the definition of dwelling in section 72(2)(a)(i) of the 1992 Act, rather than the assessor in this appeal, the issue is one for my "factual judgment".

[206] I consider applying the shared access principle here would not be just or reflect the reality of the garden rooms being occupied as an outhouse or pertinent of 15A Montrose Crescent, Hamilton by the Appellant during the council tax years in question.

[207] Mr Cox also denied the geographical test applied in this case, founding on comments of Lord Gill in *Woolway v Mazars*, under reference to the older Scottish authority of *Bank of Scotland v. Assessor for Edinburgh (1891) 18 R 936*, who at paragraph 35, stated:



"On that occasion the court, consisting of Lord Wellwood and Lord Kyllachy, decided that where the bank premises and the staff dwellinghouse were not internally connected, they should be entered in the roll as separate lands and heritages. In my view, that was correct. The absence of an internal connection between the residential unit and the bank premises meant that to reach the bank the occupier of the dwellinghouse had to leave the building and go by the street to the public entrance of the bank."

[208] Based on these comments, Mr Cox submitted the 'shared access' element meant that one could not have accessed the garden rooms from the remaining parts of 15A without crossing an area not in the Appellant's exclusive ownership or control.

[209] This ignores the fact that, in this case, the Appellant and his wife, as common owners, had agreed to the Appellant having exclusive occupation of the garden rooms, which infers agreement to the Appellant using the garden ground to access the garden rooms. In those hugely different circumstances, the garden rooms can properly be regarded as contiguous to the annex.

[210] I turn now to consider the subordinate functional test in the event the geographical test cannot be said to apply to this case.

[211] Mr Cox denied the functional test applied to this case for two reasons.

[212] First, the garden rooms, as noted above, had formed a part of 15 Montrose Crescent for valuation purposes for a number of years. However, this has nothing to do with the functional test. The functional test is factual test and a means of determining whether two separate spaces occupied by the same person are a *unum quid* in reality than by ignoring that reality.

[213] Secondly, Mr Cox submitted that even if the UTS were to accept that those rooms were 'necessary for the effective enjoyment' of 15A, which was denied, that test required the situation



'on the ground' to be viewed objectively, and not simply to be a creation of the Appellant's own making. Clearly, they had not been at the time of the Appellant's original request to have 15A as a separate council tax entry, and it was disingenuous for the Appellant to then try and make them such to succeed in this Appeal.

[214] I find this a bit confusing. If the UTS accepted the garden rooms were 'necessary for the effective enjoyment' of the annex at 15A Montrose Crescent, Hamilton, then the functional test would be met, and the garden rooms would be a *unum quid* with the annex.

[215] The functional test is distinct from Mr Cox's submission that the Appellant could not create a *unum quid* by his own making. This is a variant of his submission the garden rooms can only be regarded as allocated to the annex after formal procedure to that effect. The situation on the ground, viewed objectively, and in accordance with the facts of the matter, is clearly to the effect that the use of the garden rooms was necessary to the effectual use of the annex if the Appellant's needs as a disabled person were to be adequately met, and he were to enjoy a reasonable quality of living.

[216] The Appellant's following submissions on both the geographical and functional tests also in my opinion correctly establish the garden rooms and the annex were a *unum quid* because:

- Lord Sumption's primary geographical test i.e. contiguous buildings applied here. The garden rooms and the annex were contiguous by means of the co-owned land and the arrangement between the Appellant and his wife to use separate areas of the formerly united property at 15 Montrose Crescent, Hamilton for each exclusive use going forward. This created an invisible but nonetheless corridor of exclusive continuity.



- Lord Sumption's subordinate functional test applied here because the use of the garden rooms was necessary for the effectual enjoyment of the annex on the ascertainable character of the subjects.
- The garden rooms adopted on 1 July 2019 included in effect one bedroom and shower room with toilet. It did not include any kitchen facility whatsoever and for it to be considered a wholly separate and distinct dwelling on its own merit it would have required access through a secured private property which it did not have and would never have possessed.
- The Appellant's use of the overall property was constrained to the annex after April 2019. Pre-April 2019 this sub-section was used as a very useful option but not a restricted only space. Immediately it became apparent that when used as a restricted only space, it was unfit for purpose, and a new informal agreement was reached to include the adoption of the aforesaid annex rooms.
- The adoption of these additional rooms was to include a bedroom, and large required shower to incorporate the Appellant's needs.
- This change was to complement the annex and its objectively ascertainable characteristics of a kitchen area and small seating area and toilet.
- The annex was objectively not fit for purpose for permanent full-time stay, in particular with the Appellant's individual medical needs.
- Therefore, both sections were absolutely required to complement each other in their ascertainable character, not for what the Appellant chose to use them for what was

absolutely necessary for each to complement the other to form a single separate and distinct dwelling for his objectively ascertainable necessary needs.

