

VALUATION TRIBUNAL FOR ENGLAND



Council Tax liability appeal; discretionary reduction in council tax; section 13A Local Government Finance Act 1992; appeal dismissed.

RE: 12 Whitton Terrace, Rothbury, Morpeth NE65 7QW

APPEAL NUMBER: VT00001008

BETWEEN: Alan Fenwick Appellant

and

Northumberland County Council Respondent
(The Billing Authority)

PANEL: Mr M Hunt (Senior Member)
Dr P A R Thomson

REMOTE HEARING: 25 March 2021

CLERK: Mr J Massey

APPEARANCES: Mr A Fenwick (Appellant)
Ms C Foster for Northumberland County Council (Respondent)

Summary of Decision

- 1 The appeal was dismissed as the panel was satisfied that the Respondent Billing Authority (BA) had given reasonable consideration to the application and a discretionary reduction was not warranted in this case.

Introduction

- 2 This was a Council Tax liability appeal made under Section 16 of the Local Government Finance Act 1992 on 16 December 2019. The Appellant was aggrieved by the BA's determination not to award a discretionary discount to the appellant in respect of the council tax payable for 12 Whitton Terrace, Rothbury, Morpeth NE65 7QW, (the 'appeal property') for the period from 1 July 2019 when he vacated the appeal property.

- 3 Section 13A(1)(c) of the Local Government Finance Act 1992 (as amended) (the 1992 Act) provides the BA with discretionary powers to reduce the amount of council tax liability in exceptional circumstances where national discounts and exemptions cannot be applied.
- 4 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. 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.
- 5 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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.
- 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 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

- 7 The matter before the Tribunal was whether the billing authority’s decision to refuse to reduce the appellant’s council tax liability using discretionary powers under section 13A(1)(c) of the 1992 Act was reasonable.

Evidence and submissions

- 8 Mr Fenwick advised the BA on 20 June 2019 that he and his family had been living in the appeal property, but had decided that in view of the need for a garden for their young child they intended to move to St Helen, Bishop Auckland on 27 June 2019. Their new house was at 107 Manor Road. The appellant had been unable to sell the appeal property but to avoid the purchase of 107 Manor Road from falling through and affecting the seller, he decided to continue with the move. He was aware that he would be liable for council tax on both properties after the move, and that there was no longer an automatic exemption for unoccupied and empty properties. He had been advised to make an application for a discretionary reduction in council tax at the appeal property in writing so that it could be considered on its own merits. He stated that the decision to continue with the move was to avoid passing on the impact of the problems he was having selling the appeal property, to the vendor of 107 Manor Road. In doing so, he was having to pay two mortgages and two set of council tax, and sought some assistance from the BA in order to limit the financial impact on him and his family by granting an exemption on the appeal property until such time as it was sold.
- 9 Mr Fenwick received a decision from the BA on 12 December 2019 that a discretionary reduction would not be applied, and he stated that this was unfair, as he had been tirelessly trying to sell the appeal property and felt that his circumstances were exceptional and his case had not been given full consideration by the BA. Mr Fenwick informed the panel that having failed to sell the appeal property, he and his family had moved back in during August 2020 and decided to sell 107 Manor Road. He also considered that it was unfair that he should be required to pay for services provided by the BA after he had moved out of the area as he no longer benefited from these services.

- 10 In her submission, Ms Foster provided details of her case, a copy of the BA's council tax discount policy, and copies of correspondence between the BA and Mr Fenwick. She explained that with effect from 1 April 2013, the six-month exemption applicable to unoccupied and unfurnished properties had been abolished by the government. Local authorities were subsequently given the power to set their own discounts for these class of properties, and the full council had made a decision that no discount was applicable. Therefore when Mr Fenwick and his family vacated the appeal property, he remained liable for a full charge on the property until it is sold. She stated that Mr Fenwick's application for discretionary relief was considered by the Interim Director of Finance on 23 November 2019 and was refused on the grounds that no exceptional circumstances had been found, and he was informed of this in a letter dated 12 December 2019. Whilst these had not been detailed in the letter of 12 December 2019, Ms Foster listed examples of cases where discretionary relief had been granted which she stated were overwhelmingly due to situations where the applicant had become liable for council tax at two properties due to circumstances outside their control.
- 11 Ms Foster stated that Mr Fenwick's application for discretionary Section 13A(1)(c) discount had been refused as it was not considered that the circumstances which led to him becoming liable for council tax for two properties were unique or exceptional, and no argument had been made for extreme financial hardship.

