

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 application form had been completed for the BA to consider; appeal dismissed.

Re: 6 Pier Avenue, Southwold IP18 6BX

APPEAL NUMBER: VT00006099

BETWEEN

Ms J Morgan

Appellant

and

East Suffolk Council

Respondent

PANEL: Mr M Aspinall (Senior Member)
Mr S P Wood

CLERK: Ms Roselyn Muller

REMOTE
HEARING 4: Monday 13 December 2021

APPEARANCES: Ms J Morgan, the Appellant

Summary of decision

1. Appeal dismissed; no alteration was made to the appellant'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 Billing Authority’s (BA) 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 for the period 9 September 2020 to 2 September 2021.
6. The BA had originally requested that the appeal be adjourned in order to consider the appellant’s request for Section 13A (1) (c), as at yet, the appellant had not completed an application form for the BA to consider. However, the appellant objected to the adjournment request, as she stated that this appeal had included details of her request for Section 13A (1) (c) and therefore, she saw no reason for an adjournment. As such, the BA had requested that the appeal be heard in its absence, as the representative for the BA was not able to attend, and she had stated that there was no one else who could attend on her behalf. The panel considered the request and determined that even though the BA had requested an adjournment, it had subsequently requested that the appeal should be heard in its absence having regard to the evidence previously submitted. Accordingly, the panel heard the appeal in the BA’s absence.
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. There were three issues in dispute for the panel to consider:
 - i) had the BA correctly applied the long-term empty property premium for the period 9 September 2020 to 2 September 2021?;
 - ii) had the BA been correct in refusing the application of Class G exemption?; and
 - iii) had the BA correctly considered the appellant’s request for Sec 13A (1) (C) discretionary relief?

Evidence and submission

9. The BA had submitted a bundle of evidence which comprised of both parties' submissions. These included an outline of the case; correspondence between parties; council minutes concerning empty property discounts and long term charges; initial and final refusal correspondence; Decision of appellant's building regulations submission and notice received on 15 November 2018; previous Valuation Tribunal decisions in respect of Class G exemption (a decision made by the Valuation Tribunal for appeal numbers: VT00004392, VT00004396, VT00004397, VT00004399; rebuttal in consideration of Section 13A (1) (c) and a copy of President Zellick's decision: East Riding of Yorkshire Council dated 7 May 2014.
10. Within the appeal documentation and orally at the hearing, the appellant explained that up until 21 July 2018, the appeal property had been rented. However, as of 21 July 2018, she had taken possession of the appeal property as a second home in order to undertake building works on the property. It was noted that works had commenced on the property on 9 September 2019 and an application was granted for an empty and uninhabitable discount for a maximum period permitted of 12 months. The BA allows 25% discount for this period on properties undergoing major renovation works.
11. The appellant had stated that due to Covid 19 and the restrictions placed upon South Wales, she had been unable to travel from her place of residence in Swansea to where the appeal property was located in order to complete the renovation works.
12. The BA had stated within its submission, that an application granted for an empty and uninhabitable discount had been applied in error for the full 12 months up to 8 September 2020. However, the long term empty premium should have been applied two years after becoming empty, which would have been 19 July 2020 and not 12 months after the application of the uninhabitable discount, as the long term empty premium takes precedence. However, as this had been done in error by the BA, it did not backdate the premium.
13. Therefore, as of 9 September 2020, the BA considered that the property had been empty in excess of two years and a long-term empty premium had been applied to the appeal property at a charge of 100%. The appellant had informed the BA that the appeal property became furnished as of 2 September 2021 and as such, the premium charge had been removed as of that date. The BA considered that the premium had been correctly applied and it sought dismissal of the appeal.
14. The BA had reviewed the account to see if an exemption Class G could be applied, however, the criteria did not meet the guidelines issued. Class G deals with unoccupied dwellings, where occupation is prevented by an imposed planning restriction or is otherwise prohibited by law or by the actions of any public authority with a view to acquiring the property under an Act of Parliament. The BA stated that the appeal property did not fall within the criteria for Class G exemption.

