

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; the Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012, SI 2012 No 2964; properties unoccupied and unfurnished; period of discount; part of council tax Class C 100% one-month discount granted to previous liable person. Decision: Appeal dismissed.

RE: 8a Carlton Road, Boston, Lincolnshire, PE21 8NS

APPEAL NUMBER: VT00005020

BETWEEN:	Mr D Shaw	Appellant
And	Boston Borough Council	Respondent

PANEL: Mr S Wood (Senior Member)
Mrs N Salh

CLERK: Mr D Jefferies

REMOTE
HEARING ON: 1 October 2021

APPEARANCES: Mr M Lilly for Boston Borough Council

Summary of decision

1. The appeal was dismissed. The panel is satisfied that the respondent has correctly granted the discount for a Class C dwelling in line with its determination.

Introduction

2. The appellant, Mr D Shaw, consented to a hearing in his absence.
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. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. There were no technical problems arising on the day regarding the internet connection for any of the participants present.
5. This appeal has been brought in respect of 8a Carlton Road, Boston, PE21 8NS (“the appeal property”) and challenged the Billing Authority’s (BA) decision, dated 6 October 2020, in relation to council tax liability for the period 29 November 2019 to 17 February 2020 (the “disputed period of time”). The appeal has been accepted by the VTE as an appeal made under section 16 of the Local Government Finance Act 1992.
6. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties’ evidence. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

Preliminary issue

7. Before the appeal could be heard, the panel was required to address a preliminary issue on service of the evidence bundle. The clerk advised the panel that, under the Tribunal’s standard directions, the evidence bundle containing submissions from both parties was due to be served by the respondent on the Tribunal and the appellants no later than 5pm on 17 September 2021, i.e., two weeks before the hearing. However, the evidence bundle was received by the Tribunal from the BA on 28 September 2021.
8. Mr Lilly, for Boston Borough Council, apologised to the panel for this oversight, stating that the reason for delay issuing the evidence pack at the two-week stage was due to the fact that he had been off work through sickness and then Covid-19 within his family, which has meant that he had been unable to work for the last ten days, and thus the BA had missed the two-week deadline. He confirmed to the panel that Mr Shaw had received the BA’s evidence at the six-week stage and Mr Shaw had made his response four weeks before the hearing and there was no rebuttal from the BA.
9. In response to the respondent’s late submission of evidence Mr Shaw had emailed to the Tribunal office stating the following: ‘This morning I’ve had an email from a Mathew Lilly BBC Council tax team leader. I think he is trying to indicate they have been waiting for/or until my evidence was received. As you well know I sent this to them on 8 September 2021. They have not complied with your timetable for this hearing from day one, and to have the excuse to send an email 3 days before the hearing, I think just about sums up what it’s like trying to deal with this department at Boston Borough Council. Sheer incompetence let’s blame Covid for everything.’
10. In considering a breach of the Tribunal’s directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. In this case, it was clear there had been a breach and the BA had not served the two-week

evidence bundle in the timescales of the Tribunal's standard directions. The panel considered the reasons for the late submission of the hearing bundle and found that in this case, mitigating circumstances had been demonstrated. The panel determined that the breach was significant, but it concluded that no sanctions should be applied as the appellant had not been disadvantaged by this, therefore, the bundle was admitted. The hearing thus proceeded on that basis.

Evidence and submissions

11. In his appeal, Mr Shaw has stated that he believed that the former tenants may have taken the responsibility of council tax on another property in Boston, but used the month of November 2019 as a transition period to transfer their furniture and goods. He submitted that the tenants did not attempt to hand the keys back until 20 November 2019 to the letting agents knowing full well that their liability was until the end of November 2019. Mr Shaw believed that the BA should have been able to give him, as the landlord, a 100% Class C discount for the month of December 2019, thereafter, making him liable for council tax at 100% from 1 January 2020 until the property was sold on 17 February 2020.
12. Mr Lilly, for Boston Borough Council, explained that the appeal property had been empty since 1 November 2019. The appellant, Mr Shaw, subsequently sold the property on 17 February 2020. He said Mr Shaw was the owner of the property at the time of the dispute for an award of Empty Unoccupied and Unfurnished discount (Class C). On 1 November 2019 the former tenants reported to the BA that they had moved out of the property to another address on 1 November 2019. It was established that they remained liable to pay the council tax at 8a Carlton Road until 29 November 2019. Therefore, a 100% Class C discount was awarded to the former tenants from 1 November 2019 until their tenancy ended on 29 November 2019.
13. On 29 November 2019, Mr Shaw became the liable person for the appeal property and a Class C discount was awarded from 29 November 2019, until the date it was sold on 17 February 2020. However, Mr Lilly said that a Class C discount can only be awarded for a six-month period but under locally set parameters an award of one month at 100% discount is then followed by five months of 0%. He said that the Class C discount has been applied from 1 November 2019, when the previous tenants left the property. The remainder of the one month 100% Class C discount has been awarded to Mr Shaw from 29 November 2019 until 30 November 2019.
14. Mr Lilly explained that a Class C discount is awarded to an empty and unoccupied property and not to individual accounts. He said the process would only start again after the property had been occupied/tenanted for six weeks or more. Mr Lilly said that the BA did email Mr Shaw on 10 December 2019 to say that if he believed that the former tenants were still resident or the property was still furnished after 1 November 2019, to provide proof and the BA would look at the account again. However, Mr Lilly said that to date Mr Shaw has not provided any evidence to the contrary. Therefore, the BA has upheld its decision to award the previous tenants the majority of the one month 100% Class C discount.

