

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability; liable person; Section 6(1) and (2) of the Local Government Finance Act 1992; conflicting information; lack of verification; Decision Appeal Dismissed

Re: 7 Netherby Drive, Newcastle Upon Tyne, NE5 2RS

APPEAL NO: VT00001316

BETWEEN: Mr M Ahmad & Mrs Al-Sabah Salim Appellants

And

Newcastle City Council Respondent

PANEL: Mrs N Yang (Senior Member)
Miss L Westwell

CLERK: Mr G Wayman

REMOTE HEARING: 4 November 2021

APPEARANCES:

Mr M Ahmad (Appellant)

Summary of Decision

1. The appeal was dismissed. The appellants were the liable persons for the council tax on 7 Netherby Drive, Newcastle Upon Tyne, NE5 2RS (appeal property) for the period 1 December 2017 to 19 September 2018 (period in dispute).

Introduction

2. The appeal related to the property at 7 Netherby Drive, Newcastle Upon Tyne, NE5 2RS, where according to the land registry, the appellants are confirmed to be the freehold owners since 30 June 2006.

3. The Valuation Tribunal for England received, on the 22 January 2020, an appeal brought by Mr M Ahmad & Mrs Al-Sabah Salim under Section 16 of the Local Government Finance Act 1992 against a decision of Newcastle City Council to make them liable for the council tax in respect of the appeal property from 1 December 2017 to 19 September 2018.
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 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.
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.
6. The appellant joined the meeting via Microsoft Teams but was unable to turn his camera on and so joined by audio only. The respondent requested the appeal to be considered in its absence based upon its written submission.
7. 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

8. The issue to be determined was whether the appellants were liable for the council tax on the appeal property for the period 1 December 2017 to 19 September 2018.

Decision and Reasons

9. The appellants had disputed the liability on the basis that they had a tenant in occupation for the period 1 December 2017 to 19 September 2018, namely Mr Ananth Kumaar. To support this statement the appellants produced a copy of a tenancy agreement for Mr Kumaar covering the period in dispute.
10. However, the respondent had made the appellants liable for the period in dispute because it had concerns regarding discrepancies contained within this document; the front page stated, ‘dated this 1st day of July 2019’, but the signature page gives the dates variously as ‘this 30th day of August 2017’ and ‘31st day of August 2017’. Further, the agreement was not counter signed by the Landlord, nor witnessed by any party. The Agreement provided a landline telephone number for the tenant. The respondent checked this number and established it to be a telephone number for Rook Matthews Sayer Estate Agents office located at 380 West Road, Newcastle-Upon-Tyne, NE4 9RL. There was no reference in the Agreement to the tenancy deposit scheme nor any guarantor arrangements.

11. Due to its concerns with the agreement, on 23 July 2019 the respondent requested the appellants to provide supporting documentation by way of proof of rent paid into a bank account and a forwarding address and contact details for Mr Kumar.
12. The appellants replied to the respondent stating that the rent for 7 Netherby Drive, for the period in dispute, was paid in cash and that no forwarding address was held for Mr Kumar.
13. The panel was aware that the person liable for the payment of the council tax on a chargeable dwelling is normally determined in accordance with the provisions of Section 6 of the Local Government Finance Act 1992 (LGFA 1992).
14. Section 6 (1) and (2) of the LGFA 1992 provides a hierarchical order of who was liable to pay the council tax on a dwelling and states:

(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.

15. 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.

16. The definition of 'resident' and 'owner' were contained in section 6(5) of the 1992 Act 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;

Section 6 (6) provided the following definition:

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

17. The panel noted that the respondent had requested proof of rental payments from the start and had indicated that without such evidence it was not prepared to accept the tenancy agreement. As there was a lack of any direct evidence that rent payments had been made by Mr Kumar for the period in dispute the panel did not consider the position adopted by the respondent to be unreasonable.
18. The panel noted that the appellants had stated that the rent was collected in cash and that no supporting documentation had been produced to prove that rent was being paid. The panel was conscious of that, given the formalities of a tenancy agreement and the relationship between a landlord and tenant, there would have been other evidence that could have been presented by the appellants.
19. Due to the lack of verification and conflicting information provided, the panel was not persuaded by the authenticity of the tenancy agreement purportedly entered into between the appellants and Mr Kumar.
20. Therefore, due to the lack of verification and not being persuaded by the appellants' arguments and submissions as to the reliability of the information provided, the panel considered, on balance, that it had not been proven that Mr Kumar was resident in the appeal property or held a relevant material interest in the appeal property for the period in dispute.
21. No other evidence had been provided to suggest that any other persons were resident in the appeal property or held a material interest in the property during the period in dispute.
22. At the hearing the appellants stated that they had recently found rent receipts covering the period in dispute. The panel was aware that these alleged rent receipts had not been provided to the respondent prior to the hearing and they did not form part of the appellants' original evidence submitted under the standard directions.
23. The panel can only make a decision based upon the evidence before it. Therefore, in arriving at a decision the panel placed little weight on the alleged rent receipts as they had not been disclosed and were not before it. The panel considered that the appellants have had sufficient time since making this appeal, in January 2020, to submit this evidence to the respondent and Tribunal.
24. Having considered all the evidence before it, the panel considered that the appellants had not proved, on the balance of probabilities, that during the period in dispute the appeal property was occupied.
25. Therefore in the panel's opinion as the appeal property was unoccupied and there was no resident during the period in dispute it had to establish, for council tax purposes, who was the 'owner' for the period under dispute. Owner is defined under Section 6(5) of the LGFA 1992 as;

“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;

26. Section 6(6) states:

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

27. It had been established for the period in dispute the appellants held a material (freehold) interest in the appeal property therefore for council tax purposes they were the ‘owner’ and therefore were liable for the council tax under paragraph (2) (f) of Section 6 which states: *(f) he is the owner of the dwelling.* Consequently, the appeal was dismissed.

Dated: 26 November 2021

Appeal No: VT00001316