

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; owner disputing liability; house in multiple occupation (HMO); tenancy agreements; Goremsandu v The London Borough of Harrow [2010] EWHC 1873; Shah v London Borough of Croydon [2013] EWHC 3657 (Admin); Council Tax (Liability for Owners) Regulations 1992 (S.I. 1992/551); Local Government Finance Act 1992; appeal dismissed.

Re: 10 Pasteur Gardens, London N18 1JF

APPEAL NUMBER: VT00001714

BETWEEN:	Mrs S Herodotou	Appellant
	and	
	London Borough of Enfield	Respondent
	(Billing Authority)	

PANEL: Dr J Johnston (Senior member) and Mr S Bamawo

CLERK: Mrs S Morgan

REMOTE HEARING: Monday 14 December 2020

PARTIES PRESENT: Mr R Brown from Selborne Chambers - Appellant's representative

Mr C Kafetzis – Billing Authority's representative

Summary of decision

1. The appeal was dismissed. The appeal property was a house in multiple occupation (HMO) with effect from 12 February 2014 to 23 January 2020.

Introduction

2. This appeal was brought in respect of a decision made by the Billing Authority to designate the appeal property as a HMO and as such made the owner liable for the council tax under section 8 of the Local Government Finance Act 1992 and Class C of the Council Tax (Liability for Owners) Regulations 1992 with effect from 12 February 2014. The result of which was that liability fell on Ms Herodotou, as owner of the property since August 1995. The appellant currently resides in Cyprus.
3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.
5. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

6. The issue in dispute was whether or not the appellant was the liable person for council tax at the appeal property for the period in dispute, 12 February 2014 to 23 January 2020.

Evidence and submissions

7. Reference was made by the parties to the following authorities:

Goremsandu v The London Borough of Harrow [2010] EWHC 1873,
Shah v London Borough of Croydon [2013] EWHC 3657 (Admin),

8. The appeal property is a three-bedroom terraced house. The property was subject to tenancy agreements from 12 February 2014 to 11 August 2019 with the same family. The rent on the tenancy agreements varied between £1,300 and £1,350 per month throughout the disputed period.
9. The appellant’s representative referred to sections of the tenancy agreement. Within the agreement, Clause 1 stated that “the Landlord agrees to let, and the Tenant agrees to take the Property and the Contents for the Term at the Rent payable as above”. The “Property”

was the appeal dwelling. The “Contents” included the fixtures and fittings at the Property together with any furniture, carpets, curtains and other effects listed in the Inventory.

10. Under Clause 3.2 of each tenancy agreement, the tenants agreed to pay the council tax for the property. Clause 4 refers to the use of the Property as a single private dwelling and not to use it or any part of it for any other purpose nor allow anyone else to use it. Clause 8, the Landlord shall permit the Tenant to have quiet enjoyment of the Property without interruption by the Landlord or her agent.
11. The appellant’s representative contended that the first port of call was the written agreement (*Shah v Croydon LBC* [2003] EHC 3657; [2015] RVR 41). The agreement was clear in that the tenancy was in respect of the entire dwelling. The Landlord had no right to reserve a particular room in the dwelling. Although it was conceded that one of the bedrooms was kept locked, it was contended that the tenants would have been provided with a key if they had requested one. The tenants were therefore entitled to use the room if they wished to do so.
12. The appellant’s representative drew distinctions with *Goremsandu v The London Borough of Harrow* [2010] EWHC 1873. In particular, he referred to paragraphs 28, 34 and 35 of that judgment as follows:

28. “The evidence presented to the Valuation Tribunal shows that the furniture in the conservatory was made up of furniture provided at the outset of the first tenancy by Mrs Goremsandu to the tenants as part of their furnished tenancy. This furniture was of course owned by her. The furniture was not needed by the tenants so that it was stored in the conservatory which remained part of the house which had been demised to the tenants under the terms of their lease. The lease gave the tenants exclusive possession of the entire house including the conservatory. However, so much furniture was stored in the conservatory that no-one, including the tenants, could gain access into that area. The door into the conservatory was, or may have been, locked and the key was, or may have been inaccessible – the evidence is contradictory about this factual detail. However, the furniture was still being hired by the tenants as part of their furnished tenancy, they continued to have the right to use it or, if they could find other storage facilities for it, to store it elsewhere and use the conservatory as a conservatory rather than a storage area. If the conservatory was locked and they had no access to the key, they could at any time have called for the key in order to make use of any of the furniture or to relocate the furniture and use the conservatory.....

