

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; owner disputing liability; section 6 of the Local Government Finance Act 1992; hierarchy of liability; MacAttram v LB of Campden [2012] EWHC 1033(Admin); Leeds City Council v Stephen Broadley [2016] EWCA Civ 1213. Decision: Appeal dismissed.*

RE: 32 Moathouse Lane West, Wednesfield, Wolverhampton, WV11 3HA

APPEAL NUMBER: VT00005634

BETWEEN:	Mr M Kiely	Appellant
And	City of Wolverhampton Council	Respondent

PANEL: Mrs X Holt (Senior Member)  
Mrs A Fielder

CLERK: Mr G Wayman

REMOTE  
HEARING ON: 9 November 2021

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## Summary of decision

1. Appeal dismissed. The panel determined that the appellant was liable for council tax purposes in respect of 32 Moathouse Lane West, Wednesfield, Wolverhampton, WV11 3HA, from 2 March 2019 to 2 May 2019.

## 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. This was an appeal made under section 16 of the Local Government Finance Act 1992. The appeal was made against the Council’s decision to make Mr M Kiely liable for council tax, as owner, in respect 32 Moathouse Lane West, Wednesfield, Wolverhampton, WV11 3HA, for the period from 2 March 2019 to 2 May 2019 (the relevant period).
5. Both parties did not attend the hearing and had requested the appeal to be considered on the paperwork supplied. The panel having considered the parties’ request was satisfied to continue with the appeal on this basis.
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.

## **Issue**

7. The issue in this appeal was whether Mr Kiely was liable for council tax at the appeal property for the period 2 March 2019 to 2 May 2019.inclusive.

## **Legislation and case law**

8. Liability for council tax is determined by the hierarchy of liability in section 6 of the Local Government Finance Act 1992 which is as follows:

“(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”.

9. There being no person in residence of the appeal dwelling for the period in question, in considering ownership for the purposes of section 6 of the Act, liability therefore falls to be determined under section 6(2) (f) of the 1992 Act: who was the owner of the appeal dwelling within the meaning of that sub-section? This is defined by further sub-sections of section 6, which so far as material provide:

“(5) In this Part, unless the context otherwise requires—

“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;

“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.

(6) In this section —

...

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

10. In reaching its decision in this appeal the panel had regard to the relevant case law of the High Court judgment in *Macatram v London Borough of Camden* [2010] EWHC 1033 (Admin) and *Leeds City Council v Stephen Broadley* [2016] EWCA Civ 1213. Copies of these cases had been provided to the parties prior to the hearing in order to give them the opportunity to make comment on them.

## Decision and reasons

11. This appeal has arisen as a result of the Billing Authority’s (BA) decision not to hold the former tenant, Mr C Bird, liable for council tax purposes for the period 2 March 2019 to 2 May 2019. It was Mr Kiely’s belief that he should not be held responsible for council tax for the relevant period, as he believed that his tenant occupied the property between 2 March 2019 to 2 May 2019. Mr Kiely alleges that Mr Bird did not contact him or offer the property back or return the keys. He had to issue a section 21 notice to have Mr Bird removed and the property returned. It was not until 2 May 2019 was, he able to visit the property and found it abandoned and trashed. In his submissions Mr Kiely confirmed he had no way of knowing when Mr Bird left but he did not give notice or return the keys. A new tenant moved into the appeal property on 3 May 2019.
12. The BA refused Mr Kiely’s appeal on the grounds that further investigations revealed that Mr Bird had moved to another property, not in Wolverhampton, in either January or February 2019. Mr Bird had provided the respondent with a copy of his new lease to support the fact that he had moved out of the appeal property and his main residence had changed.
13. The BA argued that, for council tax purposes, once the tenant, Mr Bird, vacated the appeal property his sole or main residence was elsewhere, once the six month lease expired on 1 March 2019, he no longer had a ‘material interest’ in the property.

