

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeals; dwellings unable to be let; Class G of the Council Tax (Exempt Dwellings) Order 1992; Occupation prohibited by law; The Health Protection (Coronavirus Restrictions) (England) Regulations 2020; appeals dismissed.

Re: Flats 2, 3, 5 & 7 Ellens Place, Smithybridge Road, Littleborough OL15 0BQ

APPEAL NUMBERS: VT00004392, VT00004396, VT00004397, VT00004399

BETWEEN: Mr A Pratt (Appellant)

and

Rochdale B C (Respondent)

(Billing Authority)

PANEL; Gary Garland (President) and Christopher Stott (senior member)

CLERK: Jon Bestow FIRRV (Registrar)

REMOTE HEARING: 17 March 2021

PARTIES PRESENT; Mr Gareth Pratt (son) on behalf of the Appellant

Mr G Whitworth (Team Leader – Council Tax) the Billing Authority's representative

Summary of decision

1. The appeals relating to the four separate flats were dismissed as the appeal dwellings did not qualify for exemption under Class G during the period in dispute from 26 March 2020 to 18 June 2020.

Introduction

2. These cases were council tax liability appeals made in accordance with section 16 of the Local Government Finance Act 1992. Mr Pratt disputed liability in August 2020 and the Billing Authority notified Mr Pratt to appeal to the Tribunal when they declined to treat the dwellings as exempt under Class G of the Council Tax (Exempt Dwellings) Order 1992. His appeals were made on the grounds that the exemption should apply whilst the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 remained in force and as a vulnerable person he was unable to allow tradesmen to access the flats or potential tenants to view (who were also unable to visit due to the pandemic).
3. The agreed facts were as follows:
 - a. None of the four flats were subject to a planning restriction preventing occupancy or action to acquire it under a compulsory purchase order (so condition (a) of the exemption did not apply).
 - b. All dwellings were effectively empty during the period in dispute (there was a question over flat 2 where the tenant vacated towards the end of March and didn't hand the keys back until early April and if successful an adjustment may needed to have been made).
4. These appeals were heard as complex under Practice Statement 3 as the issue in dispute involved a novel, important and contentious point of law which had national implications. The tribunal had received a number of similar appeals which have been stayed, pending the hearing of this appeal.
5. The tribunal had categorised the Class G related Covid 19 restrictions appeals into three categories as follows:

Category One

This relates to appeals where the dwelling was not the appellant's main residence, but they were unable to occupy it during the period when the restrictions were in force.

Category Two

This relates to appeals where the dwelling was not the appellant's main residence and was situated on a holiday site which was closed.

Category Three

This relates to unoccupied dwellings which the appellant landlord has been unable to re-let whilst coronavirus restrictions were in place.

6. These appeals fell into category three. Category one and two appeals were heard in February 2021 and the decision issued to the parties and anyone else who had registered an interest with the Tribunal. As with the previous hearing, the Tribunal invited all those with appeals outstanding, which fell into category three to observe proceedings and a copy of this decision will be provided to them. They are advised that this decision is not binding on panels, but it is a persuasive authority that should be followed, given the President's involvement, unless new argument on different points is raised and of course the particular facts of each case.
7. Ordinarily, the tribunal would have considered and determined this appeal, following a public face to face hearing. However, in view of the Covid 19 pandemic and to avoid justice being further delayed, a remote hearing was held.
8. 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.

9. 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.
10. 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 it came to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Evidence and submissions

11. Both parties had put forward their cases and factual evidence which was subsumed into the combined hearing bundle which was of great assistance to the panel as were the concise and focused arguments of both parties.

Issue in dispute

12. Did the government’s Covid – 19 restrictions on travel, and later restrictions on overnight stay, put in place by The Health Protection (Coronavirus Restrictions) (England) Regulations 2020 justify the appellant’s claim for a Class G exemption?

Background

13. The appellant and his wife have owned flats in Smithybridge for over 25 years and they have always kept the local authority informed of changes in the occupation of their properties by tenants. They were both considered ‘vulnerable persons’ in accordance with the regulations and shielded during the period of lockdown on the advice of the Government. There was no dispute as to this.
14. During the period of lockdown, they considered they were unable to allow persons to view vacant flats on the basis that *During the emergency period,*

no person may leave the place they are living without reasonable excuse.

They considered that as vulnerable persons a visit to their flats with potential tenants would not be a reasonable excuse. They were also unable to allow tradesmen to enter the flats to undertake or complete work on the same basis.

