

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax liability appeal; Sole or main residence; R (on the application of Williams) v Horsham DC [2004] RA 49; Appeal dismissed

Re: 6 Ridgeview Road, Bracebridge Heath, Lincolnshire LN4 2LH

APPEAL NUMBER: VT00007451

BETWEEN: Mr S K
Appellant
and
North Kesteven District Council
Respondent
(Billing Authority)

BEFORE: Mr C M Taylor (Presiding Senior member)
Dr J Johnson (Senior member)

CLERK: Mrs N Grewcock

SITTING AT: Remote hearing

ON: 24 March 2022

APPEARANCES: The Appellant
Mr Wilkinson (Respondent's representative)

Summary of decision

1. The appeal was dismissed. The panel upheld the billing authority's (BA) decision that the appellant's main residence was not at the appeal property for the period 19 February 2021 to 12 October 2021 and therefore the single occupancy discount could not be awarded for this period.

Introduction

2. This appeal was brought in accordance with section 16 of the Local Government Finance Act 1992 (the Act). The appellant was aggrieved by the billing authority's decision not to award the 25% single occupancy discount in respect of the period 19 February 2021 to 12 October 2021.

3. The appellant is aggrieved by the BA's decision, contained in its e-mail dated 31 March 2021, not to award single occupancy discount for the period 19 February 2021 to 12 October 2021. An appeal was received by the Tribunal 24 June 2021.
4. The panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link.
5. To assist the appellant and with the agreement of the parties, the panel varied the Tribunal's Model Procedure as outlined in Practice Statement 8 and invited Mr Wilkinson to present the BA's evidence first.
6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that the panel fully considered all the evidence presented before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue in dispute

7. Whether the appeal property was the appellant's sole or main residence. for the period 19 February 2021 to 12 October 2021.

Evidence and submissions

8. The BA had submitted a bundle of evidence, which, in summary, contained copies of correspondence that had been exchanged between the two parties; photographs of the appeal property showing the kitchen was in a poor state of repair, the boiler had been removed, the poor state of a wall and a soil pipe; the BA's reasons for its decision together with extracts of the relevant legislation

Decisions and reasons

9. Part I of the Local Government Finance Act 1992 (the "Act") makes provision for billing authorities in England and Wales to levy a tax, known as council tax, in respect of domestic hereditaments ("dwellings") within their area.
10. Section 6 (2) of the Act provides that liability to pay council tax on a chargeable dwelling on any day falls to the person first named in the following list (the hierarchy of liability):
 - a) a resident of the dwelling with a freehold interest;
 - b) a resident of the dwelling with a leasehold interest not inferior to any other interest held by any other resident;
 - c) a statutory, secure or introductory tenant who is a resident;
 - d) a resident with a contractual licence;
 - e) a resident;
 - f) the owner of the dwelling.

The person who is liable under section 6 is the person who falls within the first paragraph of the foregoing list, taking paragraph (a) of that list first, paragraph (b) next, and so on.

A "resident" is an individual who has attained the age of eighteen years and has their sole or main residence in the dwelling.

“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;
- (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;

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

11. Section 11 of the Act states (as far as relevant to this appeal):

(1) *The amount of council tax payable in respect of any chargeable dwelling and any day shall be subject to a discount equal to the appropriate percentage of that amount if on that day—*

(a) *there is only one resident of the dwelling and he does not fall to be disregarded for the purposes of discount; or*

(b) ...

(2)...

(3) *In this section . . . “the appropriate percentage” means 25 per cent.*

12. There was no dispute that the appellant was the owner of the appeal property. However, the appellant argued that he resided in the appeal property.

13. The LGFA defines a resident as an individual who has attained the age of eighteen years and has their sole or main residence in the dwelling. The task for the panel was to decide if the appellant’s sole or main residence was at the appeal property.

14. The definition of a person’s sole or main residence is not defined in the council tax legislation, but has been explored by the courts in a number of judgments. The Court of Appeal’s Judgment in *R (on the application of Williams) v Horsham DC* [2004] RA 49 in paragraph 26 Lord Phillips, Master of the Rolls stated that:

“All this reinforces the conclusion (which is one that we would have reached without reference to the dictionary) that in Section 6(5) of the Act “sole or main residence” refers to the premises in which the taxpayer actually resides. The qualification “sole or main” addresses the fact that a person may reside in more than one place. We think that it is probably impossible to produce a definition of “main residence” that will provide the appropriate test in all circumstances. Usually, however, a person’s main residence will be a dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person’s home at the material time. The test may not always be an easy one to apply...”

15. The panel found Lord Phillips' judgement informative in considering where the appellant had his sole or main residence for the period in dispute
16. Copies of correspondence between the parties was supplied by the BA in which the appellant had suggested that he was renovating the property during the period in dispute. The BA allow a 25% discount for properties that require structural alterations or major repair work and it had sent the appellant a claim form to apply for a discount in respect of this, but, it had not been returned.
17. The BA acknowledged that the appellant had supplied some photographs of the appeal property but contended that these were not sufficient to enable a discount to be awarded and that further information was required. The appellant stated that he had been unable to supply some of the information requested at the time because works on the property had not been completed.
18. The BA further contended that for the period in dispute, the appellant was still residing in ministry of defence accommodation which it considered to be his main home and not the appeal property. The BA had come to its conclusion as the appellant had previously advised the BA, he was moving into the appeal property on 12 October 2021.
19. The BA referred to the Court of Appeal judgment *R(Williams) v Horsham District Council*. This judgment is the leading case for appeals regarding sole or main residence. It introduced the 'reasonable onlooker test' in determining the sole or main residence of an individual. The test stipulates that a person's main residence will be the dwelling that a reasonable onlooker with knowledge of the material facts, would regard as that person's home at the material time.
20. To satisfy the definition of resident as stipulated in section 6(5) of the Act, a dwelling must be shown to be the sole or main residence of the individual in question. The BA contended that after considering the facts of the case and applying the 'reasonable onlooker test', it concluded that the appeal dwelling was not Mr King's main residence for the disputed period.
21. The Appellant argued that he had been offered differing advice by the respondent regarding the terminology used and that he believed using, the Oxford English Dictionary definition of 'occupy' that he occupied the appeal property.
22. The appellant also argued that he had opted to apply for the single occupier discount as it was the same level of discount, and it did not matter to him either the grounds or the type of discount that was awarded.
23. Although there was very scant evidence provided by both parties, the panel concluded that the weight of the evidence supported the BA's view that on the balance of probabilities the appeal property was not the appellant's sole or main residence for the period in dispute, particularly in view of the following:
 - a) the appellant was still paying council tax on his MOD accommodation. If he ceased to reside in that property he would not be paying council tax for it;

- b) the photographs provided by the appellant did not suggest that the appeal property was his main residence; and
- c) no evidence was presented by the appellant to prove that his main residence had changed on an earlier date;

24. Given the above, and on the balance of probabilities, the panel were not satisfied on the evidence produced that the appeal property was the appellant's sole or main residence at the material times and it dismissed the appeal.

Dated: 21 April 2022

Appeal number: VT00007451