

VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; entitlement to single person discount in dispute; section 11 of the Local Government Finance Act 1992; sole or main residence; reasonable onlooker test; appeal allowed.

RE: Richmond House Barn, Hough Clough Lane, Chipping, Preston PR3 2NT

APPEAL NUMBER: VT00000296

BETWEEN:	Mrs S Hulme	Appellant
	and	
	Ribble Valley Borough Council (Billing Authority)	Respondent

BEFORE: Mr K Peck (Senior Member)
Ms R Taylor

SITTING AT: Holiday Inn, Preston

ON: Friday 17 January 2020

APPEARANCES: Mr S Hulme, the appellant's husband and representative
Ms D Kelly, representing Ribble Valley Borough Council

Summary of decision

1. Appeal allowed. The panel determined that a single person discount should be awarded to Mr Hulme for the period from 21 December 2016 to 15 August 2019.

Introduction

2. The appeal was made under section 16 of the Local Government Finance Act 1992. It challenged the Billing Authority's decision dated 29 March 2019, that Mr S Hulme was not entitled to a single person discount, in respect of Richmond House Barn, the appeal property, for the period from 21 December 2016 to 15 August 2019.

3. The absence in this decision 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

4. Whether the appeal property was Mrs Hulme's sole or main residence for the disputed period.

Evidence and submissions

5. In support of the appeal, Mr Hulme presented a bundle which included: a written submission; a rebuttal of the caselaw cited by the Billing Authority; a timeline of events relating to properties in the UK and USA; confirmation of a house purchase in Las Vegas; guidance from BDO (Accountancy and Professional Services) regarding residence status under the Statutory Residence Test; and email correspondence from the Billing Authority regarding Mrs Hulme's status as an Overseas Postal Voter.
6. Mr Hulme disputed the Billing Authority's decision to refuse a single person discount as he argued that Mrs Hulme's permanent residence is in Las Vegas at the property which they jointly own. Her residence there is not dependent upon her employment, as illustrated by the fact that she did not return the UK when her employment ended for a period between 2017 and 2019.
7. He explained that the appeal property had been placed on the market in June 2016, and an application for a single person discount had been made at that time, as it was recognised that Mrs Hulme would not be returning to the property. This was refused by the Billing Authority, and not appealed to the Tribunal. The appeal property had eventually sold in August 2019. Mr Hulme requested that the panel order the Billing Authority to apply a single person discount for the period from 21 December 2016, the date of the first application, through to 15 August 2019, when the property was sold.
8. On behalf of the Billing Authority, Ms Kelly presented a bundle which included: a summary of the case; copies of correspondence with the appellant; and reference to caselaw:
 - *Codner v Wiltshire Valuation and Community Charge Tribunal* [1994] RVR 169
 - *Bradford Metropolitan City Council v Anderton* [1991] RA 45
 - *Ward v Kingston-upon-Hull City Council* [1993] RA 71
 - *Cox v London (South West) Valuation and Community Charge Tribunal* [1994] 34 RVR 171
 - *Doncaster Borough Council v Stark* [1998] RVR 80
 - *R (n the application of Williams) v Horsham District Council* [2004] EWCA Civ 39

9. Ms Kelly contended that a husband and wife are one household and are jointly and severally liable with their sole or main residence in the same property for council tax purposes. The appeal property is jointly owned, and Mrs Hulme returns to the UK property to stay with her husband. Her sole or main residence is not affected by long periods of absence from the property.

Decision and reasons

10. Council tax discounts are allowed under section 11 of the Local Government Finance Act 1992. A single person discount of 25% is allowed if there was only one resident in a dwelling. The definition of 'resident' is contained in section 6(5):

“‘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.”