Decision and reasons

15. The panel initially found that the previous Class C exemption for properties being unoccupied and unfurnished was abolished under The Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012, SI 2012 No. 2965). Instead, BAs were empowered to determine what, if any, relief to offer and for how long under; the Local Government Finance Act 1992, s. 11A(4A), inserted by the Local Government Finance Act 2012, s.11(1) and the Council Tax

(Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012, SI 2012 No 2964. Boston Borough Council has determined that from 1 April 2013 there would be full 100% discount for one month only on unoccupied and unfurnished properties. The discount is applied to a property rather than for an individual and therefore a change of liable person does not extend the discount period. The panel did not have the jurisdiction to amend or alter the amount of discount determined by a BA.

16. Any challenge by the appellant 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.
17. Mr Shaw highlights that the period allowed is less than one month. It is not explicitly stated in his written submissions, but it is presumed that the appellant seeks the discount from 29 November 2019 up to and including the 29 December 2019, being the one month following the date on which he was granted the discount. However, the panel finds there to be a fundamental flaw in that expectation. Council tax is a property-based tax, and the discount is based upon the qualification of the dwelling, not the person liable to pay it. The panel notes, on the evidence presented to it, that the former tenants vacated the subject dwelling on the 1 November 2019 – that point is not disputed. They remained liable to pay council tax until the end of the tenancy and were entitled to the 100% Class C discount from the 1 November 2019 to the 29 November 2019, which was in fact granted. During that period, the subject dwelling was unoccupied and unfurnished – the qualifying conditions for the Class C discount. Therefore, Mr Shaw has been granted the “remainder” of the one-month discount after he became liable to pay council tax in respect of the subject dwelling.
18. In reaching its decision, the panel is satisfied that the one month 100% Class C discount has been correctly awarded and apportioned based on when the appeal property became empty according to the available information. The panel found no compelling evidence from Mr Shaw to suggest that the tenants did not move out of the appeal property on 1 November 2019, nor on the face of it does there appear to be any incentive for the tenants to have given the BA inaccurate information. Indeed, the panel had regard to the fact that the former tenants have supplied the BA with supporting evidence which indicates that they moved out of the appeal property to another address in Boston on 1 November 2019.
19. As stated above, council tax is essentially a property-based tax, and a Class C discount relates to a property rather than an individual class of liable person. Therefore, an individual can only benefit from a discount during a period where he/she is liable for the tax. The panel accepted the BA's contention that a tenant who vacates a rented property before the end of a notice period should remain liable for council tax until that period has ended but where a discount is applicable, as in this case, the tenant (as the liable person), is entitled to benefit from it. In the subject appeal, this meant that Mr Shaw's former tenants qualified for 29 days of 100% Class C discount during their liability as the appeal property was empty and unfurnished until their tenancy ended. Mr Shaw, as a consequence, could only benefit from the remaining one-day balance of the one-month 100% Class C discount for the property, once his liability for it recommenced on 29 November 2019.
20. As mentioned by Mr Lilly, the Class C local discount is tied to the property and applies from the day the property first meets the qualifying criteria. It therefore cannot restart again, despite a change of ownership/liable person. Although the appellant appears to have indicated in his appeal that he wishes the Tribunal to rule that only ‘landlords’ can benefit from the Class C discount, the law is clear that the Class C discount runs with the property and not an individual liable person or particular class of liable person.

21. In conclusion, the panel was satisfied that Mr Shaw was only entitled to the remainder of the 100% discount under Class C from 29 November 2019 to 30 November 2019, under the provisions of the Council's local scheme, and so for this reason a further discount cannot be applied. Ultimately, there was insufficient evidence from Mr Shaw to show that the BA's decision was wrong.

22. In view of the foregoing, the appeal was unsuccessful and dismissed accordingly.

Date: 25 October 2021

Appeal number: VT00005020