

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal, entitlement to Class F exemption, Council Tax (Exempt Dwellings) Order 1992 as amended, sections 4 and 6 of the Local Government Finance Act 1992; Decision: appeal dismissed.

Re: 32 St Marys Road, Skegness, Linc PE11 2HY

APPEAL NO: VT00000845

BETWEEN: Mr Matthew Wright Appellant

And

East Lindsey District Council Respondent

PANEL: Mrs A Adeola (Senior Member)
Miss L Moses

CLERK: Mr G Wayman

REMOTE HEARING: 18 December 2020

APPEARANCES:

Mr M Wright - The Appellant
The Respondent was represented by Mrs C Johnston

Summary of Decision

1. Appeal Dismissed. The appellant is the liable person from 31 May 2019 and Class F exemption ceases from this date.

Introduction:

2. This was an appeal under section 16 of the Local Government Finance Act 1992. The appellant was aggrieved by the Billing Authority's (BA) decision that the appeal dwelling did not qualify for exemption under Class F of the Council Tax (Exempt Dwellings) Order 1992, as amended. The period in dispute was 31 May 2019 onwards.
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. With the agreement of the parties, the panel determined that the Respondent's representative should present her evidence first.
6. 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 when 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

7. The issue in dispute concerned the appellant's non entitlement to Class F exemption from 31 May 2019.

Facts of Case

- a) The council tax liability for the appeal property was originally in the name of the appellant's father (Mr H Wright).
- b) Mr H Wright passed away on 21 February 2019 and an exemption Class F was applied to the appeal property.
- c) Probate was granted on 11 April 2019.
- d) The property remained unoccupied after Mr H Wright's death.
- e) At the beginning of September 2019 after the Respondent had contacted the Appellant it was ascertained that the Appellant had become the sole owner of the appeal property from 31 May 2019.
- f) The Respondent removed Class F exemption from 31 May 2019 and made Mr M Wright liable for the Council Tax from this date.

Decision and Reasons:

8. After due consideration of all of the evidence submitted before it by both parties, the panel decided to dismiss the appeal for the following reasons:
9. Under Section 4 of the Local Government Finance Act 1992, council tax was payable in respect of any dwelling which was not an exempt dwelling. Liability to the tax was determined by reference to Section 6 of the 1992 Act, where the hierarchy of liability was given in Section 6 (2).
10. Section 4 further enables the Secretary of State to prescribe classes of exempt dwellings. The issue in dispute involves Class F of the Council Tax (Exempt Dwellings) Order 1992 (SI 1992 No. 558). The original wording of Class F was substituted by new wording contained in an amendment order in 1994 (SI 1994 No 539, article 4(d)). The 1992 Order had been further amended over the years but not in relation to Class F. The panel found that the definition of 'qualifying person' had remained unchanged following the amendments.
11. Article 3 of the Order provides:

Class F

- (1) an unoccupied dwelling –
 - (a) which has been unoccupied since the date of death of a person ("the deceased") and
 - (b) in relation to which one of the conditions set out in paragraph (2) below is satisfied;
 - (2) the conditions referred to in paragraph (1) above are, subject to paragraph (3) below, that –
 - (a) the deceased had, at the date of his death, a freehold interest in the dwelling, or a leasehold interest in the dwelling which was granted for a term of six months or more, and
 - (i) no person is a qualifying person in respect of the dwelling; or
 - (ii) a person is a qualifying person in respect of the dwelling acting in his capacity as executor or administrator, and no person is a qualifying person in any other capacity
- Or
- (b) the deceased was a tenant of the dwelling at the date of their death and an executor or administrator acting in his capacity as such is liable for rent or, as the case may be, a licence fee for the day;
- (3) sub-paragraphs (a) (ii) and (b) of paragraph (2) above shall only apply, in a case where a grant of probate or letters of administration has been made, if less than six months have elapsed since the date of the grant;

12. The panel holds that exemption cannot be allowed from 31 May 2019 under Class F because it is conditional on there being no 'qualifying person' in respect of the dwelling. The panel further holds that the Appellant is the qualifying person in respect of the appeal property from 31 May 2019.

13. Article 2 of the Order provides:

"qualifying person" means a person who would but for the provisions of this Order, be liable for the council tax in respect of a dwelling on a particular day as the owner, whether or not jointly with any other person:

14. Qualifying person refers to the person liable for the council tax. That is determined by Section 6 of the Local Government Finance Act 1992, which provides:

(1) The person who is liable to pay council tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.

(2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day—

(a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;

(b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident;

(c) he is both such a resident and a statutory[, secure or introductory tenant] of the whole or any part of the dwelling;

(d) he is such a resident and has a contractual licence to occupy the whole or any part of the dwelling;

(e) he is such a resident; *or*

(f) he is the owner of the dwelling.

(3) Where, in relation to any chargeable dwelling and any day, two or more persons fall within the first paragraph of subsection (2) above to apply, they shall each be jointly and severally liable to pay the council tax in respect of the dwelling and that day.

15. No evidence was presented to the panel to suggest that anyone was resident in the appeal property from 31 May 2019. Therefore, the panel holds that liability had to fall on the owner of the dwelling.

16. The definition of 'owner' is contained in Section 6(5) of the 1992 Act as follows:

"owner", in relation to any dwelling, means the person as regards whom the following conditions are fulfilled—

(a) he has a material interest in the whole or any part of the dwelling; and

(b) at least part of the dwelling or, as the case may be, of the part concerned is not subject to a material interest inferior to his interest;

17. Section 6(6) provides the following definition:

“material interest” means a freehold interest or a leasehold interest which was granted for a term of six months or more;

18. The relevant question that arises from the definition of owner is. Does the appellant have a material interest in the whole or any part of the dwelling?.
19. The panel finds that the answer is yes because the Appellant confirmed to the Respondent and to the panel, at the hearing, that he solely owned the appeal property from 31 May 2019 after probate was granted on 11 April 2019. Therefore, the Appellant has a sufficient material interest in the whole or part of the dwelling.
20. The appellant can only avoid being the liable person if someone else holds an inferior material interest in the dwelling. However, this is not the case and the Appellant is therefore liable to pay council tax in respect of the whole of the dwelling.
21. The panel noted that Appellant’s grievance that he had been given erroneous information from the Respondent concerning how long the Class F exemption would last. The panel found it unfortunate that the Appellant may have been given incorrect however, the panel can only make a decision based on the facts and the current Legislation.
22. In conclusion from the evidence presented the panel found that the Appellant had become the sole owner of the appeal property from 31 May 2019. Consequently, the Appellant was no longer entitled to exemption under Class F of the 1992 Order because he had become the owner, for council tax purposes. Therefore, the appeal is dismissed.

Appeal No: VT00000845

Dated: 23 December 2020