

VALUATION TRIBUNAL FOR ENGLAND

*Council Tax Liability Appeal; Beneficial interest and exercise of a proprietary right;
Material interest; Class F of the Council Tax (Exempt Dwellings) Order 1992;
Appeal allowed.*

RE: 19 Strathmore Road, Ilkley LS29 8PQ

APPEAL NUMBER: VT00005807

BETWEEN:	P.H.	Appellant
	and	
	City of Bradford Metropolitan District Council	Respondent
	(Billing Authority)	

BEFORE:

Gary Garland (President)

CLERK: David Slater (Registrar & Chief Clerk)

ON: Monday 28 November 2022

APPEARANCES: Gary Tidswell (Billing Authority's representative)

Summary of decision

1. The appeal dwelling was an exempt dwelling for the period in dispute 23 August 2020 to 18 July 2021 inclusive.

Introduction

2. This was a council tax liability appeal made under section 16 of the Local Government Finance Act 1992. The appellant, who was the main beneficiary of his late mother's estate, was aggrieved by the billing authority's determination that the appeal property was a chargeable dwelling and that he was the liable person for the council tax as the owner under section 6 (2) (f) of the 1992 Act.
3. This appeal was due to be heard by a panel sitting remotely on 23 November 2021, in the absence of the parties. However, that hearing was adjourned on the advice of the clerk so that the appeal could be heard before me. This was on the basis that the appeal raised an important or contentious point of law which could potentially have national implications. Therefore, the matter was deemed complex and was heard in accordance with the tribunal's practice statement PS3: Complex cases.
4. Both parties were invited to appear or be represented before me. Although the billing authority's representative attended the hearing, the appellant was unable to appear and had requested that I hear the appeal in his absence.
5. The appellant's mother passed away on 23 August 2020 and following her death the appeal dwelling was unoccupied. As the Executor for his mother's estate, the appellant applied for probate which was granted on 19 January 2021.
6. The appellant engaged a company of Architects and allowed them access to the property to facilitate a planning application. As the appeal dwelling benefited from a substantial plot, planning permission was sought for the construction of a detached two storey dormer dwelling to the side of the existing house.

7. It is accepted that the legal interest remains vested in the deceased's estate. However, the billing authority determined that the appellant held an equitable interest in the freehold estate and had exercised a proprietary right which meant he was a qualifying person who was liable for council tax as the owner. Consequently, in its opinion, Class F was not applicable.
8. This re- hearing was conducted via Microsoft Teams.
9. This decision document is not and does not purport to be a verbatim record of proceedings.

Relevant law.

10. Under section 4 of the Local Government Finance Act 1992 council tax is payable in respect of any dwelling which was not an exempt dwelling. An exempt dwelling was then defined as any dwelling of a class as prescribed by the Secretary of State. The relevant statutory instrument was the Council Tax (Exempt Dwellings) Order 1992 and the relevant class for the purposes of the outstanding dispute before me was Class F which is as follows;

(1) an unoccupied dwelling—

(a) which has been unoccupied since the date of death of a person ("the deceased"); and

(b) in relation to which one of the conditions set out in paragraph (2) below is satisfied;

(2) the conditions referred to in paragraph (1) above are, subject to paragraph (3) below, that—

(a) the deceased had, at the date of his death, a freehold interest in the dwelling, or a leasehold interest in the dwelling which was granted for a term of six months or more, and

(i) no person is a qualifying person in respect of the dwelling; or

(ii) a person is a qualifying person in respect of the dwelling acting in his capacity as executor or administrator, and no person is a qualifying person in any other capacity or

(b) the deceased was a tenant of the dwelling at the date of his death, and an executor or administrator acting in his capacity as such is liable for rent or, as the case may be, a licence fee, for the day;

(3) sub-paragraphs (a)(ii) and (b) of paragraph (2) above shall only apply, in a case where a grant of probate or letters of administration has been made, if less than six months have elapsed since the date of the grant.

11. For the purposes of the 1992 Order, “qualifying person” means a person who would, but for the provisions of this Order, be liable for the council tax in respect of a dwelling on a particular day as the owner, whether or not jointly with any other person.

12. Liability for the council tax was set out in section 6 of the 1992 Act.

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6 Persons liable to pay council tax

(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.

(3) Where, in relation to any chargeable dwelling and any day, two or more persons fall within the first paragraph of subsection (2) above to apply, they shall each be jointly and severally liable to pay the council tax in respect of the dwelling and that day.

