

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; Section 13A(1)(c) of the Local Government Finance Act 1992; Discretionary reductions; Appeals dismissed.*

Re: sixty one dwellings as set out in the schedule appended to this decision notice

APPEAL NUMBERS: as set out in the schedule appended to this decision notice

BETWEEN:	Spericle Limited	Appellant
	and	
	Lincoln City Council (Billing Authority)	Respondent

BEFORE: Ms L Dubow (Senior Member)  
Mrs C Parkes

CLERK: Mr A Johnson, Tech IRRV

APPEARANCES: Mr S Vaddaram (director of the Appellant company)  
Mr S Wilkinson (for the Respondent)

DATE: 15 September 2021

REMOTE HEARING

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## Summary of decision

1. Appeal dismissed. The Panel found that the billing authority's decision not to award discretionary reductions was not unreasonable.

## Introduction

2. These appeals had been brought by Spericle Limited (hereinafter referred to as 'Spericle') in accordance with section 16 of the Local Government Finance Act 1992 ('LGFA 1992') against the billing authority's decision not to award discretionary reductions in respect of council tax liabilities for sixty one dwellings it leased.

3. This decision notice does not purport to be a verbatim record of the proceedings. The absence of a reference to any statement or item of evidence placed before the Panel by the parties should not be construed as that statement or evidence having been overlooked.

### **Remote hearing**

4. The President of the Valuation Tribunal for England (the '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.
5. 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.

### **Consolidated hearing**

6. Spericle had submitted sixty one appeals which raised common arguments and evidence. It was therefore considered impractical to hold sixty one separate hearings and, with the agreement of the parties, the appeals were consolidated and listed for a hearing together. This was allowed under regulation 6 of Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

### **Preliminary Points**

#### *Point one*

7. At the commencement of the hearing Mr Johnson drew the Panel's attention to the fact that only fifty two of the appeals had been listed for a hearing and nine had not. The nine appeals which had not been listed for a hearing were VT00006747, VT00006748, VT00006750, VT00006751, VT00006753, VT00006754, VT00006755, VT00008441 and VT00008443.
8. Regulation 30(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 requires the VTE to provide a minimum notice period of fourteen days before a hearing can take place. However, regulation 30(2) allows the VTE to waive the minimum notice period where (a) the parties consent or (b) where there are urgent and exceptional circumstances.
9. On 14 September 2021 (the day before the hearing) Mr Johnson contacted Mr Vaddaram and Mr Wilkinson by telephone to ask if they consented to the unlisted appeals being heard the following day, along with those which had

been listed (and properly notified to the parties). Both verbally confirmed their agreement and subsequently confirmed this by email to Mr Johnson.

#### *Point two*

10. Mr Vaddaram had prepared a two page document which was a response to respondent's rebuttal. Mr Vaddaram asked that this document be admitted into evidence. When asked, Mr Wilkinson advised the Panel that he had no objection to its admission.
11. The Panel retired to consider Mr Vaddaram's application and, after doing so, it decided to admit the document into evidence. The Panel concluded that it did not prejudice the billing authority, it did not introduce new evidence and the relevant parts of the document would, in all likelihood, be brought out during Mr Vaddaram's oral presentation or as a consequence of questioning.

#### **Issue**

12. The issue for the Panel to determine was whether Spericle should receive the discretionary reduction it had sought, relating to council tax liabilities for the 2020/21 financial year for sixty one dwellings located within the billing authority's area.

#### **Evidence and submissions**

13. The Panel considered submissions from both parties which, amongst other things, included Spericle's initial application to the billing authority, the appeal to the VTE, a copy of the billing authority's discretionary reduction policy and various items of correspondence between the parties,
14. The Panel followed the VTE's model procedure and invited Mr Vaddaram to present Spericle's case first.

