

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council Tax Liability Appeal; Landlord disputing liability contending tenant became resident before the date notified to the Billing Authority; material interest; section 6 of the Local Government Finance Act 1992; MacAttram v London Borough of Camden [2012] EWHC 1033; appeal dismissed.*

Re: 24 Albert Street, Burnley, BB11 3DB

APPEAL NUMBER: VT00009615

BETWEEN:	MF	Appellant
	And	
	Burnley Borough Council (Billing Authority)	Respondent

SITTING: Remotely via Microsoft Teams Conference Call

ON: 24 October 2022

PANEL: Miss L Sharkey (Presiding Senior Member)  
Mr K Richardson

CLERK: Ms N Shepherd

APPEARANCES: Melanie Poole, on behalf of the billing authority

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## Summary of decision

1. Appeal dismissed. The panel found Accent Housing liable at 24 Albert Street, Burnley, BB11 3DB (hereinafter referred to as the “appeal property”) for the period of 24 November 2020 to 1 September 2021.

## Introduction

2. This appeal has been brought in accordance with section 16 of the Local Government Finance Act 1992 (“the Act”). The appellant was aggrieved by the decision of the respondent to hold Accent Housing liable for council tax purposes at the appeal property from 24 November 2020 to 1 September 2021.

3. The appellant was employed by Accent Housing, who was the landlord of the appeal property. Accent Housing became liable for council tax purposes at the appeal property from 23 February 2020, following the death of a previous tenant. A tenancy was then signed with a new tenant with effect from 24 November 2020.
4. Following correspondence with the new tenant, confirmation was received that she did not move into the appeal property until 2 September 2021. The respondent found Accent Housing to be liable for council tax purposes until this date. The appellant disagreed with this determination, requesting the respondent reconsider its decision on 29 November 2021. The respondent advised the appellant on 22 December 2021 that it would not be amending its decision. The appellant was also informed of his appeal rights on this date and subsequently an appeal was received by this Tribunal on 22 December 2021.
5. This statement of reasons is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of their presented submissions were fully considered before the panel came to its decision. Consequently, the absence of a reference to any statement should not be construed as it having been overlooked.

### **Preliminary Issue**

6. The appellant did not attend the hearing of the appeal, nor did they advise the Tribunal at least 24 hours before the hearing that they were not going to attend or be represented at the hearing.
7. The panel had regard to Regulation 32 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations"). This provides –

#### **"32 Hearing in a party's absence**

If a party fails to attend a hearing the VTE panel may proceed with the hearing if

(a) it is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) it considers it is in the interests of justice to proceed with the hearing."

8. The clerk advised the panel that the notice of hearing was sent by email to the appellant on 9 August 2022 and that subsequently a meeting invite, and appointment time had also been emailed to the appellant. The clerk had also tried contacting the appellant on numerous occasions in the week prior to the hearing by both telephone and email but had received no response. In view of this the panel was satisfied that the appellant had been notified, or that reasonable steps had been taken to notify the appellant of the hearing.

9. The panel concluded that it was in the interests of justice to continue to avoid unnecessarily delaying the determination of the appeal.

## **Issue**

10. The issue for the panel to determine was whether the respondent was correct in its determination that Accent Housing was liable for council tax purposes at the appeal property from 24 November 2020 to 2 September 2021.

## **Evidence and submissions**

11. A consolidated evidence bundle was provided which was comprised of the arguments for both the appellant and respondent and included various correspondence between the parties, the appellant's appeal form, a call log from Accent Housing relating to the appeal property and relevant legislation.
12. Prior to the hearing the clerk to the Tribunal circulated a copy of the High Court judgment of *MacAttram v London Borough of Camden* [2012] EWHC 1033 to both parties and the panel.

## **Decision and reasons**

13. Section 6 of the Local Government Finance Act 1992 determines who is the liable person for council tax:

### **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

14. Resident is defined in the Local Government Finance Act 1992 as:

“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.

15. The panel therefore had to determine who was the ‘owner’ of the property, for council tax purposes under Section 6(2)(f), for the period in dispute. Owner is defined in the 1992 Act at section 6 (5) –

‘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.”

16. Section 6(6) provided the following definition of material interest:

‘material interest’ means a freehold interest or a leasehold interest which was granted for a term of six months or more;

17. The appellant submitted that he did not think Accent Housing should be liable at the appeal property for the period in dispute as it was let out to a tenant. He believed she was resident in the appeal property from the date her tenancy commenced, demonstrated by the log of calls provided within the evidence submission. These were requesting repairs be carried out in respect of the appeal property.

18. The respondent advised that the log of calls did not demonstrate that the tenant was resident. Therefore, it had requested further information from Accent Housing which was not provided. The tenant however had submitted a signed statement advising she did not become resident at the appeal property until the 2 September 2021. Prior to this date she stated she was residing at another property, where she was in receipt of council tax reduction. Based upon this information, the respondent deemed the appeal property to be unoccupied for the period in dispute.

19. As the respondent deemed there to be no resident, in accordance with the hierarchy of liability, liability fell to the owner. Therefore, regard to the tenancy was needed to establish who had a material interest in order to be held liable for council tax. The respondent advised that the tenancy agreement between Accent Housing and the tenant stipulated that the property was let out on a weekly basis. Therefore, in accordance with the legislation as the tenancy was not granted for a period of six months or more, it was Accent Housing who held the material interest.

20. The panel had regard to the High Court judgment, *Macattram v Camden LBC*, which confirmed that at the expiry of the fixed term, a new and different term commenced; a monthly periodic tenancy (in cases where rent was payable monthly). As the monthly periodic tenancy was not a leasehold interest which was granted for a term of six months or more, the tenant in such an arrangement could not be liable for council tax if he or she was not resident in the dwelling. Liability passed to the landlord in such circumstances.
21. The panel found that the appeal in question was similar to the *Macattram* case in that if the tenant was not resident at the appeal property for the period in dispute, she did not have a 'material interest' within the meaning of section 6(6), despite having a tenancy. Her liability did not commence until the date her occupation of the appeal property began.
22. The panel was aware that in cases of this nature, the persuasive or legal burden of proof was on the appellant to satisfy it that the appeal dwelling was occupied for the period in dispute. Ultimately, Accent Housing was in a better position to prove the property was occupied by a tenant than the respondent was to prove otherwise.
23. The panel considered both parties' arguments, the relevant legislation and case law. The panel found there to be no substantial evidence to show that the appeal dwelling was occupied for the period in dispute by a tenant. As such, the property could be determined to be empty and therefore as the owner and in accordance with Section 6 (2) (f) of the Act, Accent Housing could be deemed to be liable for council tax purposes.
24. The panel therefore concluded that there was nothing erroneous with the decision of the respondent in determining Accent Housing to be liable for council tax purposes in respect of the appeal dwelling from 24 November 2020 to 1 September 2021. It was a decision the respondent was entitled to reach having regard to the available evidence. In view of the foregoing the appeal is dismissed.

**Date:** 21 November 2021

**Appeal number:** VT00009615

### **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.