15. Evidence was provided of prospective tenants who indicated they would like to reserve a flat but had to remain where they were during the lockdown period. Once lockdown had ended three of the flats were let relatively quickly.
16. The Appellant produced a published article stating that the housing market had been frozen by the government during the lockdown and that advice had been given to renters to not move during the period.
17. In respect of the flats the following information had been provided:

Flat 5

This had been refurbished but was awaiting a new electric hob to replace the gas hob for safety reasons.

A tenant that had shown interest decided not to proceed (note provided in evidence).

Another potential tenant had cancelled a visit due to a family member having suspected corona.

The flat was occupied from 1 August 2020.

Flat 3

Major refurbishment work was virtually complete apart from shelves in the airing cupboard that needed to be put in. The flat was due to be advertised when it was safe to do so.

The flat was occupied from 15 August 2020.

Flat 7

The tenant had recently died and required removal of their belongings by the deceased relatives which was completed by 13th March 2020 when the keys returned. Major work was required to remove grease from the kitchen walls, re-grouting to be done, cupboard doors to be recovered, kitchen radiator was rusty (as was the one in the bathroom) and the flat required a complete repaint.

The outstanding work was delayed due to lockdown because of the risk of trades people spreading the virus to the Landlords.

Whilst the flat had been reserved for some time it wasn't occupied until November 2020.

Flat 2

This flat was vacated on 4 April 2020 but required ten days before it could be visited for safety reasons (one assumes covid related). The tenant had vacated due to the covid climate and being a key worker.

The flat was occupied from 8 August 2020.

In total there were 52 applications for the flats just prior to lockdown and it was the Appellant's contention that it was the government's information which prevented the flats being let.

The relevant law

18. Council tax was introduced by the Local Government Finance Act 1992 and replaced the much-criticised Community Charge (or Poll Tax). It is a tax based on the value of a dwelling placed in one of a number of Valuation Lists, with discounts and exemptions granted by the local authority where the liable person meets the relevant statutory criteria. Sections 1 and 2 of the Act introduce council tax in respect of dwellings (properties) and the concept of liability. Section 3 sets out the definition of a dwelling. Section provides for

council tax to be payable in respect of any dwelling which is not an exempt dwelling. An exempt dwelling is any dwelling in a class prescribed by an order made by the Secretary of State. For the purposes of this appeal I am concerned with Class G of the order:

Class G of the Council Tax (Exempt Dwellings) Order 1992, as amended,
states:

unoccupied dwelling -

- (a) the occupation of which is restricted by a condition which—
 - (i) prevents occupancy, and
 - (ii) is imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990; or
- (b) the occupation of which is otherwise prohibited by law; or
- (c) which is kept unoccupied by reason of other action taken under powers conferred by or under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it;

The Health Protection (Coronavirus Restrictions) (England) Regulations 2020

Further restrictions and closures during the emergency period

5.— (1) A person responsible for carrying on a business, not listed in Part 3 of Schedule 2, of offering goods for sale or for hire in a shop, or providing library services must, during the emergency period—

(a) cease to carry on that business or provide that service except by making deliveries or otherwise providing services in response to orders received—

(i) through a website, or otherwise by on-line communication,

(ii) by telephone, including orders by text message, or

(iii) by post;

(b) close any premises which are not required to carry out its business or provide its services as permitted by sub-paragraph (a);

(c) cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by sub-paragraph (a).

(2) Paragraph (1) does not apply to any business which provides hot or cold food for consumption off the premises.

(3) Subject to paragraph (4), a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period.

(4) A person referred to in paragraph (3) may continue to carry on their business and keep any premises used in that business open—

(a) to provide accommodation for any person, who—

(i) is unable to return to their main residence;

(ii) uses that accommodation as their main residence;

(iii) needs accommodation while moving house;

(iv) needs accommodation to attend a funeral;

(b) to provide accommodation or support services for the homeless,

(c) to host blood donation sessions, or

(d) for any purpose requested by the Secretary of State, or a local authority.

(5) ...

Restrictions on movement

6.— (1) During the emergency period, no person may leave the place where they are living without reasonable excuse.

(2) For the purposes of paragraph (1), a reasonable excuse includes the need—

(a) to obtain basic necessities, including food and medical supplies for those in the same household (including any pets or animals in the household) or for vulnerable persons and supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person, or to obtain money, including from any business listed in Part 3 of Schedule 2;

(b) ...;

(f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living:

(g) ...