[217] The Appellant also addressed the other aspect of the functional test, namely whether the two sections could be let separately.

[218] He submitted they could be let as one unit and that it was impossible to let each separately. The question posed by Lord Sumption was "whether the two sections could reasonably be let separately" (paragraph 12).

[219] I agree with the Appellant this question must answered in the negative as the garden rooms had no kitchen facility and, as a matter of law, would not have constituted a separate dwelling. A dwelling must meet certain minimum requirements, one of which is to provide space for eating and preparing food (see *Assessor for Lothian Region v Viewpoint Housing Association Ltd* 1983 SC 130 (LVAC)).

[220] I conclude this discussion by noting two points. First, that for the purposes of section 72(2)(a)(i) of the 1992 Act, the UTS was required to look to both the physical circumstances of the subjects in question, and the use to which they were put in determining whether they constituted a dwelling for the purposes of that section (*Old Course Ltd v Assessor for Fife* 2016 SC 805 (LVAC)). The section does not contain a definition of dwelling, and the question is one of impression in the particular facts and circumstances of the case (*Assessor for Lothian Region v Rowe* 1991 SC 257 (LVAC)). For the reasons advanced in this Decision, I regard both the annex and the garden grounds as one dwelling for the purposes of section 72(2)(a)(i) of the 1992 Act.

[221] Secondly, I acknowledge that decisions of the Supreme Court are not binding on the UTS in matters of valuation for rating or the determination of what constitutes a dwelling for the purposes of section 72(2)(a)(i) of the 1992 Act (*Akram v Assessor for Lothian Valuation Joint Board* [2026] CSIH 3 (LVAC)).

[222] However, as I have mentioned previously in this Decision, *Woolway v Mazars* must be regarded as a highly persuasive judgment in the Scottish context and was so treated by the parties in this case.

Findings in Fact in Relation to the "Dwelling" in this Case

[223] Based on the foregoing discussion, I make the following additional findings in fact in relation to scenario 2.

[224] I number these from 38 onwards as Order No. 9 contained 37 findings in fact.

38. The garden rooms adopted on 1 July 2019 included in effect one bedroom and shower room with toilet.
39. The garden rooms did not include any kitchen facility for the garden rooms to be considered a wholly separate and distinct dwelling on its own merit.
40. The adoption of the garden rooms was to include a bedroom, and a large shower to incorporate the Appellant's needs.
41. This change was to complement the annex and its objectively ascertainable characteristics of a kitchen area and small seating area and toilet.
42. The annex was objectively not fit for purpose for permanent full-time stay, in particular with regard to the Appellant's individual medical needs.

43. The annex and the garden rooms complemented each other in their ascertainable character to form a single separate and distinct dwelling for the Appellant's objectively ascertainable necessary needs.

44. The garden rooms were *de facto* a pertinent of the annex and together they constituted a dwelling or *unum quid* for the purposes of section 72(2)(a)(i) of the Local Government Finance Act 1992 with effect from 1 July 2019.

45. The reference in finding in fact 36 to the garden rooms providing the Appellant with a room which was not a bathroom, a kitchen or a lavatory refers to the space used by him as a bedroom as referred to in finding in fact 38.

46. It is that room which was predominantly used by the Appellant, and which was required for meeting the needs of the Appellant as a qualifying individual resident in the dwelling.

47. That room was of essential or of major importance to the Appellant's well-being by reason of the nature and extent of his disability.

[225] I believe these 47 findings in fact are sufficient for the purposes of determining this appeal.

Were the Garden Rooms Nonetheless a Pertinent of 15 Montrose Crescent, Hamilton?

[226] I would characterise this as a *de jure* position on the Respondent's part, rather than Mr Cox's characterisation of it as a *de facto* position.

[227] The Respondent's position this is a *de facto* question has throughout this case had a feeling of unreality about it. There is an acceptance by the Respondent that the garden rooms were occupied and used by the Appellant, but a reluctance to concede this occupation met the Appellant's needs as a disabled person and gave him a reasonable quality of living.

[228] The Respondent has challenged the geographical tests and functional tests, often in the face of common sense.

[229] There is no real, *de facto* sense, in which the garden rooms remained a pertinent of 15 Montrose Crescent, Hamilton after 1 July 2019, when the Appellant and his wife, as common proprietors, reached agreement on the Appellant's use of the garden rooms as a pertinent to the annex at 15A Montrose Crescent, Hamiliton.