15. Finally, the BA explained that the appellant had been advised on several occasions to complete a Section 13A (1) (c) discretionary application form and submit it for the BA to consider. However, the Section 13A application form had not been completed by the appellant, as she had not felt it necessary to provide her financial details. The BA stated in its rebuttal that as no such application had been submitted, it had issued a response dated 14 November 2021 that despite several suggestions that the form be completed for consideration, this had not happened. Therefore, the BA could not consider or issue a formal decision with regards to discretionary relief.

Decision and reasons

16. 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)."

17. 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.

....

18. The panel found that during the period of time under consideration, the BA's policy to charge a 100% premium was applied equally to all dwellings in its area that had been empty for two years or more and the BA had applied this charge to the appeal property as of 9 September 2020 until it had become furnished on 2 September 2021.

19. 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 appellant was not able to make the journey from her home in Swansea, to the appeal property to continue with the renovations. The appellant had appealed against the premium being applied and considered it financially unfair as she had acted on advice.

20. The panel considered the issue with regards to the appeal property and that the appellant could not travel to the property to carry out outstanding works during the lockdown restrictions imposed upon the country from 23 March 2020. When considering the timeline provided with regards to works commenced etc. the panel noted that works were originally to be completed by 10 February 2020, however, due to poor weather during Autumn 2019 and the restriction of movement regulations due to Covid 19, the building work had not been

completed until 8 September 2020. The property was then handed over to the appellant to complete outstanding works, such as interior painting, sanding and varnishing floors, installation of a kitchen and associated plumbing and electrical work. It was noted that these works had not been completed until 1 February 2021.

21. The panel considered that the fact that restrictions had been in place with regards to travel from 23 March 2020 had obviously delayed the date of the completion of works by a matter of several months, however, the restrictions had not alone been solely to blame for the delay. It was noted that there had been a considerable delay from Planning and Building Control permission being granted to works commencing on the appeal property. The panel also considered that outstanding works could have been completed by tradesperson without the appellant being present at the appeal property, as it was noted that from 5 November 2020, a tradesperson could work in other peoples' homes where necessary.
22. 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% for the period in dispute.
23. The panel also considered whether Class G exemption in accordance with The Council Tax (Exempt Dwellings) Order 1992 (as amended) (SI No 1992/558) was applicable to the appeal property for the period in dispute. The definition of Class G was as follows:

Class G

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;

24. The panel noted that even though the appellant was unable to travel to the appeal property during lockdown, occupation of the appeal property itself had not been prohibited by law and therefore, the criteria with regards to Class G was not met with regards to the appeal property. A similar issue had recently been considered in relation to a previous Valuation Tribunal decision (*Appeal numbers: VT00004392, VT00004396, VT00004397 and VT00004399*). As the issue in dispute involved a novel, important and contentious point of law which had national implications, the appeal had been heard by Mr G Garland, the President of the Valuation Tribunal, as a complex case under Practice Statement 3. Whilst the decision was not binding on the current panel, it gave persuasive authority that should be followed unless new argument on different points were raised. In that appeal, Mr Garland also found that Class G exemption was not warranted as occupation of the property in question was not prohibited by law.
25. Finally, the panel turned its attention to the Section 13A (1) (c) dispute. The BA had not been able to consider whether to apply discretionary hardship relief in accordance with Section 13A (1)(c) of The Local Government Finance Act 1992, as the appellant had not completed the relevant form. As such, it was noted that the BA had made a determination

on 14 November 2021 to not grant any discretionary relief, as no evidence had been provided by the appellant to show financial hardship.

26. 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.

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

28. 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.

29. 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, the panel noted that the appellant had not completed the relevant form, no evidence of her financial details had been submitted to the BA nor the Tribunal for either the BA’s or Tribunal’s consideration.

30. Having given careful consideration to all of the evidence presented, the panel found nothing erroneous with the BA’s decision to apply the long-term empty property premium, not to apply Class G exemption and not to grant discretionary relief. Accordingly, the appeal was dismissed.

Date: 11 January 2022

Appeal Number: VT00006099