

VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; calculation; discretionary reduction under section 13A of the Local Government Finance Act 1992; SC v East Riding of Yorkshire Council and CW v East Riding of Yorkshire Council [VTE, appeals: 2001M113393/CTR & 2001M117053/CTR, 27 May 2014; appeal dismissed.

RE: 15 Holays Dalton Huddersfield HD5 9QU

APPEAL NUMBER: VT00007200

BETWEEN:	Mr L O	Appellant
	And	
	Kirklees Council (Billing Authority)	Respondent

PANEL: Mr A Backway (Chairman)
Mr P Phelps

SITTING AT: Remote hearing 1

ON: 10 March 2022

APPEARANCES: Mr L O Appellant

Summary of decision

1. Appeal dismissed the panel could find no error in the determination of the Billing Authority.

Introduction

2. This appeal has been brought in respect of 15 Holays, Dalton (the appeal property).
3. On 16 April 2021 the appellant requested a reduction in the council tax charged on the appeal property following the resolution of a long-standing boundary dispute. The appellant considered the error was caused by the Billing Authority (BA) and he should be given a refund of part of the

council tax he had paid from the date he moved in. He wrote to the BA requesting a refund on 16 April 2021

4. The BA explained that the appeal property was in the lowest council tax band and therefore a reduction was not possible. The appellant responded that he wanted a refund in the amount paid as he did not have the use of the land. The BA considered the application and determined that a reduction could only be considered under its discretionary powers. The BA refused to exercise its discretion in these circumstances.
5. The appellant appealed on 6 June 2021 as he was aggrieved at the billing authority's decision, in which it refused to exercise its discretion to reduce the council tax in accordance with Section 13A (1)(c) of The Local Government Finance Act (LGFA 1992).
6. The appeal had been accepted by the Valuation Tribunal for England as an appeal made under section 16 of the Local Government Finance Act 1992 (the '1992 Act'). Briefly, that section allowed appeals to be made concerning council tax liability including the calculation of bills, the determination of the liable person and disputes over whether dwellings were chargeable.
7. The period in dispute was from 10 October 2016 to 31 March 2019.
8. 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 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) (arrangements for appeals) and regulation (6)(3)(g)(appeal management powers) the VTE may determine the form of the hearing.
9. The BA had notified the panel in advance that they would not attend the hearing and that it agreed to a hearing in its absence.
10. This hearing was conducted via video and telephone conference using Microsoft Teams.
11. The BA had notified the panel in advance that it would not attend the hearing and it agreed to a hearing in its absence.
12. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered when coming to my decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

13. Had the billing authority been correct in refusing to reduce The appellant's council tax liability for the period in dispute using discretionary powers under Section 13A (1)(c) of the LGFA 1992.

Evidence and submissions

14. The billing authority provided a synopsis of the appeal; evidence of the survey report submitted by the appellant and correspondence between the parties.

15. The clerk provided the panel and parties a copy of the judgment in *SC v East Riding of Yorkshire Council and CW v East Riding of Yorkshire Council* [VTE, appeals: 2001M113393/CTR & 2001M117053/CTR, 27 May 2014]; and advised the panel of the test set down in that judgment.

Decision and reasons

16. Council tax was introduced by the Local Government Finance Act 1992 and replaced the Community Charge (or Poll Tax). It is a tax based on the value of a dwelling placed in one of a number of Valuation Lists, with discounts and exemptions granted by the BA where the liable person meets the relevant statutory criteria. Sections 1 and 2 of the Act introduce council tax in respect of dwellings and the concept of liability and it being a daily charge. Section 3 introduces the concept of dwellings and Section 4 states council tax is payable on every dwelling which is not exempt. Section 5 sets out the bands and Section 6 the persons liable to pay council tax.

17. The Local Government Finance Act 2012 introduced a new section 13A into the 1992 Act covering both the new council tax reduction schemes and the former discretionary power to grant relief. The relevant part of section 13A reads:

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.

18. The former President of this Tribunal, Professor Zellick, QC, in *SC v East Riding of Yorkshire Council and CW v East Riding of Yorkshire Council* [VTE, appeals: 2001M113393/CTR & 2001M117053/CTR, 27 May 2014] confirmed that the Tribunal's approach to this type of appeal is the same as for any other liability appeal; at paragraphs 23 and 24 Professor Zellick stated the following:

'23. The Tribunal's approach is thus the same as in every other appeal. This is captured in para. 5 of our Model Procedure (VTE/PS/B1: 22 May 2013):

“(1) It is for the appellant to satisfy the Tribunal that the appeal should be allowed.

(2) All parties must satisfy the Tribunal in respect of any argument or evidence they advance or introduce.”

24. Thus, it is for the appellant to raise doubt as to the correctness of the authority's decision and to argue what the correct decision should have been. The authority may then defend its decision and the panel will decide the appeal on the balance of probabilities. There is no inhibition on the Tribunal's substituting its view for that of the authority, but any such substitution must be soundly and solidly based.’

19. It was not in dispute that the appeal property is in the lowest council tax band and therefore there was no scope to reduce the council tax further through a proposal to the Valuation Office Agency. It was therefore for the panel to consider whether the BA determination to refuse a discretionary reduction is correct.
20. It was not in dispute that the appellant is the liable person, the property does not satisfy the conditions for an exemption and is in Band A the lowest band for council tax purposes.
21. The appellant submitted that he had been in dispute for a prolonged period regarding the boundary of his rented property. It has now been determined that the fence was positioned incorrectly resulting in the loss of 455mm of garden from when he moved into the property until the error was rectified in May 2021. He considered he should receive a refund of a proportion of his council tax due to the loss of this space. He understood that the council tax band was based on the value of the property and believed this loss of the garden area would have affected the council tax due. The appellant considered the error should have been rectified when he first raised the issue.
22. The BA did not attend the hearing and did not include any evidence of its discretionary policy. The decision letter only referred to the fact that the appeal property was in council tax band A the lowest band possible. The BA submitted in the bundle that many properties without gardens were in Band A and therefore the loss of a small part of the garden would have no effect on the council tax band.
23. The panel noted that the original determination made no reference to the BA's discretionary powers and did not give reasons why a discount had been refused. However the BA explained in its submission that the discretionary policy is intended to assist council taxpayers suffering hardship and it was not appropriate to use its discretionary power to reduce the appellant's liability over a land dispute. He had continued to pay his council tax throughout the period in dispute.
24. The panel concluded that in this case the size of the garden had no effect on the determination of the council tax band. The appeal property is placed in band A the lowest possible band and the difference of 455mm in the size of the garden was immaterial to this band. The appellant has paid the council tax during the disputed period and has put forward no compelling argument why the appeal should be allowed. He did not provide any evidence of hardship and relied upon the circumstances of the case being exceptional to argue for a reduction in his liability.

25. The panel was mindful of the words of Professor Zellick that it is for the appellant to satisfy the tribunal that the appeal should be allowed .If it was to substitute it's view for that of the BA it had to have a sound and solid basis for this.
26. Although the panel could understand the position of the appellant, the panel found he had not shown any reason why the BA decision is erroneous and therefore the panel found the BA's decision to refuse a discretionary reduction is correct.
27. In view of the foregoing, the appeal was unsuccessful, and the panel dismissed it.

Date: 04 April 2022

Appeal number: : VT00007200