[230] The Appellant conceded at the hearing on 10 December 2024 that he had made no formal proposal to the assessor to alter the entry on the valuation list to include the garden rooms. At best, although I have not been able to find in fact, his position is he contacted the Respondent with a view to the necessary information being passed on to LVJB. This is not particularly important, however. The important matter is no formal process took place to make the necessary alteration in the valuation list.

[231] A new dwelling can be created either by a new building or by the structural alteration of an existing property (*Child Poverty Action Group, Council Tax Handbook*, 14th edition, 2024, page 23). When that happens, by the adoption of the garden rooms on 1 July 2019 in this case, the owner or taxpayer (the Appellant in this case), may make a proposal to the assessor to alter the valuation list to show with effect from a particular date a dwelling not shown on the list and to delete with effect from a particular date a dwelling shown on the list (regulations 5(1)(a) and (b), Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993).

[232] In essence that proposal would have been to delete 15A Montrose Crescent, Hamilton from the valuation list and add a new dwelling (15A incorporating garden rooms) with effect from 1 July 2019.

[233] There is no time limit attaching to such an application (*Grant v Assessor for Highland and Western Isles Valuation Joint Board* [2024] UT 56; *Walsh v Assessor for Scottish Borders Council*, [2025] UT 60), and no reason I can see why such an application, if required, could not now be made to the assessor.

[234] The procedural importance of such an application is the assessor would determine in the first instance whether a new dwelling had come into effect on 1 July 2019, with a right of appeal to the First-Tier Tribunal for Scotland if the assessor was of the opinion the proposal was not well founded (regulation 15, Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993).

[235] The assessor has statutory responsibility for the compilation and maintenance of the (council tax) valuation list in terms of section 84 of the Local Government Finance Act 1992. The list must contain certain prescribed information (interestingly, not a description of the extent of the dwelling - see regulation 2, Council Tax (Contents of Valuation Lists) (Scotland) Regulations 1992)), and, in terms of section 84(2) of the 1992 Act, each dwelling and the valuation band applicable to the dwelling.

[236] The issue therefore is whether, in applying the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992 to this case, the UTS requires to have regard not only to the reference



to dwelling in section 72(2)(a)(i) of the 1992, but also to whether the dwelling in question was shown in the valuation list.

[237] The 1992 Regulations operate by providing for the calculation of the council tax due by the "eligible person" by reference, not to the valuation band shown in the valuation list applicable to the dwelling, but by reference to the band immediately above in the table set out in section 74(2) of the 1992 Act.

[238] Thus, for example, council tax for a dwelling in Band B would be calculated with reference to Band A. Since there is no band above Band A, the amount of council tax payable by the eligible person "in respect of the dwelling in question" is calculated in a reduced amount by reference to a formula set in regulation 4(1C) of the 1992 Regulations.

[239] There is no definition of dwelling in the 1992 Regulations as being the dwelling referred to in the valuation list. The regulations use expressions such as "particular dwelling", "dwelling". "that dwelling" and "the dwelling in question".

[240] In this case, Ms Dell stated in her cross-examination on 15 September 2025 that the annex and garden rooms would have both been shown in the valuation list with Band A.

[241] I have not accepted her evidence as to *unum quid* as I have found the two sections did, in fact, form a *unum quid*. I find it highly unlikely the combined properties would have required to be included in any higher than Band A. Ms Dell made no suggestion to that effect.

[242] In practical terms, I find the position adopted by the Respondent and LVJB difficult to understand. The ultimate purpose of the valuation list is to tax properties with reference to the valuation band shown for the dwelling on the valuation.

[243] It is unlikely therefore, to have any practical effect in this case whether the entry for 15A Montrose Crescent, Hamilton had been amended to reflect the addition of the garden rooms.

[244] The extent of the dwelling is not required to be entered on the valuation list in accordance with regulation 2 of the Council Tax (Contents of Valuation Lists) (Scotland) Regulations 1992) in any event.

[245] A proposal to create a new dwelling would be appropriate where this affected the banding as that would be relevant to the Respondent's function in calculating the council tax due by reference to the the band immediately above in the table set out in section 74(2) of the 1992 Act. I therefore do not consider it was necessary for the Appellant to have made a formal proposal in this case. The Respondent is, in the circumstances of this case, able to give effect to the calculation in regulation 4(1C) of the 1992 Regulations without such a proposal being made to the assessor.