(4) Subsection (3) above shall not apply as respects any day on which one or more of the persons there mentioned fall to be disregarded for the purposes of discount by virtue of [paragraph 2 (severely mentally impaired) or 4 (students etc) of Schedule 1 to this Act] and one or more of them do not; and liability to pay the council tax in respect of the dwelling and that day shall be determined as follows—

(a) if only one of those persons does not fall to be so disregarded, he shall be solely liable;

(b) if two or more of those persons do not fall to be so disregarded, they shall each be jointly and severally liable.

(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—

“introductory tenant” means a tenant under an introductory tenancy within the meaning of Chapter I of Part V of the Housing Act 1996;

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

“secure tenant” means a tenant under a secure tenancy within the meaning of Part IV of the Housing Act 1985;

“statutory tenant” means a statutory tenant within the meaning of the Rent Act 1977 or the Rent (Agriculture) Act 1976.

Decision and reasons

13. In *ZT v London Borough of Lewisham* [2018], I decided that during the period in dispute in that case, the appeal dwelling was exempt under Class F and that the appellant was not a qualifying person who would be liable for the council tax. In the *Lewisham* case, the appellant’s father died intestate but as the next of kin he stood to be the sole beneficiary. However, throughout the period in dispute, the appellant had no legal title as the freehold ownership was still vested in the deceased’s estate and therefore, I held that the appellant was not the owner for council tax purposes as he did not hold a material interest.

14. There are some similarities between the case under consideration and the earlier *Lewisham* appeal. In both cases, the appeal dwelling had been unoccupied since the deceased person passed away. Both appellants stood to be either the sole or main beneficiaries of the deceased’s person’s estate, so both were likely to inherit the respective dwellings. However, during the

respective periods in dispute, legal title to the dwelling(s) remained vested in the deceased person's estate. In each case, the respondent billing authority had determined that the appellant was the liable person for the council tax under section 6 (2) (f) of the 1992 Act.

15. The main difference between this case and *Lewisham* was that in this case there was a will. In *Lewisham* the deceased person died intestate. The appellant in this case was appointed as the Executor to administer the estate for which he was due to become the main beneficiary, once the liabilities to the estate were discharged. Although he was named in the will as the sole beneficiary, a codicil that was appended to it meant that the deceased's grandchildren who had attained the age of 16 years would stand to inherit a sum of £40,000 divided equally.
16. In *Lewisham* much to the frustration of the billing authority, the appeal property was in a state of limbo as the appellant in that case had not applied for letters of administration and was, in its opinion, taking advantage of the Class F exemption.
17. Mr Tidswell accepted that *Lewisham* was correctly decided but the facts in play in the current appeal were different because no court intervention was required, as an Executor had been appointed and probate subsequently acquired.
18. Although the appellant did not appear before me, I had regard to the arguments he had raised in his appeal.
19. The appellant contended that he was merely the representative for his late mother and although he was the main beneficiary, he had no equitable proprietary interest in her assets until probate was granted and therefore was not the owner. Since obtaining probate on 19 January 2021, he was now in a position to act. Before probate was granted, his hands were effectively tied.
20. The appellant argued that devolution of real estate was dealt with under Section 1 of the Administration of Estates Act 1925. Any material interest/ownership of the appeal dwelling was vested in the personal representative of the deceased and the estate could not be administered until the grant of probate. A beneficiary therefore has no equitable or legal interest in the property.

21. The appellant also made the point that until probate was ascertained and all of the liabilities accrued by the estate were paid, it was impossible to pass any property to the beneficiary. The appellant said he had been using his own money to pay off some of the estate's debts and he was mindful that the house would have to be sold before other outstanding debts could be paid. He therefore felt it was reasonable, in his capacity as Executor, to look into maximising the proceeds of the estate. He therefore engaged a firm of Architects to explore options for that purpose.
22. Mr Tidwell informed me that the appellant had filled in an enquiry form at the billing authority's request and from the information provided to it, the council believed that once the estate was liquidated, there was sufficient funds to meet the liabilities accruing to the estate without the house having to be sold.
23. The billing authority had determined that the appellant met the statutory criteria of being a qualifying person who was liable for council tax as the owner, because he had an equitable interest in the freehold estate.
24. In support of the billing authority's argument Mr Tidwell referred to sections 12 and 13 of the Trust of Land and Appointees of Trustees Act 1996 which stipulated that a trustee may not unreasonably exclude a beneficiary's right to occupy land.
25. The appellant in this case was both the Executor and the main beneficiary of his late mother's estate. In the billing authority's opinion, his engagement of Architects to submit a planning application which, if successful, would increase the value of the appeal dwelling amounted to an exercise of a proprietary right. It was not the application for planning that was the exercise of a proprietary right, it was the granting of permission to others access to the land. This was an overt act which meant that, in the billing authority's opinion, he had an equitable material interest in the dwelling both prior to and after probate had been granted. The billing authority also argued that the role of Executor did not extend to increasing the value of the assets of the estate. Therefore, the engagement of the Architects was not done by the appellant, in his capacity as Executor but in his capacity as the beneficiary.
26. The billing authority also referred to section 36(2) of the Administration of Estates Act 1925 and argued that the appellant's exercise of a proprietary right meant that the appellant, in his capacity, as Executor had effectively

assented to the property being gifted by the estate to himself as the beneficiary with effect from the date of his mother's death.