Error of law by the Valuation Tribunal

34. The Valuation Tribunal erred in law in not giving effect to the terms of the tenants’ shorthold tenancies and in not applying the statutory definition of an HMO despite setting it out in their decision. In particular, they considered that individual rent charges gave rise to “multiple occupation”, which is the wrong test to apply. The statutory test that they should have applied is whether the rent charges gave rise to a licence whereby they only occupied part only of the dwelling or whether they were paid in respect of part only of the dwelling. On analysis, the individual

rent charges were all paid to allow each tenant to occupy the entire house, as provided for in the tenancy agreement, and each payment related to the occupation of the house as a whole.

35. The Valuation Tribunal also considered that the fact that Mrs Goremsandu's furniture was kept locked in the conservatory meant that the tenants did not occupy the conservatory. That factual finding was not sufficient since the statutory test that had to be applied was concerned with whether the tenant was a "tenant of part only of the dwelling". The tenants remained tenants of the conservatory even if factually they were unable to use or readily gain access to the conservatory. The only items of furniture that the conservatory was storing were items that the tenants were paying rent for and since the terms of the tenancy had not been varied, they were in law entitled to call for the key at any time and, if they chose to do so, to exclude Mrs Goremsandu from the conservatory and also to exclude her furniture from that area so long as they stored or used the furniture in another location. They were, therefore, tenants of the whole dwelling that included the conservatory".

13. The appellant's representative argued that the conservatory in the *Goremsandu* judgment could be likened to the bedroom in the appeal case in so far as they were both locked rooms, used for storage by the owners, which the tenants could have access to should they wish. He therefore believed that the appeal property should not be treated as a HMO, as was decided in the *Goremsandu* case.
14. The appellant's representative also drew attention to the lack of detail in the one/two-word answers from one of the tenants in relation to questions asked of him by the billing authority regarding the room and the access to it. He contended that the billing authority had relied on an unsigned statement from the tenant. Furthermore, there was no witness statement from the tenant.
15. The appellant, on the other hand, had provided a witness statement in which she stated that once she decided to rent the appeal property, it was put into the hands of a letting agent. The whole house was let to Mr Bi and his family from 12 February 2014. The same family continued to lease the property and several tenancy agreements with them were renewed over time. Although a small room in the house was locked this was only to store items of sentimental value which included furniture. The appellant stated that she would have gladly provided the tenant with a key so as to use the room should he have asked for it.
16. The billing authority believed that the appeal property was a HMO under Class C (b) (ii) of the Council Tax (Liability for Owners) Regulations 1992 (S.I. 1992/551) on the basis that it considered that one of the bedrooms was reserved for use by the appellant. Originally, the tenants had been made liable. However, based on the fact that there was one room in the house reserved for use by the Landlord, the house was deemed a HMO and liability was changed to the owner.
17. The respondent stated that on 25 May 2015, the tenant of the appeal property telephoned the billing authority to say that the Landlord had a locked room in the property and that this had been the situation since he first moved in. An inspection was made by an Enquiry

Officer on 2 June 2015. The Enquiry Officer confirmed that there was a small room in the dwelling that was locked by the Landlord and used for storing some of her personal items such as furniture.

18. Further enquires were made with the letting agent on 8 May 2019, who confirmed the room was still locked. In addition, on 16 July 2019, the appellant's solicitors at that time wrote to the billing authority disputing that the appeal property should be treated as a HMO. They referred to the statutory definition of a HMO under the Housing Act 2004. The solicitors also stated that the appellant kept some furniture in a room at the appeal property, which was locked. In response, the billing authority informed the solicitors that the Housing Act 2004 was not relevant in this case. They referred the solicitors to the Council Tax (Liability for Owners) 1992 regulations and that for council tax purposes it was a HMO and that the owner did not need to be resident to be made liable.
19. Furthermore, the tenants had confirmed in an email dated 20 October 2020, that they were not in the position to be able to gain access to the room as it was understood from the start of the tenancy agreement that the room did not form part of their contract.
20. The respondent's understanding of the *Goremsandu* case was that the tenants rented the property as a whole including the conservatory. It was the tenants' choice that they did not wish to use the furniture supplied by the Landlord that was included within the rent, and so in agreement with the Landlord, the furniture was stored in the conservatory and door locked accordingly. This was the tenants' decision having rented the whole property and they could have, at any time asked for the conservatory to be opened, to use the furniture stored etc. In this case, the property was not deemed to be a HMO.
21. In the appeal case, the tenant(s) as a family, rented the property on the understanding that they had no access to the locked room, which was being used for storage by the owner as it did not form part of the contract. This was supported by a visit made by an officer from the billing authority in June 2015, a solicitors' letter dated 16 July 2019, a conversation with the letting agent on 8 May 2019 and an email from the tenant on 20 October 2020. On this basis, the billing authority had classed the appeal property as a HMO, under regulation 2, Class C part (b) (ii) of the Council Tax (Liability for Owners) Regulations.
22. On 31 January 2020, an email was received from the new tenants to say that they had moved into the subject property 24 January 2020. They confirmed that they had access to all rooms. At this point, the billing authority was satisfied that from 24 January 2020, the property was no longer a HMO.

