

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal: the panel determined that the tenants did not hold a material interest in the appeal property on the day they remained tenants but were no longer resident; section 2 and 6 of the Local Government Finance Act 1992; appeal dismissed.

Re: The Poplars, 130 Chester Road, Frodsham WA6 9NN

APPEAL NUMBER: VT00009795

BETWEEN: DV-W Appellant

and

Cheshire West and Chester Council Respondent
(Billing Authority)

PANEL: Mrs L Bryning (Senior Member)
Dr P Thomson

CLERK: Mrs C McAvoy

REMOTE HEARING No.2 on 19 July 2022

APPEARANCES:

The appellant

Mr I Schroder for the respondent

Summary of decision

1. Appeal dismissed; the panel found that the appellant had been correctly held liable for the council tax at The Poplars, 130 Chester Road, Frodsham WA6 9NN on the 30 June 2021.

Introduction

2. The Valuation Tribunal for England received an appeal, brought by the appellant under section 16 of the Local Government Finance Act 1992, (the '1992 Act'), against the Billing Authority's (BA) decision to hold him liable for council tax at The Poplars, 130 Chester Road, Frodsham WA6 9NN for the date of 30 June 2021.
3. The appellant was owner and landlord of the property. He was aggrieved by this decision of the BA as he submitted that 30 June 2021 was the last day of the tenancy agreement. As such, his contention was that he should be held liable from 1 July 2021 not 30 June 2021. Therefore, the period of dispute was for one-day: 30 June 2021.
4. 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 by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

5. The issue before the panel was whether the appellant had been correctly held liable for the council tax charge for 30 June 2021.

Evidence and submissions

6. It was noted that the BA had not submitted an evidence bundle to the Tribunal two weeks prior to the hearing as directed in the Tribunal's Standard Directions.
7. The panel was therefore provided with the appellant's submission which included the appeal form, his skeleton argument, a tenancy agreement, and a copy of the Lands Tribunal judgment, *Tarwood Limited v Antonino Giordano & Desiree Giordano*.
8. The panel had also been provided with an exchange of emails which included the BA's decision and referenced the relevant law. The parties confirmed that this was the BA's submission, as such, the BA's evidence was submitted but earlier than the directed two weeks. Both parties were content that they had exchanged evidence and were able to proceed.
9. With the agreement of the parties, and to assist the unrepresented appellant, the panel varied the procedure outlined in the Consolidated Practice Statement PS8 - Model Procedure and invited the respondent to present his evidence first.
10. To summarise the respective arguments, Mr Schroder, for the BA, argued that having regard to section 2 of the 1992 Act, which refers to liability of tax being determined on a daily basis and having particular regard to the sentence, 'it shall be assumed that any state of affairs subsisting at the end of the day had subsisted throughout the day', the appellant was correctly held liable. He

submitted that this establishes very clearly the principle that the situation at the end of the day is assumed to have subsisted throughout the day. Therefore as, at the end of 30 June 2021, the tenancy had ended and the appellant, who was the owner of the property, was correctly held liable for the council tax on that day.

11. The appellant's position was that the legal entitlement and liability for 30 June 2021 rested with the tenant, arising by virtue of the tenancy agreement. He argued that the legal state of affairs subsisting at the end of the day was that the tenant was the liable person, and therefore was the liable person for the whole of that day. In support of his submission, he referred to a Lands Tribunal judgment. A full copy of the judgment was provided, and the appellant specifically referred to the following paragraphs whereby the judge had regard to extracts from the book 'The Interpretation of Contracts':

Paragraph 13 of the judgment.

"Where under contract a period of time is expressed to run from a certain day, the day named is generally excluded in computing the period. But where a period of time is expressed to begin on a certain day, the day named is generally included in computing the period. However, the context may displace the general rule."

Paragraph 14 of the judgment

"So where an interest (e.g. under a lease) is expressed to run from a particular date, prima facie the interest begins at midnight at the end of named day. Thus in Ackland v Lutley (1839) 9 Ad. & El. 879, Lord Denman said: 'The general understanding is, the terms for years last during the whole anniversary of the day from which they are granted.

.....

Thus in Ladyman v Wirral Estate Ltd Fisher J said: 'It seems to me that a general rule can be derived from the authorities, namely, at prima facie, a lease in those terms commences from the first moment of the day following that named, but it seems to be equally well established by the cases that this is only a prima facie indication, and that it can be displaced if, on the construction of the lease or agreement for lease, a contrary intention can be derived'"

12. He therefore submitted that the term expired at midnight on 30 June 2021, and the state of affairs subsisting at the end of the day is that the tenant was still "the tenant" and therefore the liable person.
13. Prior to the hearing, the clerk circulated section 6 of the 1992 Act and the High Court judgment *Macattram v Camden LBC* [2012] EWHC 1033 (Admin) to all parties. In response, the appellant referred to *Leeds City Council v Broadley* [2016] EWCA Civ 1213 so a copy of this was also sent to the respondent to ensure all parties were aware of the judgments and could comment on them at the hearing if they felt necessary.

14. At the hearing, during the appellant's oral submission, he stated that he did not consider the *Macatram v Camden* judgment relevant to his case, as it was under grounds (6)(2)(f) and the tenant was still the tenant. Furthermore, he submitted that the tenant's 'residency' ended at the point the tenancy ended and he referred to *R (On the Application of Williams) v Horsham District Council* [2004] EWCA Civ 39 in respect of determining sole or main residence for council tax.

Decision and reasons

15. Council tax was introduced by the 1992 Act (as amended). It is a tax based on the value of a dwelling as shown in a valuation list (placed in one of eight bands), with discounts and exemptions granted by the local Billing Authority where the dwelling meets relevant statutory criteria. Sections 1 and 2 of the 1992 Act introduce council tax in respect of dwellings and the concept of liability and provides that liability is determined on a daily basis. Section 2 provides the following:

2 – Liability to be determined on a daily basis

(1) Liability to pay council tax shall be determined on a daily basis.

