

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Local Government Finance Act 1992 section 11B; premium in respect of long-term empty dwellings; panel found that the billing authority's scheme had been correctly applied as the appeal property fulfilled the definition of a long-term empty dwelling; Section 13A (1) (c) of The Local Government Finance Act 1992; discretionary hardship relief; no evidence provided to demonstrate that the appellant was suffering from financial hardship; appeal dismissed.

RE: 18 Woodwynd Close, Shrewsbury SY5 8PZ

APPEAL NUMBER: VT00005360

BETWEEN	Mrs R Wright	Appellant
	and	
	Shropshire Council	Respondent

BEFORE: Mr AN Backway (Senior Member) and Ms J Morton

CLERK: Rachel James

REMOTE

HEARING 4: Thursday 18 November 2021

APPEARANCES: Mrs R Wright (Appellant), who was accompanied by her husband, Mr Wright
Ms J Dodington (Respondent's representative)

Summary of decision

1. Appeal dismissed; no alteration was made to Mrs Wright's council tax liability.

Introduction

2. 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.

3. 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.
4. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. The panel was satisfied that both parties were able to fully participate in the hearing.
5. The appeal challenged the council’s resolution to charge long-term empty properties 100% premium, thus levying a charge of 200% on properties that fit the criteria. The premium had been applied to the appeal property’s charge since 25 June 2018. The period in dispute was from 20 March 2020 to 31 May 2020.
6. To assist the appellant (who was not professionally represented) and with the agreement of the parties, the panel varied the Tribunal’s model procedure and invited the billing authority’s representative to present her evidence first.
7. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that the panel considered all of the evidence presented before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

8. Had the 100% premium been applied correctly during the period of dispute.

Evidence and submission

9. The billing authority had submitted a bundle of evidence which comprised its written submission and extracts from relevant legislation. The panel had also been provided with a copy of Mrs Wright’s appeal documentation.
10. Within the appeal documentation and orally at the hearing, Mrs Wright explained that she and her husband had purchased the appeal property on 20 March 2020. They received an email from the solicitors on Friday 20 March 2020 at 3:40 pm, confirming the sale of the property. The country went into lockdown on Monday 23 March 2020, which made it impossible to make the journey from their home in York, to the appeal property in Shrewsbury, to collect the keys or move furniture into the premises. Mrs Wright had checked with both the council and the police to clarify if they could make the journey to the appeal property. They were advised not to make the journey as it was not classified as essential. They could not let the property out as gas and electrical safety checks were required prior to being let out. In response to the billing authority’s decision not to apply discretionary relief, Mrs Wright questioned what would be considered ‘exceptional circumstances’ if a national lockdown was not. They considered they had been unfairly financially prejudiced as they had acted on the advice given.
11. Ms Dodington outlined the history surrounding the occupancy of the appeal property and its council tax charge. She explained that a long-term empty premium had been applied to the appeal property since 25 June 2018. She considered that the premium had been correctly applied and she sought dismissal of the appeal. Furthermore, the matter had been considered for a discretionary reduction. However, the application was rejected on the

grounds that the circumstances were not exceptional. Accordingly, she sought dismissal of the appeal.

Decision and reasons

12. The panel considered the power available to the billing authority when it decided to levy council tax at 200% for long term empty properties. This was a power provided by the newly inserted section 11B of the Local Government Finance Act 1992. The panel found that section 12(2) of the Local Government Finance Act 2012 introduced section 11B into the Local Government Finance Act 1992, it stated:

“Higher amount for long-term empty dwellings: England

(1) For any financial year, a billing authority in England may by determination provide in relation to its area, or such part of its area as it may specify in the determination, that if on any day a dwelling is a long-term empty dwelling-

(a) the discount under section 11(2)(a) shall not apply, and

(b) the amount of council tax payable in respect of that dwelling and that day shall be increased by such percentage of not more than 50 as it may so specify.

(2) The Secretary of State may by regulations prescribe one or more classes of dwelling in relation to which a billing authority may not make a determination under this section.

(3) A class of dwellings may be prescribed under subsection (2) by reference to such factors as the Secretary of State thinks fit and may, in particular, be prescribed by reference to –

(a) the physical characteristics of, or other matters relating to, dwellings;

(b) the circumstances of, or other matters relating to, any person who is liable to the amount of council tax concerned.

(4) Where a determination under this section has effect in relation to a class of dwellings-

(a) the billing authority may not make a determination under section 11A(3), (4) or (4A) in relation to that class, and

(b) any determination that has been made under section 11A(3), (4) or (4A) ceases to have effect in relation to that class.

(5) A billing authority may make a determination varying or revoking a determination under this section for a financial year, but only before the beginning of the year.

...

(8) For the purposes of this section, a dwelling is a ‘long-term empty dwelling’ on any day if for a continuous period of at least 2 years ending with that day-

(a) it has been unoccupied, and

(b) it has been substantially unfurnished.

