

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Local Government Finance Act 1992; Hierarchy of Liability; Appeal Dismissed.

RE: 16 Oakfield Road, Falmouth TR11 2HR

APPEAL NUMBER: VT00008684

BETWEEN:	KG	Appellant
	and	
	Cornwall Council (Billing Authority)	Respondent

PANEL: Mr WJ Read (Presiding Senior Member)
Miss L Westwell (Senior Member)

CLERK: Mrs H Beresford

REMOTE
HEARING ON: 14 December 2022

APPEARANCES: The Appellant
The Appellant's wife
Mr M Paget, Billing Authority's representative

Summary of decision

1. Appeal Dismissed.
2. The appellant, as owner, was liable for the council tax in respect of the appeal property for the period from 11 September 2020.

Introduction

3. This appeal has been brought by the appellant, in respect of the following: The appeal was made against the decision of the billing authority to regard him, as owner of 16 Oakfield Road, Falmouth, TR11 2HR, liable for the Council Tax for the period from 11 September

2020. The appeal has been accepted by the Valuation Tribunal for England (VTE) as an appeal made under section 16 of the Local Government Finance Act 1992 (the '1992 Act')

4. In order to assist the appellant, who was not represented, the respondent's representative, Mr Paget, agreed to give his evidence first.
5. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

6. The issue before the panel was whether the appellant, as owner of 16 Oakfield Road, Falmouth TR11 2HR, was liable for the Council Tax for the period from 11 September 2020.

Evidence and submissions

7. The billing authority had provided a bundle of all the evidence submitted by both parties, which included amongst other things: details of the dispute; the relevant legislation; a copy of the billing authority's decision letter; the appeal form and evidence; and the billing authority's statement.
8. Mr Paget argued that under Section 6 of the Local Government Finance Act 1992, where there is no resident in a property it is the 'owner' who is liable for the Council Tax charge. In this case the tenants had moved out of the appeal address on 11 September 2020. The property was furnished and unoccupied from that date. The appellant had contacted the billing authority and stated that he should not have to pay council tax as the property could not be let due to the anti-social behaviour of the residents at 18 Oakfield Road, Falmouth.
9. Mr Paget did not dispute that the residents of 18 Oakfield Road had caused a nuisance and may well have caused the appellant's tenants to leave the property. However, he contended that the billing authority had to operate within council tax legislation and under that legislation there were no exemptions or discounts available in these circumstances.
10. Mr Paget stated that the billing authority had signposted the appellant to Cornwall Housing Ltd and the Local Government and Social Care Ombudsman, who may be able to provide further advice.
11. Mr Paget submitted that the appellant had been invited to apply for discretionary relief under section 13A of the Local Government Finance Act 1992, but the appellant had declined. He stated that the provision of the council's discretionary relief scheme allowed relief on the grounds of hardship, crisis, or a major event such as flooding. Whilst no such application had been made, he submitted that the anti-social behaviour did not amount to a crisis or major event. He therefore asked the panel to dismiss the appeal.
12. The appellant had submitted that he believed that it was unfair of the billing authority to charge him council tax given that it was the residents of a local authority property that had rendered the appeal property incapable of being let due to the antisocial behaviour. He believed that he should be compensated for the nuisance caused as all of this was beyond his control, the council's housing department would not even let the appeal property to a person on the council's waiting list, on his behalf, due to the residents of the neighbouring property.

13. The appellant submitted that he had not applied for section 13A discretionary relief as he was not suffering hardship and did not want to provide details of his finances. Speaking on behalf of the appellant, his wife submitted that she believed the section 13A relief should be granted under the provision for crisis as she and the appellant found this to be a critical situation for them. She also mentioned that there is a housing crisis in Cornwall.
14. Finally, the appellant argued that he was unable to sell the property as he would be forced to disclose information about the ongoing problems with the neighbours and no-one would purchase the property.

Decision and reasons

15. In arriving at its decision, the panel had regard to section 6 of the Local Government Finance Act 1992, which outlines the persons liable to pay council tax as follows:

“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.”

16. The terms owner and resident are defined in section 6 (5) as follows:

“(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.”

17. Material interest is defined in section 6 (6) as follows: “material interest” means a freehold interest or a leasehold interest which was granted for a term of six months or more.”

18. The Council Tax (Exempt Dwellings) Order 1992 [SI 1992 No. 558] (the “Exempt Dwellings Order”) makes provision for classes of dwelling which are “exempt dwellings” for the purposes of section 4 of the 1992 Act. So far as is relevant to these proceedings, it provides —

3 *A dwelling is an exempt dwelling for the purposes of section 4 of the Act on a particular day if on that day it falls within one of the following classes—*

...

Class G an 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;

19. The panel was aware that the appellant had been unable to let the property and that when the property had been let tenants had refused to stay. However, it was also aware that it could only ensure that the billing authority had acted within the relevant legislation. In this case it noted that under the legislation that governed council tax liability there was no discount or exemption which could be applied as occupation of the property was not prohibited by law as in Class G.

20. The panel was aware that this was a very unfortunate situation but, unfortunately, it had no discretion in this matter and could only apply the law as it stood.

21. With respect to discretionary relief, the panel accepted that the anti-social behaviour might be considered to be exceptional circumstances, however, as no formal application for discretionary relief had ever been made by the appellant, that was not an issue that the panel could consider at this hearing. If the appellant were to make an application for discretionary relief in the future and it was declined, he would have the right of appeal regarding that decision to this Tribunal.

22. In appeals of this nature, the onus is on the appellant to prove their case. Unfortunately for the appellant in this case he had provided no evidence to persuade the panel that he should not be held liable for the council tax.

23. As the panel was satisfied that no one was resident at the property from 11 September 2020, the liability under the hierarchy fell on the owner.

24. Therefore, the appellant, as the owner and freeholder, held the material interest in the property and as such became liable for the council tax from 11 September 2020; the panel therefore dismissed the appeal.

Date: 9 January 2023

Appeal number: VT00008684

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.