

VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; sole or main residence; single person discount sought under Section 11 of the Local Government Finance Act 1992; Williams v Horsham District Council [2004] EWCA Civ 39; appeal allowed.

RE: 563 Manchester Road, Linthwaite, Huddersfield, HD7 5QX

APPEAL NUMBER: 4715M262995/282C

BETWEEN:	Mr D Newton	Appellant
	and	
	Kirklees Council	Respondent
	(Billing Authority)	

PANEL: Mr M Unees (Chairman)
Mr C Rafferty

SITTING AT: Well Met, Leeds Beckett University

ON: Friday 7 November 2019

APPEARANCES: Mr D Newton (Appellant), accompanied by
Mrs Newton
Mr P Elliott (Respondent's Representative)

Summary of decision

1. The appeal was allowed. The panel determined that the appeal property is the main residence of Mr Newton and a 25% single person discount (SPD) should be awarded.

Introduction

2. The appellant, Mr Newton, owns two properties 563 Manchester Road and the neighbouring property 565 Manchester Road. He lived at 565 Manchester Road from 2003 on his own and was awarded 25% SPD until 1 September 2015. This was when his partner, Alison Newton moved into the property.
3. Prior to 2015 Mrs Newton continued to reside in her own house at 485 Manchester Road despite being in a relationship with Mr Newton. It was only due to her daughter and her

children needing somewhere to live, that Mrs Newton moved in with Mr Newton at 565 Manchester Road.

4. 563 Manchester Road was purchased by Mr Newton on 15 January 2007 and was awarded an exemption from council tax until 14 January 2008 on the grounds of structural repairs. After this time the property was charged at 100% liability as an empty and unfurnished property. Due to a change in regulations, the charge was increased to 150% on 1 April 2013 as a long term empty unfurnished property. On 4 March 2019, the charge was increased to 200%.
5. Mr Newton was undertaking renovations at 563 Manchester Road. The first floor and attic had been completed to a high standard and Mr Newton moved his belongings into the property on 31 March 2019 and had been living there ever since. The billing authority accept that the property is no longer unfurnished and have amended the liability from 200% to 100% council tax. Mr Newton disputes the 100% liability charge believing that a discount of 25% SPD should apply for both 563 Manchester Road and 565 Manchester Road. He confirmed that it is their intention to sell 565 Manchester Road and Mrs Newton will move into 563 Manchester Road with him.
6. The billing authority consider 565 Manchester Road to be Mr Newton's sole or main residence and therefore have not awarded a 25% SPD as it is occupied by two people, Mr and Mrs Newton. 563 Manchester Road has been deemed as a long term empty property until Mr Newton moved in his belongings on 31 March 2019 and is now being charged as an empty furnished property at 100% council tax charge.
7. The billing authority determined that no adjustment was appropriate and issued a decision letter to that effect on 10 May 2019. The appellant appealed to the tribunal against the billing authority's decision under Section 16(1) of the Local Government Finance Act 1992.
8. In order to assist the appellant (who was not professionally represented) and with the agreement of the parties, the tribunal panel varied its model procedure and invited the billing authority's representative to present their evidence first.
9. The absence in this decision text of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue

10. The issue before the panel was whether a 25% single person discount should be awarded.

Evidence and submissions

11. In support of his case, Mr Elliott referred to caselaw: *Codner v Wiltshire Valuation and Community Charge Tribunal* [1994] RVR 169, in which the High Court confirmed the principle that time was not the only factor to be considered in determining sole or main residence. He also referred to the High Court decision of *Cox v London South West Valuation and Community Charge Tribunal* [1994] 34 RVR 171. In this case the taxpayer spent time at two dwellings. It was held that the sole or main residence was the home where the wife and family resided.
12. Mr Elliott stated that Mr and Mrs Newton remain as a couple and therefore in his opinion, it is most likely for them to spend time together in one property. This would be more likely to be

at 565 Manchester Road, which is a fully furnished house, in comparison with the partly furnished 563 Manchester Road, where the rest of the house was undergoing repairs.