#### *The appellant's case*

15. Mr Vaddaram explained that Spericle had contracts with the owners of the appeal dwellings to let each individual room, inclusive of all utility costs and council tax. The business operation was, in simple terms, intended to generate a profit once the cost of utilities, council tax and other expenses had been met.
16. Mr Vaddaram explained that Spericle had been adversely impacted by the Covid-19 pandemic because the individuals who were occupying the rooms had been unable to pay their rent which, in turn, impacted upon Spericle's ability to meet its own financial obligations. This situation had, he said, been exacerbated by the Government introducing regulations which prevented the eviction of non-paying tenants.
17. Mr Vaddaram explained that whilst the Government had provided assistance to some business sectors, none had been made available to his. He added

that Spericle had been unable to ease its cashflow by selling any of the appeal dwellings because it did not own them. Furthermore, Spericle had been unable to secure bank loans because it did not have any tangible assets.

18. In the circumstances, Spericle submitted an application to the billing authority seeking a reduction to their council tax liabilities. This was in accordance with section 13A(1)(c) of the LGFA 1992. The billing authority subsequently determined the applications and decided that no discretionary reduction was to be made.

19. Spericle was aggrieved by this decision and it pointed the Panel to the 'Statement of Objectives' in Section 2 of the billing authority's policy:

*In order to comply with Council priorities value for money in the delivery of services needs to be achieved, as well as addressing issues such as the poorest people in Lincoln.*

*Section 13A awards will be used to help mitigate any unforeseen or exceptional hardship circumstances that threaten taxpayers' ability to pay the council tax or maintain their homes.*

20. Mr Vaddaram asserted that approximately 450 people were housed by Spericle on a room only basis and they were amongst the poorest of people in Lincoln who would be adversely affected by losing their homes. Consequently, the lack of support from the billing authority by refusing the application for discretionary reductions was contrary to the stated aim of helping the poorest people of the City. Furthermore, it was Mr Vaddaram's opinion that the Covid-19 pandemic was unforeseen and exceptional circumstance and justified the discretionary reductions that had been sought.

21. Mr Vaddaram referred the panel to section 3.3 of the billing authority's policy which set out the eligibility criteria which, he said, had been met (so far as they were relevant):

- *the applicant's personal circumstances*
- *the applicant's evidence of hardship*
- *the applicant's not having access to assets or savings that could be realised to pay the council tax*
- *any other eligible discounts, reliefs or exemptions that could be awarded*
- *the council tax account and if it is in arrears the council must be satisfied that non-payment is not due to wilful refusal or culpable neglect*

22. Mr Vaddaram highlighted that the billing authority's policy was to be reviewed on 17 September 2020 and was, as a consequence, overdue. Mr Vaddaram questioned the Panel's ability to rely upon the policy in this circumstance.

23. Mr Vaddaram complained that the billing authority had determined the applications for discretionary reductions without seeking any additional information and, when doing so, it had provided only one reason contrary to its policy which stated that 'reasons' would be given.
24. Mr Vaddaram asserted that by dealing directly with Spericle the billing authority had saved time and money by reducing billing authority's administration.

### *The respondent's case*

25. On behalf of the billing authority, Mr Wilkinson explained that discounts awarded in accordance with Section 13A(1)(c) were funded by other taxpayers of the billing authority. Awards in this regard were very much intended to be the exception, especially as the cost was met by the taxpayers of Lincoln.
26. Mr Wilkinson did not dispute the claims that Spericle had been adversely impacted by the Covid-19 pandemic. However, the billing authority had decided that the discretionary reductions sought by Spericle were not appropriate.
27. Mr Wilkinson stated that Spericle's business model was not unique and any decision to award discretionary reductions would set a precedent which others could follow. Similar awards to others within Lincoln would, he said, significantly increase the billing authority's expenditure which would have to be met by budget cuts elsewhere and/or a rise in council tax. Budget cuts and increased council tax would not, he added, support the poorest residents of Lincoln because they would bear the service cuts and the tax increases.