[246] Even if that were not the case, the Appellant could simply make that formal proposal now, and in all likelihood the assessor would be required to grant the application based on the findings in fact made by the UTS in this case in respect of the annex and garden rooms forming a *unum quid* or a dwelling for the purposes of section 72(2)(a)(i) of the 1992 Act. There is no unfairness to LVJB in that outcome as they were able, through Ms Dell, to appear before the UTS and state their position, albeit this is a position the UTS has rejected.

Conclusion

[247] In conclusion, I find in relation to scenario 1 that from 1 April 2019 until 30 November 2023 for the council tax years 2019/20, 2020/21, 2021/22, 2022/23 and 2023/24, during the period of the

Appellant's separation from his wife, the Appellant was an eligible person for the purposes of the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992 during those periods.

[248] I find in relation to scenario 2 that the annex and the garden rooms formed a *unum quid* or a dwelling for the purposes of section 72(2)(a)(i) of the 1992 Act from 1 July 2019 until 30 November 2023 for the council tax years 2019/20, 2020/21, 2021/22, 2022/23 and 2023/24 during this part of the period of the Appellant's separation from his wife and the Appellant was an eligible person for the purposes of the Council Tax (Reductions for Disabilities) (Scotland) Regulations 1992 during those periods.

[249] The result is the Appellant is entitled to his council tax reduction calculated in accordance with regulation 4 of the 1992 Regulations, effective from the earlier of the two dates of 1 April 2019 and 1 July 2019.

[250] As the UTS has already quashed the contrary Decision of the FTS, the UTS remakes that Decision in accordance with this Decision, allows the Appellant's appeal against the Respondent's decision to refuse his application for council tax reduction under the 1992 Regulations, and directs the Respondent to grant the Appellant's application.

[251] The Respondent is now required to calculate the amount of the council tax reduction due to the Appellant in the period from 1 April 2019 until 30 November 2023 for the council tax years 2019/20, 2020/21, 2021/22, 2022/23 and 2023/24 in accordance with regulation 4 of the 1992 Regulations.

[252] I consider it appropriate the Respondent does so, and that it pays any refund due to the Appellant, within six months of the date of this Decision.

[253] I have made an order to that effect pursuant to section 47(2)(c) of the Tribunals (Scotland) Act 2014.

Further Appeal

[254] Somewhat unusually, the Respondent indicated an intention to appeal to the Court of Session in its written submissions in relation to scenario 1. The Respondent's view, contrary to my finding in fact 32 in Order No. 9, is the annex met the Appellant's "basic needs" in the same way as those needs would be required by any person, whether disabled or not. The concept of "basic needs" is not found in the 1992 Regulations. I will consider any application for permission to appeal made on this ground, if and when it is submitted to the UTS.

[255] I believe I dealt correctly with these issues in Order No. 9. No doubt any application for permission to appeal will explain in more detail why the Respondent thinks I did not make finding in fact 32 in accordance with regulation 3 of the 1992 Regulations and the case law to which I discussed in Order No. 9.

[256] The Respondent also indicated its intention to appeal in its written submissions in relation to scenario 2 on the basis I had made certain findings in fact which I had not in fact made in Order No. 9. I have endeavoured to explain in this Decision why I think this point is misconceived. However, I will consider any application for permission to appeal made on this ground, if and when it is submitted to the UTS. No doubt any application for permission to appeal will explain in more detail why the Respondent thinks I should grant permission to appeal on this ground.

[257] This has been a complicated case to decide, and I do not imply that the Respondent is limited to seeking permission to appeal only on these two grounds. The Respondent may think of

other matters upon which the Respondent wishes to seek permission to appeal after considering this Decision.

[258] I will, of course, consider any application for permission to appeal made on other grounds, if and when such application is submitted to the UTS.

[259] I remind parties that if either of them is aggrieved by this Decision and wishes to apply for permission to appeal to the Court of Session, then: (i) they must must apply in writing to the UTS for permission to appeal to the Court of Session; (ii) do so within 30 days of the date on which this decision was sent to that party; and (iii) that any such appeal must be on a point or points of law only.

[260] Furthermore, any written application for permission to appeal to the Court of Session by a party in this case must: (a) identify the Decision of the UTS to which it relates; (b) identify the alleged error or errors of law in the Decision; and (c) in terms of section 50(4) of Tribunals (Scotland) Act 2014, state the important point of principle or practice that would be raised in the further appeal, or any other compelling reason for allowing a further appeal to proceed.

Concluding Remarks

[261] This concludes my Decision in respect of this appeal to the UTS. I am grateful to the parties for the assistance provided to me in the determination of the appeal.

George Jamieson
Sheriff of North Strathclyde
Judicial Member of the Upper Tribunal for Scotland