

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax; Liability Appeal; Single person discount sought under Section 11 of the Local Government Finance Act 1992; Bradford MCC v Anderton QBD [1991] RA 45; Ward v Kingston upon Hull CC QBD [1993] RA 71; Doncaster BC v Stark and Stark [1997] RVR 1998 p81; Williams v Horsham District Council [2004] EWCA Civ 39; The husband of the appellant was not found to have his sole or main residence at the appeal property; Appeal allowed.

Re: 20b Salters Way, Threekingham, Sleaford, NG34 0AU

APPEAL NO: VT00001495

BETWEEN:	Mrs S Perkins	Appellant
	And	
	North Kesteven District Council	Respondent

PANEL: Miss L Sharkey (Senior Member)
Mr S Bamawo

CLERK: Mr G Wayman

REMOTE HEARING: 20 April 2021

APPEARANCES:

Mrs S Perkins (Appellant)
Mr S Wilkinson representing North Kesteven District Council (Respondent)

Summary of Decision

1. Appeal allowed. The appellant is entitled to a 25% single person discount in respect of 20b Salters Way, Threekingham, Sleaford, NG34 0AU (appeal property) from 18 July 2019.

Introduction

2. This appeal has been brought by the appellant, Mrs S Perkins, against the decision issued by the Billing Authority (BA), North Kesteven District Council, on 5 December 2019 not to award a 25% single person discount in respect of the appeal property with effect from 18 July 2019. The appellant appealed against the BA's decision under Section 16(1) of the Local Government Finance Act 1992 and the appeal was received by the Valuation Tribunal on 31 January 2020.
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 varied the model procedure and requested the respondent to present his 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 a decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as its having been overlooked.

Issue

7. The issue before the panel was whether a 25% single person discount should be awarded from 18 July 2019.

Evidence and Submissions

8. The BA's representative provided the panel with a submission containing his case and appendices and referring to the following decisions of the High Court: *Bradford MCC v Anderton* QBD [1991] RA 45; *Ward v Kingston upon Hull CC* QBD [1993] RA 71; *Doncaster BC v Stark and Stark* [1997] RVR 1998 p81 and also presented *Cox v London (South West) Valuation and Community Charge Tribunal*; *Codner v Wiltshire VCCT* [1994]. The BA's representative argued that despite working in Dubai in the United Arab Emirates (UAE) since July 2019 the appellant's husband's main residence remained at the appeal property and as such the appellant was not entitled to a 25% single person discount. Accordingly he asked the panel to dismiss the appeal.
9. The appellant had argued that her husband's main residence had been Dubai since July 2019 and therefore as she lived alone, she should be entitled to single person discount.

10. The clerk referred the panel to the later decision of the Court of Appeal in *Williams v Horsham District Council* [2004] EWCA Civ 39, a copy of which was sent to the parties prior to the hearing. Reference was made to the "Reasonable onlooker test" at paragraph 26, where it was held that:
11. "All this reinforces the conclusion (which is one that we would have reached without reference to the dictionary) that in section 6(5) of the Act "sole or main residence" refers to premises in which the taxpayer actually resides. The qualification "sole or main" addresses the fact that a person may reside in more than one place. We think that it is probably impossible to produce a definition of "main residence" that will provide the appropriate test in all circumstances. Usually, however, a person's main residence will be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time. That test may not always be an easy one to apply, but we have no doubt as to the conclusion to which it leads in the present case".

Decision and Reasons

12. In arriving at its decision the panel had regard to S11 (1) (a) of the Local Government Finance Act 1992 ("the Act"), which states:

Discounts

(1) The amount of council tax payable in respect of any chargeable dwelling and any day shall be subject to a discount equal to the appropriate percentage of that amount if on that day—

(a) there is only one resident of the dwelling and he does not fall to be disregarded for the purposes of discount

The appropriate percentage is stated in sub-paragraph (3) to be 25%.