27. Since the alleged exercise of a proprietary right had occurred before the appellant received the grant of probate, I was not persuaded that this action meant that the appeal dwelling did not qualify for exemption.
28. Normally when a person dies their assets are frozen. The appellant's mother died on 23 August 2020 and until probate was granted, the deceased's assets were effectively in limbo. Whilst it was not disputed that the appellant engaged Architects to visit the property, in my view, he was acting as a family connected person would rather than as a solicitor, fulfilling the duties of an Executor would. As the appellant explained he was merely looking at options, it was unknown whether the Architect's proposals were ever acted upon.
29. In this case, there was no suggestion that the appellant had not undertaken his duties as an Executor with due diligence and in an expedient manner.
30. Although the financial assets and liabilities of the estate were not before me, as the appellant did not appear, I have no reason to question Mr Tidswell's contention that the appeal dwelling did not need to be sold to meet the liabilities that were due to the estate. I inferred from this that the billing authority's case was that the appellant's beneficial interest in monetary terms was at least equal to the value of the freehold interest. Whilst this may have been the case, the billing authority's case cannot, in my opinion, succeed.
31. First and foremost, it was not disputed that throughout the period in dispute legal title remained with the estate. The billing authority contended that from the date of death, the appeal dwelling did not meet the criteria of being exempt under Class F. Given the fact that at the date of death, the deceased's assets were frozen, I do not understand the billing authority's logic that no exemption was applicable from the date of death.
32. There would have been some logic to its argument if it had conceded the exemption until 19 January 2021 and then argued that as the Executor and the person who stood to inherit the property was one in the same, given there would be nothing to prevent him gaining legal title, as the beneficial owner he was thus a qualifying individual who was liable under section 6 (2) (f) of the 1992 Act. Although an argument for the removal of the exemption from the date of probate may have had more merit, rather than no exemption at all

given the facts in this case, in my opinion it could not have been Parliament's intention that a means test was required before an exemption under Class F could be considered.

33. Council tax was supposed to be a simple tax which was easy to administer. If I look at the definition of an owner under section 6 (5) of the 1992 Act throughout the period in dispute the owner of the appeal dwelling was the estate. This is because the deceased held the freehold interest at the date of her death. Although the billing authority argued that the exercise of a proprietary right demonstrated implied assent by the beneficiary to the gift provided him in the will, I rejected that argument. As previously stated, the exploration of potential hope value from a planning application was something a family member may take. In addition, for proper assent to occur, a document (form AS1) would need to be completed and sent to the Lands Registry for the title register entry to be amended.
34. Had a third party been appointed to be the Executor, there would have no doubt that the appeal property would qualify for exemption under Class F. If the billing authority's argument is correct, it would mean that any entitlement to exemption ceases, once probate is granted, is dependent upon whether the Executor stands to inherit the full value of freehold title, once any liabilities to creditors or other beneficiaries are met.
35. The inevitable flaw in such a means test approach is what happens if unexpected liabilities accrue to the estate or the will is later contested before the estate is wound up? This leads me to the conclusion that to meet the definition of a qualifying person, the appellant would have had to have possessed the legal title. The likelihood that, in due course, he stood to inherit the legal title was not sufficient to disqualify the dwelling from Class F exemption since such a theoretical approach may not have accorded with what ultimately came to pass when probate was finalised and the deceased's assets were distributed.
36. I have therefore reached the same conclusion as I did previously in *ZT v Lewisham*. As in *Lewisham* the appellant may have had a beneficial interest but he certainly had no legal title to the freehold interest and without the latter in my judgment he cannot be a qualifying person. As a corollary, the appeal dwelling qualified for Class F exemption for the period 23 August 2020 to 18 July 2021 inclusive. The appeal was therefore successful.

Order

37. In accordance with Regulation 38 (1) and (9) the billing authority is hereby ordered to reverse its decision that the appeal dwelling was chargeable for the period 23 August 2020 to 18 July 2021. The appellant's council tax liability therefore needs to be re-calculated and, in the event of an overpayment, any sum paid but no longer due needs to be refunded. The billing authority must comply with this Order within two weeks of the date given below.

President

Date: 2 December 2022

Appeal number: VT00005807

Right of appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.