

VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability; Local Government Finance Act 1992; House in Multiple Occupation; Tenancy Agreements; Appeals Allowed

RE: 2 Lascelles Place, Leeds LS8 5PR
10 Stanley Terrace, Leeds LS9 7AF
45 Seaforth Avenue, Leeds LS9 6AG

APPEAL NUMBERS: VT00001122, VT00001120 and VT00001117

BETWEEN:	Ms B Girmawi	Appellant
	and	
	Leeds City Council	Respondent
	(Billing Authority)	

PANEL: Mr A Khurram (Senior Member)
Miss L Westwell

CLERK: Mrs H Beresford

REMOTE
HEARING ON: 16 December 2020

APPEARANCES: Ms B Girmawi, the Appellant
Mr M Soliman, interpreter for the Appellant
Miss A Walker, representing the Respondent

Summary of decision

1. The appeals were allowed. The appeal properties were found to be houses in multiple occupation.

Introduction

2. These appeals have been brought in respect of council tax liability at 2 Lascelles Place, Leeds for the period 20 March 2015 to 22 June 2016, 10 Stanley Terrace, Leeds for the period 8 July 2016 to 19 March 2018 and 45 Seaforth Avenue, Leeds for the period 22

March 2018 to 28 November 2018. The appeals were brought by Ms Girmawi who resided at the properties and disputed the Billing Authority's decision to hold her liable for the payment of the council tax.

3. Ms Girmawi, 'the appellant', believed that 2 Lascelles Place, 10 Stanley Terrace and 45 Seaforth Avenue, 'the appeal properties', were all Houses in Multiple Occupation (HMO) and as such she should not be held liable for council tax payments for the periods in dispute.
4. The Billing Authority issued a decision notice on 15 October 2019 stating that it upheld its original decision that the appeal properties were not HMO's. It determined that the appellant was a joint tenant in each of the appeal dwellings which she occupied and therefore was jointly and severally liable for the council tax in respect of 2 Lascelles Place, Leeds for the period 20 March 2015 to 22 June 2016, 10 Stanley Terrace, Leeds for the period 8 July 2016 to 19 March 2018 and 45 Seaforth Avenue, Leeds for the period 22 March 2018 to 28 November 2018.
5. On 16 December 2019, these appeals were accepted by the Valuation Tribunal for England (VTE) as appeals made under section 16 of the Local Government Finance Act 1992 (the '1992 Act'). In effect, that section allowed appeals to be made concerning council tax liability including the calculation of bills, the determination of the liable person and disputes over whether dwellings were chargeable.
6. The President of the 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.
7. 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.
8. In order to assist the appellant, the Billing Authority's representative, Miss Walker agreed to give her evidence first.
9. 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 item of evidence, should not be construed as it having been overlooked.

Issue

10. The issue before the panel was whether Ms Girmawi should be held liable for the council tax at the appeal properties for the periods in dispute, or whether the properties should be classed as HMO's.

Evidence and submissions

11. The Billing Authority had submitted a joint bundle of evidence in respect of each of the three properties which included the following: a statement of the Billing Authority's case; a copy of

the appeals; various tenancy agreements; relevant legislation; correspondence that had passed between the parties; and a copy of the decision letter(s). Miss Walker also referred to various case law which she believed supported the Billing Authority's decision not to class the appeal properties as HMO's:

Watts v Preston City Council [2009] EWHC 2179;
R (Goremsandu) v London Borough of Harrow [2010] EWHC 1873;
UHU Property Trust v Lincoln City Council [2000];
Naz v Redbridge LBC [2013] EWHC (Admin);
Soor v Redbridge London Borough Council [2016] EWHC 77 (Admin); and
Shah v Croydon LBC [2013] EWHC 3657 (Admin).

12. Miss Walker contended that the appellant and other persons who had occupied the appeal properties had signed joint tenancy agreements. As there was no evidence that the landlord had issued any individual tenancy agreements, Miss Walker invited the panel to dismiss the appeals.