(9) In determining whether a dwelling is a long-term empty dwelling, no account is to be taken of any one or more periods of not more than 6 weeks during which either of the conditions in subsection (8)(a) and (b) is not met (or neither of them is met)."

13. From 1 April 2019, Section 2 of the Rating (Property in Common Occupation) and Council Tax (Exempt Dwellings) Act 2018 allowed billing authorities to apply 100% premium charge to properties that were unoccupied and substantially unfurnished.

Section 2

(1) Section 11B of LGFA 1992 (higher amount for long-term empty dwellings: England) is amended as follows.

(2) In subsection (1)(b) (maximum percentage by which may be increased) –

(a) After “that day” insert (“the relevant day”), and

(b) For “50” substitute “the relevant maximum”.

(3) After subsection (1) insert –

“(1A) For the financial year beginning on 1 April 2019 the “relevant maximum” is 100.

....

14. The panel found that during the period of time under consideration, Shropshire Council’s policy to charge a 100% premium was applied by the billing authority equally to all dwellings in its area that had been empty for two years or more.
15. The appeal property had attracted a long-term empty property premium since 25 June 2018. Mr and Mrs Wright had purchased the appeal property on 20 March 2020.
16. There was no dispute that the appeal property had been unoccupied and unfurnished for over two years thus qualifying as a long-term empty property. However, due to the Covid-19 pandemic, the country went into lockdown on 23 March 2020 and Mrs Wright had been advised not to make the 162 mile journey from their home in York, to the appeal property in Shrewsbury, to collect the keys and move furniture in. Mrs Wright had appealed against the premium being applied and considered it financially unfair as they were acting on advice. The appeal property had been let out to tenants from 1 June 2020.
17. In arriving at its decision, the panel determined that as the subject premises had been empty for over two years, within the Council’s policy, it fell to be regarded as a long-term empty property and council tax had been correctly levied at 200%. The billing authority had confirmed that there had been no direct instructions from Central Government to offer any specific discounts covering circumstances caused by the pandemic, such as those outlined by the appellants.
18. The panel noted that Mrs Wright had appealed against the application of the premium. However, the panel was unable to intervene in the Council’s resolution to apply the premium to this class of dwelling. If Mrs Wright wished to challenge the premium charged, she may pursue one of the following options:

- (i) apply for judicial review in the High Court; or
- (ii) complain to the Local Government Ombudsman.’

19. The billing authority had considered whether to apply discretionary hardship relief in accordance with Section 13A (1)(c) of The Local Government Finance Act 1992. Having considered the matter, the billing authority rejected the application. The circumstances outlined were not considered exceptional, or unique and applied equally to all new home-owners who had purchased properties during the lockdown period where a long term empty property premium was applied.

20. Under Section 13A of the 1992 Act, the BA retained a general discretionary power to reduce the amount of council tax payable. Section 13A provides:

“Reductions by billing authority

(1) The amount of council tax which a person is liable to pay in respect of any chargeable dwelling and any day (as determined in accordance with sections 10 to 13) —

(a) in the case of a dwelling situated in the area of a billing authority in England, is to be reduced to the extent, if any, required by the authority’s council tax reduction scheme (see subsection (2));

(b) ...

(c) in any case, may be reduced to such extent (or, if the amount has been reduced under paragraph (a) or (b), such further extent) as the billing authority for the area in which the dwelling is situated thinks fit.

...

(6) The power under subsection (1)(c) includes power to reduce an amount to nil.

(7) The power under subsection (1)(c) may be exercised in relation to particular cases or by determining a class of case in which liability is to be reduced to an extent provided by the determination.

21. Therefore, in accordance with paragraph (1)(c) stated above, a taxpayer can make an application to reduce the amount of council tax he has to pay and the billing authority can reduce the council tax to nil or as it thinks fit.

22. An appeal of this kind is to be heard by the Tribunal as it is brought under Section 16 of the 1992 Act. The panel was mindful of the decision presided over by the former VTE President in *S.C. v East Riding of Yorkshire Council, C.W v Same* [2014] (Appeal Numbers 2001M11393 and 2001M117503, dated 27 May 2014). Paragraph 25 of this decision detailed 16 observations designed to assist billing authorities’, council taxpayers and Tribunal members when dealing with this type of appeal.

23. In appeals of this nature, the burden of proof rests on the appellant to provide sufficient evidence to confirm that their expenditure exceeded their income and that they could not afford the council tax payments. In the appeal before it, when questioned, it was explained that Mr and Mrs Wright had not wanted to pursue the appeal on a financial hardship basis, as such an income and expenditure exercise had not been carried out. The panel also accepted the billing authority’s statement that Mr and Mrs Wright’s circumstances were not unique and would have equally applied to others in that situation.

24. Having given careful consideration to all of the evidence presented, the panel found nothing erroneous with the billing authority's decision to apply the long-term empty property premium and not grant discretionary relief. Accordingly, the appeal was dismissed.

Date: 6 December 2021

Appeal Number: VT00005360