Decision and reasons

23. The issue in dispute related to whether or not the appeal property is a HMO for Council Tax purposes. If a dwelling is a HMO, the owner is liable to pay council under statutory framework set out in section 8 of the 1992 Act and the Council Tax (Liability for Owners) Regulations 1992 SI 1992/551 (as amended).

Owner is defined in regulation 2A of the above regulations as follows:

- 1) In relation to a dwelling within Class C in regulation 2, section 8(3) shall have effect as if, for the reference to the owner, there were substituted a reference to—

(a) the person who has a relevant material interest which is not subject to a relevant material interest inferior to it;

or, if there is no such person—

(b) the person who has a freehold interest in the whole or any part of the dwelling.

2) In paragraph (1), “relevant material interest” means a freehold or leasehold interest in the whole of the dwelling.

24. In arriving at this decision, the panel found that the Billing Authority had demonstrated that the appeal property satisfied the definition of an HMO in accordance with regulation 2, Class C part (b) (ii) of the Council Tax (Liability for Owners) Regulations.

25. Regulation 2 prescribed six classes of dwellings in respect of which owners were liable; one of those classes was Class C, which applied to a dwelling that:

(a) was originally constructed or subsequently adapted for occupation by persons who do not constitute a single household; or

(b) is inhabited by a person who, or by two or more persons each of whom either-

i. is a tenant of, or has a licence to occupy, part only of the dwelling; or

ii. has a licence to occupy but is not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of the dwelling as a whole.

26. The appellant’s representative contended that each of the joint tenants had a tenancy for the whole property from 12 February 2014. He drew comparisons between the locked conservatory in the *Goremsandu* case and the locked bedroom at the appeal property. In doing so, he believed that the house should not be treated as a HMO, as determined in the *Goremsandu* judgment.

27. The respondent contended that the situation with the appeal case was different to that described in the *Goremsandu* case, as the tenants rented the property with no access to the locked room, as it did not form part of the contract. This was confirmed in the conversation with the letting agents, by a visit made by an officer from the billing authority, the appellant’s solicitors at the time and an email from the tenant, as outlined in paragraph 22 above.

28. As mentioned in paragraphs 34 and 35 of *Goremsandu*, the statutory test that the panel need to apply is whether the tenants are paying rent to occupy the whole of the dwelling or just part of it, albeit the whole house minus the one bedroom.

29. The panel noted that there was no special condition covering the locked room or indeed any mention of the locked room in the tenancy agreement. It was, however, accepted that there was furniture and some personal belongings that were kept in the locked room, which only the appellant had access to.

30. The panel examined the evidence presented by both parties in particular the findings in the *Goremsandu* judgment and this case. The panel noted that in the *Goremsandu* case, it was clear from the outset that the entitlement to use the furniture formed part of the tenancy agreement. In the appeal case, the fact that one of the bedrooms was kept locked indicated that the tenancy agreement did not cover the whole house. It established that the tenants did not possess a key to the bedroom. However, on behalf of the Landlord, it was contended that they could have had a key on request. The fact that the tenants had to specifically request permission for a key to access the room proved that the tenants did not have exclusive use of the whole property.
31. Having considered all the evidence provided by the parties relating to the relevant period, the panel found that there were subtle differences between the facts in *Goremsandu* and the appeal case. In *Goremsandu* the tenants had the run of the whole house which was a furnished letting. However, instead of using the Landlord's furniture, the tenants preferred to use their own and put the Landlord's furnishings in the conservatory, so that they were out of the way. The conservatory was therefore taken out of use by the tenants' own actions. In the case under consideration, the bedroom was out of bounds to them from day one. They did not even have a key. Consequently, regardless of what the tenancy agreement stated, they did not have exclusive possession of the whole house, since their landlord retained the use of the bedroom for the storage of her personal belongings.
32. The panel therefore concluded that the facts on the ground demonstrated that the appeal property satisfied the criteria for an HMO regulation 2, Class C part (b) (ii) of the Council Tax (Liability for Owners) Regulations with effect from 12 February 2014 to 23 January 2020.
33. Once a dwelling is designated a HMO, the owner of the property becomes liable to pay the council tax, not the occupier(s). The appellant fulfilled the criteria of being the owner, as she held the freehold interest, which was not subject to an inferior relevant material interest in the whole dwelling. Consequently, the appeal was dismissed.

Date: Tuesday 12 January 2021

Appeal number: VT00001714