13. It was the opinion of Mr Elliott that the decision to move into 563 Manchester Road was a financial decision given that they were being charged 100% council tax on 565 Manchester Road and the next door property had been increased to 200% council tax. However, just by furnishing the property has reduced the liability from 200% to 100%. He did not consider it to be of any financial gain for Mr and Mrs Newton to live separately as the cost of the other utilities would outweigh the saving of council tax.
14. Mr Elliott therefore asked the panel to dismiss the appeal on the grounds that Mr Newton's sole or main residence was with his wife at 565 Manchester Road.
15. In support of his case, Mr Newton confirmed to the panel that he and his wife had been in a relationship since 2002. Throughout their relationship they continued to live in separate houses. It was never their intention to live together. Mrs Newton only moved in with Mr Newton as her daughter needed somewhere to live. It was considered that Mr and Mrs Newton would only be living together for a short term basis as Mr Newton was to move into 563 Manchester Road. However, the renovation works had taken longer than expected due to a lack of motivation and financial resources.
16. Mr Newton confirmed that 563 Manchester Road had remained unoccupied since 2007 due to ongoing long term renovations. However by 31 March 2019 the first floor of the property had been rendered habitable after having installed a bathroom, central heating with hot and cold water, carpets and furnishings. His belongings from 565 Manchester Road were moved into 563 Manchester Road. Mr Newton confirmed he slept at the property every night. Since March 2019 he had only spent two nights away from the property; he also bathes there, and his clothes are kept there. He leaves from this property to go to work and this is where he returns. He has tea and coffee making facilities, a small fridge and microwave oven. He has even changed his personal details such as doctor, driving licence, and utility bills to this address to reflect his occupation at the property.
17. Mr Newton stated that he had been upfront and honest with the council. He felt as though he was being made to be a criminal by the billing authority for seeking to reduce his liability. If that was the case he would not have continued to pay 150% council tax for the property and would have acted sooner to finish the repairs and furnish the property. Mr Newton asked the panel to confirm that he and his wife have separate living arrangements, as they had done before he purchased 563 Manchester Road. He sought 25% discount on 563 Manchester Road and 565 Manchester Road as each property was only occupied by one person.

Decision and reasons

18. Council tax is essentially a property tax, but a significant factor which distinguishes it from a pure property tax is the concept of discounts relating to personal circumstances, under section 11 of the Local Government Finance Act 1992, which includes a 25% discount for a 'resident' who lived alone. The definition of 'resident' is contained in section 6(5) of the 1992 Act as follows:

'resident', in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling.

19. The panel had to consider where the appellant's main residence is in order to establish whether or not a single person discount could be awarded at the appeal dwelling.
20. The phrase 'sole or main residence' is not defined by the legislation; however, it has been considered by the High Court and Court of Appeal in a number of cases. The panel was aware that a "reasonable onlooker test" had been established in the case of *Martin Williams v Horsham District Council* [2004] EWCA Civ 39. Usually a person's main residence would be the dwelling that a "reasonable onlooker" with knowledge of the facts would regard as that person's home at the time.
21. The panel appreciated that Mr Newton had the majority of his belongings at the appeal property. The panel was also aware that he had security of tenure at both properties as he owned 563 Manchester Road and 565 Manchester Road; they were not jointly owned with Mrs Newton. Mr Newton spent a considerable amount of time at 563 Manchester Road where he slept every night. He only returned to 565 Manchester Road for a small amount of time to share an evening meal with Mrs Nelson.
22. The panel held that a reasonable onlooker would consider the appeal dwelling to be the appellant's main residence. While it is normally the case that a person's main residence will be at the matrimonial home, in the subject appeal, Mr and Mrs Newton had continued to live in separate dwellings throughout their relationship and only moved in together for a brief period of time due to the circumstances of Mrs Newton's daughter. The appeal property is the scene of Mr Newton's domestic life and where he returns to sleep. The panel also draws support for the appeal property as Mr Newton's main residence, from the fact that he has registered a change of address with his doctor and for his driving licence.
23. The panel placed little weight on the assumptions made by the billing authority that the appellant and his wife were merely seeking a way to reduce their finances, as the facts of the case did not support this given their continued choice to reside in separate dwellings.
24. As the panel considered that the appellant's main residence was the appeal dwelling the appeal was allowed.

Order

25. Under the provisions of Regulation 38(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the billing authority to award a single person discount to Mr Newton in respect of 563 Manchester Road with effect from 31 March 2019.
26. Under Regulation 38(9), the billing authority must comply with this order within two weeks of the date of its making.

Date: 13 January 2020

Appeal number: 4715M262995/282C