14. Based on the above regulations, the BA had determined that Mr Kiely held the 'material interest' for the appeal property from 2 March 2019 to 2 May 2019, as 'owner' in line with section 6(2)(f) of the Local Government Finance Act. As such the appellant, Mr Kiely, is held liable for the council tax, as 'owner' of the dwelling, using the hierarchy of liability, after Mr Bird vacated the property and moved to another property out of Wolverhampton.
15. The panel found that no specific date had been given when Mr Bird vacated the appeal property and it was no longer his sole or main residence. The BA had stated that Mr Bird had vacated the property in January / February 2019 and this was supported by the production of a tenancy agreement for a new property outside of Wolverhampton. Within the bundle the panel noted that Mr Kiely stated that he had no way of knowing when Mr Bird left or where he went to.
16. Therefore, based upon the evidence before it the panel was satisfied that during the period in dispute 2 March 2019 to 2 May 2019 Mr Bird was not resident in the appeal property and it was no longer his sole or main residence. The panel noted Mr Kiely's observations that he considered Mr Bird was still resident in the appeal property during the period in dispute. However, the panel consider these observations were not evidentially strong enough to counter the fact that Mr Bird had provided the BA with documentary evidence that he had taken out a new lease on another property outside of Wolverhampton in January / February 2019.
17. In its decision making the panel referred to the *Leeds v Broadley* decision, where the High Court determined that there must be explicit terms in the original lease to enable the lease to continue, after the fixed term, on the same terms as the original lease. The High Court's judgment was later upheld by the Court of Appeal. In this appeal it was established that the appeal property was rented out to Mr Bird from 3 September 2018 on a six-month fixed Assured Shorthold Tenancy (AST) agreement. The panel was satisfied that there was no continuation clause in the AST that is the subject of this appeal.
18. The High Court judgment in *Macattram v London Borough of Camden* [2010] EWHC 1033 (Admin), held that if the tenant was not in occupation after the expiry of the fixed term, then the landlord/owner was liable for the council tax charge. The fixed term tenancy having come to an end, the High Court found that the periodic tenancy arising thereafter between the same parties by payment and acceptance of rent after expiry of the fixed term lease was not a material interest because it had not been granted for a term of six months or more.
19. For the appellant to avoid liability for council tax for the disputed period, he had to satisfy the panel someone else should be regarded as the owner; in other words that they held a material interest in the appeal property. The binding High Court judgment, *Macattram v Camden*, confirmed that at the expiry of the fixed term, a new and different term commenced; a monthly periodic tenancy (in cases where rent was payable monthly). As the monthly periodic tenancy was not a leasehold interest which was granted for a term of six months or more, the tenant in such an arrangement could not be liable for council tax if he or she was not resident in the dwelling. Liability passed to the landlord in such circumstances.
20. In this case the panel noted the tenancy agreement specifies that Mr Bird's tenancy was for the term of six months commencing on 3 September 2018. In the panel's opinion, following the decision in *Macattram v Camden*, the periodic tenancy created after the fixed initial term is not a 'material interest' for the purposes of section 6 of Local Government Finance Act 1992. Liability falls to the appellant, as the freeholder under section 6(2)(f) of the hierarchy of liability, from when the tenant vacated. Once the dwelling had no 'resident' the owner

becomes liable as the only person with a 'material interest' in the dwelling in accordance with section 6 of the 1992 Act.

21. The panel found that the High Court judgment, *Macattram v Camden*, is relevant to this case because it confirms that a periodic tenancy which arose after the end of the lease was a leasehold interest; however as it was not granted for a term of six months or more, it was a monthly periodic tenancy and that monthly tenancy was not a 'material interest' within the meaning of section 6(6) of the 1992 Act.
22. In conclusion, as Mr Bird's tenancy agreement had a term of six months from 3 September 2018 and did not include explicit terms to continue the tenancy from 2 March 2019, the tenancy had been replaced by a new periodic monthly tenancy on the same terms and conditions from 2 March 2019. The monthly periodic tenancy was not granted for a term of six months or more and was not a 'material interest' within the meaning of section 6(6) and he could not be held liable for council tax at 32 Moathouse Lane West, Wednesfield, Wolverhampton, WV11 3HA for the period 2 March 2019 to 2 May 2019 as he had vacated in January / February 2019. He could therefore only be held liable for the period that the appeal property remained his sole or main residence as he no longer held a 'material interest' in the property when the original lease ceased as the new tenancy was for less than a six month term.
23. In view of the foregoing, the appeal was unsuccessful and dismissed accordingly.

Appeal No: VT00005634

Dated: 6 December 2021