Decisions and Reasons

- 12 The panel had regard to section 13A(1)(c) of the Local Government Finance Act 1992 which provided a broader discretionary power to grant relief as follows:

13A Reductions by billing authority

(1) The amount of council tax which a person is liable to pay in respect of any chargeable dwelling and any day (as determined in accordance with sections 10 to 13)—

(a) in the case of a dwelling situated in the area of a billing authority in England, is to be reduced to the extent, if any, required by the authority's council tax reduction scheme (see subsection (2));

(b) in the case of a dwelling situated in the area of a billing authority in Wales, is to be reduced to the extent, if any, required by any council tax reduction scheme made under regulations under subsection (4) that applies to that dwelling;

(c) in any case, may be reduced to such extent (or, if the amount has been reduced under paragraph (a) or (b), such further extent) as the billing authority for the area in which the dwelling is situated thinks fit.

- 13 The panel is aware that it is not bound by a decision made by the President of the VTE, but it is a persuasive authority that should be followed, given the President's involvement, unless new arguments on different points are raised and of course the particular facts of the case.

14 The former President of this Tribunal, Professor Zelic, QC, in the case of *SC v East Riding of Yorkshire Council and CW v East Riding of Yorkshire Council* [VTE, appeals: 2001M113393/C TR & 2001M117053/CTR, 27 May 2014] confirmed that the Tribunal's approach to this type of appeal was the same as for any other liability appeal; at paragraphs 23 and 24 Professor Zelic stated the following:

"23. The Tribunal's approach is thus the same as in every other appeal. This is captured in para. 5 of our Model Procedure (VTE/PS/B1: 22 May 2013):

(1) It is for the appellant to satisfy the Tribunal that the appeal should be allowed.

(2) All parties must satisfy the Tribunal in respect of any argument or evidence they advance or introduce.

24. Thus, it is for the appellant to raise doubt as to the correctness of the authority's decision and to argue what the correct decision should have been. The authority may then defend its decision and the panel will decide the appeal on the balance of probabilities. There is no inhibition on the Tribunal substituting its view for that of the authority, but any such substitution must be soundly and solidly based".

15 Whilst the Model Procedure has been amended in subsequent Practice Statements, the above principle still remains. Professor Zelic had also considered the financial circumstances of the appellants and had resolved that if there was a surplus of income to pay council tax then an application for discretionary relief should be dismissed.

16 In the subject appeal, the only issue the panel could consider was whether the billing authority was correct to refuse discretionary relief to the appellant. It noted that the billing authority had provided examples of successful applications for discretionary relief which included the following:

- Taxpayers fleeing domestic abuse who are recommended by the police not to return to a property.
- Taxpayers who are victims of crime where it is unsafe for them to remain in a property.
- Taxpayers who have become extremely ill or hospitalised and therefore unable to carry out works on an inherited property.
- Taxpayers who have incurred a charge through no fault of their own such as inheriting a property in negative equity or debt, where they have limited or fixed income.
- Taxpayers who incurred a charge for the first time following Council Tax Support.

17 The panel did not consider that the circumstances which led to the Appellant being liable for council tax at two properties simultaneously were either unique or outside of his control. It was his own choice to proceed with the purchase of 107 Manor Road having not sold the appeal property, and this choice was made in the knowledge that he would have to pay a mortgage and council tax in respect of each of these properties. Mr Fenwick had not made his application based on financial hardship, and therefore had not been asked for, nor provided any details of income or expenditure in support of his application. The panel therefore found nothing in Mr Fenwick's case which persuaded it that the decision of the BA to refuse a discretionary discount was incorrect.

- 18 The panel notes Mr Fenwick's assertion that it was unfair that he was required to pay council tax at a property where he did not live as he no longer lived in the BA's area and therefore did not benefit from the services provided by the BA. However council tax is a property tax which is payable irrespective of whether a liable person benefits from some or all of the services funded by the collection of that tax.
- 19 Mr Fenwick had also challenged the BA's policy to levy a 50% premium on properties which have remained unoccupied for more than two years. As it had emerged during the hearing that the appellant and his family had moved back in to the property and 107 Manor Road had been sold before the expiry of the two years, the panel was aware that such a premium had not been added to his account. If this had not been the case however, the panel found that the legislation allows the Council to decide on what discounts and level of discounts can be awarded and what premiums can be levied. Any challenge by the Appellants to the legality of this element of the policy can only be by way of judicial review: Local Government Finance Act 1992, s. 66(2)(b), as amended by the Local Government Act 2003.
- 20 As is usual in such appeals, the onus is on the appellant to show that the billing authority has acted unreasonably in refusing discretionary relief. In this case the panel was aware that a great many individuals own more than one property for which they are liable for council tax, and did not consider that Mr Fenwick's position was either exceptional or unique. The appeal was therefore dismissed.

Date: 12 April 2021

Appeal Number: VT00001008