11. The phrase 'sole or main residence' was not defined by the legislation; however, it had been considered by the High Court and Court of Appeal in a number of previous cases. The Billing Authority had cited a number of these cases and provided a brief description. It was submitted that these cases established that factors such as security of tenure, intention to return (whether of long or of short duration) and where family is resident were important factors when determining one's sole or main residence for council tax purposes.
12. Mr Hulme disputed the relevance of the caselaw for the following reasons:
- *Bradford v Anderton* – Mrs Hulme is living in the USA out of choice, and not due to the demands of her employment.
 - *Ward v Kingston-upon-Hull* – Mrs Hulme's residence is wholly owned, and not employment related.
 - *Cox v London (South West) Valuation and Community Charge Tribunal* – They have no children. Mrs Hulme has spent just 2.2% of her time since 2014 in the UK visiting friends and family only, and lives in the USA out of choice.
 - *Doncaster Borough Council v Stark* – Mrs Hulme is not residing in employment related premises, and also has not returned to the UK to live when she has not been working (i.e. in the period 2017-2019).
 - *R (on the application of Williams) v Horsham District Council* – Mrs Hulme does not live in employer-provided accommodation. She lives in her main residence in the United States, and neither had, nor has any intention of returning to live in the UK. She is in full-time employment in the United States.
13. The panel held that Mr Hulme had successfully argued why the caselaw relied upon by the Billing Authority did not support the decision to refuse a single person discount.

14. While the facts of the subject appeal could be distinguished from the facts of the caselaw, there were certain principles which had been established which assisted the panel. Most significant was the case of *R (on the Application of Williams) v Horsham District Council*, which had established the “reasonable onlooker” test. The Court of Appeal held that, although it is probably impossible to produce a definition of main residence that will provide the appropriate test in all circumstances, usually a person’s main residence for council tax purposes is the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person’s home at the material time,

15. The timeline of events provided by Mr Hulme was helpful to the panel, as there had been various movements between Las Vegas and the UK since 2007:

- Mr and Mrs Hulme moved from the appeal property to Las Vegas in 2007.
- They bought their first house in Las Vegas in 2008.
- In 2009, Mrs Hulme obtained a permanent US residence card.
- In 2010, they sold the house in Las Vegas and returned to the UK, but Mrs Hulme was still employed by a US company.
- Between 2010 and 2013, Mrs Hulme spent increasingly longer periods of time working in the US.
- In 2014, they bought a second house in Las Vegas and Mrs Hulme moved out of the appeal property to reside fully in USA.
- In June 2016 the appeal property was put up for sale.
- Between 2017 and 2019, Mrs Hulme was no longer employed by her company in the US.
- Mr Hulme moved out of the appeal property in 2018 to take up employment in Scotland.
- The appeal property sold in August 2019.

16. The time spent by Mrs Hulme at the appeal property since 2014, was stated as follows:

- 2014: 6 days
- 2015: 8 days
- 2016: 8 days
- 2017: 14 days
- 2018: 12 days
- 2019: 0 days

17. In arriving at the decision that a reasonable onlooker would not regard the appeal property to be Mrs Hulme’s home at the material time, the panel took into account the following:

- Mrs Hulme has lived in the US as a permanent resident since 2007.
- She has held a US Permanent Resident Card since 2009, and this has been renewed to 2029.

- The Permanent Resident Card is not dependent on her working in the US, and consequently she is not required to leave in the event that she is no longer working.
 - She continued to live in the US for nearly two years between 2017-2019 when she was not employed.
 - Mrs Hulme is registered as an Overseas Postal Voter.
 - In 2016, the international financial advisory service, BDO, determined Mrs Hulme to be domiciled in the US as she does not spend enough time in the UK to be considered resident any longer.
18. The main contention of the Billing Authority was that a husband and wife are one household and are jointly and severally liable with their sole or main residence in the same property for council tax purposes. The panel acknowledged that a husband and wife are jointly and severally liable for council tax when they reside in the same property. However, in the subject appeal, the panel is satisfied that Mrs Hulme's main residence was in Las Vegas for the disputed period. As such, she is not jointly and severally liable as a resident, and therefore Mr Hulme, as the only adult resident in the property, is entitled to a single person discount.
19. The appeal is therefore allowed. Mr Hulme is entitled to a single person discount for the period from 21 December 2016 to 15 August 2019.

Order

20. 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 Hulme for the period from 21 December 2016 to 15 August 2019.
21. Under regulation 38(9), the Billing Authority must comply with this order within two weeks of the date of its making.

Date: 29 January 2020

Appeal number: VT00000296