13. Ms Girmawi gave an oral presentation which was translated by Mr Soliman. Ms Girmawi's argument can be summarised as follows:

- She came into the country as a refugee from Eritria unable to speak English and was asked to sign many different tenancy agreements throughout the periods in question.
- She did not understand what she was signing and did not know the people that she lived with.
- She was regularly asked to sign new tenancy agreements at all three properties whenever other people moved in or out.
- The tenancy agreements did not reflect the facts, Ms Girmawi stated that only people who were in receipt of benefits were asked to sign the tenancy agreements whilst those in work paid the rent in cash. Consequently, there were often more people living in the properties than reflected on the tenancy agreements.
- Because she was on benefits, she was held liable to pay the council tax.
- After some time, Ms Girmawi contacted the Council as she was concerned that she was the only person paying the council tax at 10 Stanley Terrace, the property was visited by someone from the Council (possibly the housing department) but the day before the visit the locks were removed from the bedroom doors and some of the tenants were asked to leave.
- On some occasions, tenants held separate tenancy agreements in their own name.
- Throughout the whole period Ms Girmawi stated that she always dealt with a person called Mohammed. It was he who told her to pack up her things and put them in a van which took her to 10 Stanley Terrace which he said would be temporary. When she first moved to this address Ms Girmawi questioned why she was the only tenant with an agreement and was told that it was because she was on benefits.
- Ms Girmawi believed that she was taken advantage of because of the language barrier.

14. Ms Girmawi asked the panel to make an order that she was not liable for payment of council tax for the appeal dwellings during the periods in dispute.

Decisions and reasons

15. The panel had regard to the statutory provisions regarding council tax liability. Section 6 (2) of the Local Government Finance Act 1992 (LGFA 1992) provided a hierarchy of who was liable to pay the council tax on a dwelling as follows:

- (a) A resident with a freehold interest in the whole or any part of it.
- (b) A resident with a leasehold interest in the whole or any part of the dwelling which was not inferior to another such interest held by another such resident.
- (c) A resident with a statutory, secure or introductory tenancy of the whole or any part of the dwelling.
- (d) A resident with a contractual licence to occupy the whole or any part of the dwelling.
- (e) A resident.
- (f) The owner of the dwelling.

The person who was liable under Section 6 was the person who fell within the first paragraph of the foregoing list, taking paragraph (a) of that list first, paragraph (b) next, and so on.

The definitions of 'resident' and 'owner' were contained in section 6(5) of the LGFA 1992 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.

'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."

The definition of material interest was contained in Section 6(6) of the LGFA 1992:

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

16. However, section 8 of the 1992 Act took precedence over section 6 in cases which were prescribed by Order of the Secretary of State. One such class of prescribed dwellings were houses in multiple occupation.

17. The panel therefore had to consider Regulation 2 of the Council Tax (Liability for Owners) Regulations 1992 (as amended) (SI No 1992/551) made under section 8 of the Local Government Finance Act 1992. Regulation 2 reads:

"The following are the classes of chargeable dwellings prescribed for the purposes of section 8(1) of the Act-
 'Houses in multiple occupation, etc
 Class C

a dwelling which

(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.'

18. The appellant argued that the bedroom doors in all of the properties had locks. However, the landlords/letting agents had denied this when questioned about it by the Billing Authority. The panel noted that in respect of 2 Lascelles Place there were locks on the bedroom doors and the appellant stated that she had her own key, however, the landlord stated that there were no keys for the locks.
19. The evidence presented showed a series of assured short hold tenancy agreements had been entered in to between the landlord/letting agents and tenants during the periods in dispute. In form they were essentially very similar, and it was confirmed by the appellant that a new joint tenancy agreement had been issued each time a tenant left one of the properties or there was a new tenant.
20. These tenancy agreements should have established the legal basis under which the premises were let. On the face of it these were lawful agreements under which the tenants had the right of occupation of the whole of the premises. The Billing Authority had determined that in each case the tenants were jointly and severally liable; meaning that they were jointly and severally liable for the rent and specifically the council tax in accordance with Section 6(2)(b) of the LGFA 1992.
21. However, the panel found that the number of tenancy agreements and in particular changes in the rent payable indicated that despite the joint tenancy agreements, indicating otherwise, the properties were not let as a whole and the tenants did not have exclusive right to the whole property as different tenants were being moved in and out of the properties as follows:

2 Lascelles Place.

Period of agreement	Tenants named on the agreement	Rent payable per month
20/03/2015 – 19/09/2015	Syfen Muleta Berhana Girmawi Tiebe Soloman Beyene Merhawit Teame Mehari	£1108.64
13/08/2015 – 13/02/2016	Syfen Mulete Berhana Girmawi Alem Desta Beraki	£831.48
24/08/2015 – 24/02/2016	Berhana Girmawi Alem Desta Beraki Habban Mohammed Issaq Abdulaziz Osman Idris	£1119.72

24/11/2015 – 23/05/2016	Berhana Girmawi Alem Desta Beraki Robel Fekandu	£839.79
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10 Stanley Terrace.