### **Decisions and reasons**

28. Mr Vaddaram had made submissions regarding alleged failures of the billing authority in terms of its administration and timeliness. These have not been referenced in this decision notice (other than in this paragraph) as they were not matters which fell within the jurisdiction of the Panel.
29. On the issues of a statutory right of appeal and VTE jurisdiction, the Panel noted points 3.2 and 3.7 of the billing authority's policy:

3.2

*other than the normal appeal against the application of a discretionary function by Judicial Review there is no right to a statutory appeal of any application decision.*

*and*

3.7

*It is not in the Valuation Tribunal's jurisdiction to investigate an Authority's decision not to exercise its discretion in individual cases. In*

*these instances the Council taxpayer should make an application before the High Court for a judicial review.*

30. Contrary to these policy statements, the Panel was satisfied that a statutory right of appeal did exist *and* that the VTE had jurisdiction to exercise its own discretion in individual cases. This was because section 16(1)(b) of the LGFA 1992 provides a person with the right to appeal to this tribunal if he is aggrieved by any calculation made of an amount of council tax for which he is liable to pay (the definition of a 'person' is defined within Schedule 1 of the Interpretation Act 1978 to include corporate bodies such as Spericle).
31. Furthermore, two appeals that were heard together on 27 May 2014 determined that the VTE does have jurisdiction. These appeals were *SC and CW v East Riding of Yorkshire Council* [2014] VTE (appeal numbers 2001M113393 and 2001M117503). A copy of this had been circulated to the Panel and to the parties prior to the hearing by Mr Johnson (although neither party made any reference to them during the hearing). Whilst these decisions were not binding upon the Panel, they were considered authoritative as they were determined by Professor Zellick who was, at the time, President of the VTE. At paragraph 25 of the decision Professor Zellick set out the points he considered relevant to assist a Panel and a tribunal clerk when dealing with such appeals. It was not considered necessary to repeat verbatim paragraph 25 in this decision notice, however, the Panel was satisfied that it should only reverse the billing authority's decision if it found strong grounds for doing so.
32. On the point of liability, the Panel noted that there was no dispute between the parties as to Spericle being liable to pay council tax in respect of the appeal dwellings. However, and for completeness, the Panel considered it appropriate to set out the legal framework which confirms this.
33. Liability for council tax is usually determined by section 6 of the LGFA 1992. However, section 8(1) of the same Act stipulates that the 'owner' of prescribed classes of dwellings will be liable in substitution of section 6.
34. The regulations which set out the prescribed classes are the Council Tax (Liability for Owners) Regulations 1992. Class C was relevant in this appeal:

*The following are the classes of chargeable dwellings prescribed for the purposes of section 8(1) of the Act -*

*Houses in multiple occupation, etc*

*Class C*

*(a) was originally constructed or subsequently adapted for occupation by persons who do not constitute a single household; or*

*(b) is inhabited by a person who, or by two or more persons each of whom either -*

- (i) *is a tenant of, or has a licence to occupy, part only of the dwelling; or*
- (ii) *has a licence to occupy, but is not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of, the dwelling as a whole.*

35. The Panel was satisfied that Spericle was liable to pay council tax in respect of the appeal dwellings in accordance with section 8(1) of the LGFA 1992 and Class C of the Council Tax (Liability for Owners) Regulations 1992.

36. In view of this, the Panel could not find any merit in Mr Vaddaram's comment that the billing authority had saved money by dealing directly with Spericle when it came to the administration and collection of council tax in respect of each dwelling. As can be seen above, legislation stipulates that Spericle was liable by prescription and so the billing authority had no choice but to issue demand notices to Spericle. Therefore, there was no cost efficient agreement between the parties (intentional or otherwise), the billing authority was simply following the legislation.

37. The Panel noted Mr Vaddaram's comments regarding the billing authority's policy which appeared to be overdue a review. However, the Panel was satisfied that it remained in force and that it could be relied upon in order to understand the way in which the billing authority generally administered discretionary reduction requests at the time of Spericle's applications.

38. The Panel understood that Mr Vaddaram considered Spericle to have met the criteria set out by the billing authority in its policy. However, the Panel found that this, of itself, did not result in the award of discretionary reductions. The billing authority was entitled to consider any application in a broader context and consider any factors it considered relevant. Indeed, the policy document at section 3.4 was observed to state that the billing authority will consider any special circumstances that it may be aware of. In this instance, the Panel considered that, whilst this is not a cash limiting exercise, it was reasonable for the billing authority to take into account the cost burden to Lincoln's taxpayers and the cost of any precedent that may result in further applications which may result in reduced services elsewhere and/or increased future council tax charges.