13. The respondent claimed that time spent at a dwelling is not the sole factor to consider when determining a person's main residence. Other factors considered include security of tenure; whether the dwelling is the marital or family home. The respondent pointed out that the appeal property was the family and matrimonial home and was the only property the appellant and her husband had security of tenure in, as the property in Dubai was rented.
14. The respondent further stated that Mr Perkins (the appellant's husband) decision to remain in the UAE, or lack of consideration for returning to the UK, following his redundancy may have been a pragmatic one. It may be that Mr Perkins would have a greater probability of obtaining more lucrative employment in the UAE than in the UK. Or, with several months still to run on his tenancy the rent would have been payable regardless. That Mr Perkins is "seeking mortgage guidance" appears to indicate that Mr Perkins has found employment again in the UAE since July 2020.
15. From the information provided the Respondent would assert that 20b Saltersway remains Mr Perkins's main residence, and therefore a 25% discount is not applicable for the period in dispute.

16. In support of her case the appellant informed the panel that her husband does not live at the appeal dwelling for any time at all. She pointed out that he had returned on some occasions namely for the funeral of her father and visiting his daughter for personal reasons. All his belongings are in Dubai, UAE, he is currently seeking mortgage guidance and advice to purchase a property, his plans are to remain in UAE and he is not considering returning to the UK. The appellant further stated that they both keep separate households and live individually; this was a lifestyle choice made by them.
17. The appellant also challenged the BA's assumption that Mr Perkins lived in UAE only on condition of his employment and, if he was to lose that employment, he would return to the UK. The appellant pointed out that her husband was made redundant from his role in the UAE in June 2020. However, following his redundancy, he did not seek or consider employment in the UK. Nor did he consider returning to the UK he had obtained further employment in Dubai and had stayed.
18. The appellant stated that her husband had firmly settled with his life in Dubai from July 2019.
19. Looking at the above facts the panel had to apply the reasonable onlooker test outlined in *Williams v Horsham*. The panel found that the BA had relied heavily on the security of tenure and intention to return arguments adopted in the earlier High Court cases, although there was no evidence to support the BA's statement that the appellant's husband intended to return to the appeal property.
20. The BA had drawn similarities with the three earlier appeals, *Bradford MCC v Anderton*; *Ward v Kingston upon Hull and*; *Doncaster BC v Stark and Stark*, in that the husband was absent from the matrimonial home for his employment purposes and security of tenure was found to be a significant consideration in each case.
21. However, these cases had been decided before *Williams v Horsham*, where security of tenure was acknowledged to be an important factor but not an overriding factor. In *Williams v Horsham*, the Court of Appeal determined that the appellants' sole or main residence was not at the appeal property, Pump Cottage, which they owned but had not lived in, but was instead the Oaks, where they had lived while, and after, Mr Williams had been employed as a housemaster in the school. The decision also introduced the reasonable onlooker test, which required all of the material facts to be considered.
22. The panel found that at paragraph 25 of the *Williams v Horsham* case it stated
- 'Where an estate agent's brochure speaks of a "desirable residence" it gives the word the latter meaning. In the present case, residence is used as part of the definition of the word "resident". The primary meaning of "resident" given by the dictionary is:'
- "One who resides permanently in a place"
- The relevant definition of "reside" is:
- "To dwell permanently or for a considerable time; to have one's settled abode; to live in or at a particular place."

23. Having regard to the case law, in this particular appeal it was not challenged that the appellant's husband had worked and resided in Dubai since July 2019. It was the panel's opinion that due to the length of time spent in Dubai it had become the place that he was settled in and this had become his permanent residence and therefore had become his main residence. There was no substantive evidence to suggest that the appeal property held any of the appellant's husband's personal possessions. It was also not disputed that the appellant's husband had only occasionally visited his wife.
24. Having considered the facts in this appeal the panel determined that a reasonable onlooker would not consider the matrimonial home to be the appellant's husband's main residence for Council Tax purposes.
25. The panel found the test had not been easy to apply in this case but on balance, considering all the facts previously detailed, that more facts pointed to his main residence not being at the appeal property and it allowed the appeal.

Order

26. Under the provisions of Regulation 38(1) and (9) of the Valuation Tribunal for England (Council Tax and rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Billing Authority to award single person discount to the appellant on 20b Salters Way, Threkingham, Sleaford, NG34 0AU with effect from 18 July 2019.

Appeal No: VT00001495

Dated: 23 April 2021