Period of agreement	Tenants named on the agreement	Rent payable per month
08/07/2016 - 08/01/2017	Berhana Girmawi	£279.93
22/01/2017 - 22/07/2017	Berhana Girmawi Fanuel Nuguse	£559.86
12/04/2017 - 12/10/2017	Berhana Girmawi Abraham Teklehaimainot	£559.86
26/07/2017 - 26/01/2018	Berhana Girmawi Abraham Teklehaimainot Habtom Zenebe	£839.79
01/09/2017 - 01/03/2018	Berhana Girmawi Dio Ali Abdullah	£559.86
01/09/2017 - 01/03/2018	Berhana Girmawi	£279.93

45 Seaforth Avenue.

Period of agreement	Tenants named on the agreement	Rent payable per month
22/03/2018 - 22/09/2018	Berhana Girmawi Senait Goytom	£279.93

22. The panel found that the evidence of tenancy agreements with differing rents depending on the number of tenants, as outlined above, was significant evidence that the property was an HMO and supported the appellant's claim that the tenancy agreements did not reflect the facts. It found that rooms were being let separately as on occasion the rent was too low to be for the whole property, for example, 45 Seaforth Avenue was a 3/4-bedroom property which had been let for £279.93 per month which the panel believed was not an open market rent for a property of this size. The panel did not accept the landlord/letting agents' explanation that this was because they wanted to let the property as soon as possible.
23. The panel noted that in respect of 2 Lascelles Place the landlord/letting agent had stated that the tenants were friends and had been told what the rent was, regardless of how many occupants there were, however, the rent had clearly been altered on several occasions to reflect the number of tenants.
24. The appellant's argument that the rooms in 10 Stanley Terrace were being let separately was corroborated by Temessgen Gebremichael on 29th March 2017. He contacted the Billing Authority and stated that he was living at the property and renting a room and sharing other facilities, however he did not provide a tenancy agreement and no further enquiries were made. On the 12th June 2018 Fanuel Nuguse contacted the Billing Authority about his bill and stated the property should have been classed as a HMO, he was asked to provide his individual tenancy agreement but this was not forthcoming and no further action was taken.
25. All of the tenancy agreements provided to the tribunal in evidence were for a six-month fixed term period and, with the exception of one, were silent regarding what should happen at the end of the six-month period. In the absence of a specific contractual provision, if a tenant

wished to remain, the tenancy would become a statutory periodic tenancy at the expiry of the fixed term. The point being that the tenancy would normally be brought to an end by written notice.

26. The panel considered whether the tenancy agreements were genuine, and whether the appellant had by herself (or with other tenant(s)) exclusive possession of the dwelling(s) as a whole for the contractual periods covered by the tenancy agreements. If this was the case how could the landlord/letting agent, of his own volition, permit another tenant to occupy the same property and demand that the existing tenant(s) sign up to a new tenancy agreement to supersede the earlier one especially when the contractual fixed term had not expired. The only conclusion that the panel could draw from this is that the tenancy agreements were a sham and concealed the true nature of the lettings. The panel made a finding of fact therefore that the appeal dwellings were being let on a room by room basis which explained why the level of rent tended to increase when there were more occupants. In reality, the appellant was only ever entitled to occupy part of the properties she occupied and was not responsible for paying the rent for the property as a whole.
27. In appeals of this nature, there is a factual burden of proof on both parties. If a party asserts something, they must prove it. The Billing Authority had provided the documents and the communications which showed that the appellant had various joint tenancy agreements in respect of the appeal properties. However, the appellant asserted the properties were HMO's and the panel found that assertion was supported by the tenancy agreements which had been provided because the full open market rental value for the properties was not being charged.
28. Consequently, after full and thorough consideration of all the evidence provided, the panel allowed the appeal. The panel determined that the appellant is not liable for council tax at 2 Lascelles Place, Leeds for the period 20 March 2015 to 22 June 2016, 10 Stanley Terrace, Leeds for the period 8 July 2016 to 19 March 2018 and 45 Seaforth Avenue, Leeds for the period 22 March 2018 to 28 November 2018.

Order

29. Under the provisions of Regulation 38 (1) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Billing Authority to reverse its decision as the appellant was not liable for council tax at 2 Lascelles Place, Leeds for the period 20 March 2015 to 22 June 2016, 10 Stanley Terrace, Leeds for the period 8 July 2016 to 19 March 2018 and 45 Seaforth Avenue, Leeds for the period 22 March 2018 to 28 November 2018. The Billing Authority must comply within two weeks of the date of this order.

Date: 12 January 2021

Appeal Numbers: VT00001122, VT00001120 and VT00001117