39. The Panel noted Mr Vaddaram's complaint that the billing authority had determined the applications without seeking any additional information and, despite the policy stating that 'reasons' would be given when a decision had been made, only one had been forthcoming. The Panel was not convinced by these arguments. On the point of additional information, it was clear to the Panel that the billing authority considered itself to be in possession of sufficient information in order to make a decision and that it remained open to Spericle to challenge that decision and provide any additional information it considered necessary. Furthermore, there was not, in the Panel's opinion, anything to prevent the billing authority from providing one reason to decline

an application should it choose to do so. The policy document should, perhaps, be amended to read ‘reason(s)’?

40. The Panel understood Mr Vaddaram’s assertion that approximately 450 people who were housed by Spericle on a room only basis would be adversely impacted by the billing authority’s decision not to award discretionary reductions. However, the Panel also understood that council tax was just one element of the rental amount and there was no evidence to demonstrate the degree of adversity Mr Vaddaram had alleged or that awarding discretionary reductions for the council tax element would prevent any evictions that may ultimately occur.
41. The Panel considered the suggestion that Spericle was experiencing financial hardship. The Panel had regard to the summary of the company’s profits and losses between 2015 and 2020 and it was of the opinion that the success or failure of the company had limited bearing on whether or not a discretionary reduction should be awarded. The Panel did not believe it was for Lincoln’s taxpayers generally to underwrite the risks taken by the business model that had been adopted by Spericle.
42. The Panel noted the contents of an email sent by the billing authority to Spericle on 13 January 2021:

*Whilst the lockdown for Coronavirus has been an exceptional event, the Council has generally considered that as it has affected a wide number of the taxpayers in adverse ways it is not practical to treat it as exceptional for the purposes of discounts awarded under Section 13A(1)(c). In effect the adverse impact felt by the taxpayers is not exceptional when compared with other taxpayers.*

*Therefore, the Council is unable to award you a Section 13A(1)(c) as requested. The Covid-19 pandemic we find ourselves in is unusual, however, your situation is not unique. It is therefore not in the interests of the taxpayers in the City for an award to be made.*

43. Whilst this email was brief and to the point, the Panel did not find its contents unreasonable in view of the circumstances of these appeals.
44. Accordingly, the Panel found no strong grounds to reverse the billing authority’s decision and impose one of its own.
45. In view of the above findings, the Panel dismissed the appeals.