(l) to move house where reasonably necessary;

(m) ...to avoid injury or illness or to escape a risk of harm.

Restrictions on gatherings

7. During the emergency period, no person may participate in a gathering in a public place of more than two people except —

(a) ..

(b) where the gathering is essential for work purposes’

(c) ...

(d) where reasonably necessary —

(i) to facilitate a house move,

There was a minor amendment to the regulations that came onto force on 22 April 2020. Travel restrictions remained in place until the Health Protection (Coronavirus Restrictions) (England) (Amendment) (No 3) Regulations 2020 introduced a new regulation 6 with effect from 1 June 2020 which is below.

6.— (1) No person may, without reasonable excuse, stay overnight at any place other than the place where they are living.

(2) For the purposes of paragraph (1), the circumstances in which a person (“P”) has a reasonable excuse include cases where—

(a) ...

(b)...;

(c) P needs to stay elsewhere while moving house;

(d) it is reasonably necessary for P to stay elsewhere—

(i)for work purposes, or for the provision of voluntary or charitable services;

(ii)...;

(e)...

Note – the regulations included a long list of businesses subject to restrictions or closure which have not been copied here but it is sufficient to record they did not include empty domestic hereditaments which could be let.

19. The Health Protection (Coronavirus Restrictions) (England) Regulations 2020 were revoked by The Health Protection (Coronavirus Restrictions) (No 2) (England) Regulations 2020 which came into force at 6am on 4 July 2020.

Decision and reasons

20. The panel had every sympathy with the Appellant and his wish to follow the government's advice and also keep his wife and himself safe during the lockdown. As vulnerable people the panel fully understood why he did not meet potential tenants at any of the flats or tradesmen. It was clear by his actions that the appellant was taking very sensible precautions and doing his bit to avoid the spread of Covid-19.

21. However, as explained by the President at the hearing, the question wasn't whether the appellant thought he was following the law by not letting any of the flats that became vacant during the period, but whether the conditions set out in Class G of the exemption were met. Initially the Appellant focused on whether occupation of each dwelling was prevented by law. It was put to Mr G Pratt at the time that the Coronavirus restrictions regulations did not prevent rented dwellings being occupied or let. Other than reference to an article which highlighted that renters were recommended not to move; Mr Pratt could not find any law or regulation that specifically prevented any of the flats being occupied during the period.

22. Mr G Pratt did move onto a further provision in Class G under (c) which stated:

which is kept unoccupied by reason of other action taken under powers conferred by or under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it.

Whilst this proposition might have initially looked attractive in that Parliament was restricting travel and therefore, Mr Pratt argued, occupation of an empty dwelling; the regulations specifically included a provision to allow persons to move to a new house where necessary.

23. Mr Pratt explained to the panel that his father would meet potential tenants at the dwelling in order to assess their character before letting it to them. The panel had no doubt that this policy had generally worked well for the Appellant as well as not using a letting agent. But during the period in dispute the Appellant could have instructed a letting agent to act on their behalf or undertaken discussions with potential tenants online and there would have been nothing in law to prevent any of the flats being occupied. The dwellings could, in the alternative, have been lawfully occupied by the Appellant or his family if they had so wished. So, whilst it did disrupt the Appellant's usual way of working the corona regulations did not prevent the occupation or use of the properties, however different or inconvenient that might have been in practice.

24. Furthermore, the outstanding refurbishment work could have been undertaken by tradesmen without the Appellant being present. It was his choice to wait until lockdown had finished to be present when such work was undertaken, possibly an unattractive and inconvenient choice but still a choice.

25. The panel appreciated the difficulties that the Appellant had encountered during the period in dispute but there was simply no reason for any of the flats to qualify for Class G exemption as there was no specific prohibition contained in the Regulations that "prohibited" the use of the said properties as contended by the Appellant. The reasons advanced in support of the Appellant's case did not identify any specific provision that applied to these properties. The panel where unable to conclude that the difficulties encountered in the disrupted rental market prevented the properties being occupied or indeed repaired or refurbished. The arguments in fact related to personal circumstances relating to the Appellant and not any actual prohibition by law which was crucial in this context.

Therefore, the panel unanimously felt the appeals must be dismissed.

A handwritten signature in black ink, appearing to read 'Ray Fairclough', with a long horizontal stroke extending to the right.

President

Date: 25 March 2021

Appeal numbers: VT00004392, VT00004396, VT00004397, VT00004399