**Date:** 29 September 2021

**Appeal numbers:** as set out in the schedule appended to this decision



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## SCHEDULE

*Appeals consolidated and heard together by the Tribunal on 15 September 2021*

Appeal number	Address	Amount (£)
VT00006693	13 Albany Street, Lincoln, LN1 3JD	1,246.02
VT00006694	6 Albert Terrace, Lincoln, LN5 8DG	1,246.02
VT00006695	14 Avondale Street, Lincoln, LN2 5BL	1,246.02
VT00006696	105a Burton Road, Lincoln, LN1 3LL	1,453.69
VT00006697	51 Canwick Road, Lincoln, LN1 8HE	1,246.02
VT00006698	53 Canwick Road, Lincoln, LN5 8HE	1,246.02
VT00006699	19 Cheviot Street, Lincoln, LN2 5JD	1,246.02
VT00006700	5 Church Drive, Lincoln, LN6 7AX	1,246.02
VT00006701	16 Craven Street, Lincoln, LN5 8DQ	1,246.02
VT00006702	18 Craven Street, Lincoln, LN5 8DQ	1,246.02
VT00006703	44 Cromwell Street, Lincoln, LN2 5LP	1,246.02
VT00006704	47 Cromwell Street, Lincoln, LN2 5LP	1,246.02
VT00006705	5 Cromwell Street, Lincoln, LN2 5LP	1,246.02
VT00006706	104 Cross Street, Lincoln, LN5 7XH	1,246.02
VT00006707	20 Dixon Street, Lincoln, LN5 8AG	1,246.02
VT00006708	81 Dixon Street, Lincoln, LN5 8AQ	1,246.02
VT00006709	4 Florence Street, Lincoln, LN2 5LR	1,246.02
VT00006710	56 Foster Street, Lincoln, LN5 7QF	829.54
VT00006749	96 Foster Street, Lincoln, LN5 7QF	1,246.02
VT00006711	58 High Street, Lincoln, LN5 8AH	1,246.02
VT00006712	25 Hood Street, Lincoln, LN5 7XB	1,246.02
VT00006713	8 Kirkby Street, Lincoln, LN5 7TU	1,246.02
VT00006715	17 Foss Bank, Lincoln, LN1 1TA	829.54
VT00006716	65 Monks Road, Lincoln, LN2 5HP	1,246.02
VT00006717	18 Nelthorpe Street, Lincoln, LN5 7SJ	1,246.02
VT00006718	50 Pennell Street, Lincoln, LN5 7TA	1,246.02
VT00006719	109 Ripon Street, Lincoln, LN5 7NF	1,246.02
VT00006720	2a Ripon Street, Lincoln, LN5 7NL	1,246.02
VT00006752	36 Ripon Street, Lincoln, LN5 7NL	1,661.36
VT00006721	69 Ripon Street, Lincoln, LN5 7NH	1,246.02
VT00006722	79 Ripon Street, Lincoln, LN5 7NH	1,246.02
VT00006723	85 Ripon Street, Lincoln, LN5 7NH	1,246.02
VT00006724	3 Russell Street, Lincoln, LN5 8NN	1,246.02
VT00006725	119 Scorer Street, Lincoln, LN5 7SY	1,246.02
VT00006726	61 Scorer Street, Lincoln, LN5 7XE	1,246.02
VT00006727	58 Shakespeare Street, Lincoln, LN5 8JS	1,246.02
VT00006728	26 Sidney Street, Lincoln, LN5 8BT	1,246.02
VT00006729	25 Spencer Street, Lincoln, LN5 8JH	1,246.02
VT00006730	Flat at 16 St Martins Lane, Lincoln, LN2 1HY	1,453.69
VT00006731	24 Thesiger Street, Lincoln, LN5 7UU	1,246.02
VT00006732	73 Thesiger Street, Lincoln, LN5 7UY	1,246.02
VT00006733	19 Vine Street, Lincoln, LN2 5HZ	1,246.02
VT00006736	22 Vine Street, Lincoln, LN2 5HZ	1,246.02

VT00006734	7 Peel Street, Lincoln, LN5 8AB	645.20
VT00006738	181 Winn Street, Lincoln, LN2 5ER	1,246.02
VT00006739	59 Waterloo Street, Lincoln, LN6 7AQ	1,115.44
VT00006740	128 Monks Road, Lincoln, LN2 5PH	1,453.69
VT00006741	130 Monks Road, Lincoln, LN2 5PH	1,453.69
VT00006742	258 Newark Road, Lincoln, LN6 8RP	1,661.36
VT00006744	68 Ripon Street, Lincoln, LN5 7NQ	1,064.24
VT00006745	2 Sherbrooke Street, Lincoln, LN2 5QA	1,246.02
VT00006746	10 Staunton Court, Lincoln, LN1 1TN	1,246.02
VT00006747	29 Eastbourne Street, Lincoln, LN2 5BW	1,246.02
VT00006748	5 Exley Square, Lincoln, LN2 4WP	2,246.82
VT00006750	39 Monks Road, Lincoln, LN2 5HN	829.54
VT00006751	35 Oakfield Street, Lincoln, LN2 5LU	1,246.02
VT00006753	10 Sibthorpe Street, Lincoln, LN5 7SH	1,198.23
VT00006754	177 Winn Street, Lincoln, LN2 5EW	1,246.02
VT00006755	151 Winn Street, Lincoln, LN2 5EW	1,246.02
VT00008441	3 Shakespeare Street, Lincoln, LN5 8JS	1,020.71
VT00008443	60 Park Street, LN1 1UR	1,078.75
<b>Total:</b>		<b>76,066.39</b>