(2) For the purposes of determining for any day –

(a) whether any property is a chargeable dwelling;

(b) which valuation band is shown in the billing authority's valuation list as applicable to any chargeable dwelling;

(c) the person liable to pay council tax in respect of any such dwelling; or

(d) whether any amount of council tax is subject to a discount and (if so) the amount of the discount.

it shall be assumed that any state of affairs subsisting at the end of the day had subsisted throughout the day.

16. Liability for council tax is determined by section 6 of the 1992 Act. Section 6 provides the following hierarchy of who is liable to pay the council tax on a dwelling on any day:

(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 the 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 was 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.

17. The definitions of resident and owner were contained in section 6(5) of the 1992 Act as follows:

“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.

“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.

18. Section 6(6) defines a “material interest” as a freehold interest or a leasehold interest which was granted for a term of six months or more.

19. In this case, the BA had commenced the appellant’s liability with effect from 30 June 2021, on the basis that the tenant had vacated and therefore, at the end of the day, the property was unoccupied and thus, the owner is liable. The appellant considered his liability should commence from 1 July 2021, as the tenant was legally liable, as tenant, until the end of day on 30 June 2021.

20. Having regard to the governing legislation, the panel found that the statute clearly provides that council tax liability is determined on a daily basis and when determining on any day the person liable to pay council tax, it shall be assumed that any state of affairs subsisting at the end of the day had subsisted throughout the day. In accordance with this, the panel found that it had to consider who was liable, in accordance with section 6 of the 1992 Act (as stated above), having regard to who was ‘resident’ or if necessary ‘owner’ at the end of the day.

21. A person can only have one main residence for council tax purposes and therefore if a tenant has moved out, it is probable that the address they have moved to then becomes their main residence, especially as, at that point, there was no intention for the tenant to return. The panel was not provided with details of where the tenant had moved to but based on both parties' submissions, it was satisfied that at the end of the day, the property was unoccupied. The appellant had stated the following within his skeleton argument:

'It is admitted that the tenancy ("Tenancy") ceased on 30 June 2021, by virtue of notice to quit dated 30 May 2021 served by the tenants. It is not admitted that the tenants vacated on the 30 June 2021; it may have been earlier, but the Appellant will aver that the matter of the date on which the tenant vacated is irrelevant.'

22. The panel did not consider the date the tenant vacated to be irrelevant; on the contrary it was required in order to determine when the property became unoccupied and thus when council tax liability falls on the 'owner' under section 6(2)(f). When asked at the hearing, the appellant submitted that he could not give the exact date for when the tenant moved out but confirmed that as of 30 June 2021 the tenant had moved out. However, the tenancy was still in place until the end of the day, so if he entered the property he would have been in breach of contract and the Harassment Act.

23. The panel was satisfied that there was no resident under section 6(2) (a) to (e) at the end of the day on 30 June 2021. It therefore turned its considerations to who was owner under section (6)(2)(f) at the end of the day on 30 June 2021.

24. The panel accepted the appellant's argument that the tenancy was still in place until the end of this day and accepted the appellant's submission that this was the date the notice ended and thus the Lands Tribunal's case in which the appellant was relying on supported this argument. However, whilst the tenant and landlord contractual relationship continued by virtue of the tenancy agreement, which may impact the landlord's right to enter the property, as he had asserted, and would continue the tenant's rental liability; council tax liability is determined by section 6 of the 1992 Act. As such, the panel was obliged to have reference to this, and it was aware that a tenancy agreement could still be in place, but it does not always equate to a 'material interest' for the purpose of determining council tax liability under section (6)(2)(f).

25. The panel therefore found it had to consider who held the material interest at the end of the day on 30 June 2021. In doing so, the panel reviewed the tenancy agreement provided, which was a one-year fixed term from the 1 August 2019. As the period in dispute was outside of this specified term, the panel was aware of binding case law relating to consideration of who holds the material interest for council tax liability purposes following the expiry of the initial fixed term, namely the *Macattram v Camden LBC* and the *Leeds City Council v Broadley* judgments.

26. In *Macattram*, Her Honour Judge Robinson held that the statutory periodic tenancy, which arose by the actions of the parties, after the expiry of the fixed term was not a material interest for the purposes of section 6. At paragraph 17 and 18 the Judge states the following:

'17. The whole premise of the inference of a periodic tenancy which arises after expiry of a fixed term by virtue of the payment and acceptance of rent is that by their conduct the parties are taken to have agreed to enter into a tenancy. Although the relationship of landlord and tenant continues, the agreement between them is not one of continuation of a previous fixed term that has expired, rather it is the commencement of a new and different term of years, a monthly periodic tenancy. Although that tenancy is on the same terms and conditions as the previous lease, that again is based on an inference from the party's conduct. Those previous terms only apply insofar as they are not inconsistent with the terms of the new and different tenancy, namely the monthly periodic tenancy.'

18. For all these reasons, I consider that the periodic tenancy which arose upon the payment and acceptance of rent after expiry of the 3year fixed term was a new tenancy or leasehold interest rather than a continuation of the fixed term.'

27. In the *Leeds v Broadley* judgment, it was agreed that tenancies which have a fixed term and then have provision to continue on the same contractual basis, until brought to an end in the normal way by notice, are single tenancies which meet the statutory definition of a material interest.

28. The *Leeds v Broadley* judgment therefore did not override the *Macattram* judgment, but rather different tenancy terms existed. At paragraph 28 of *Broadley*, it compares the differences between the terms of the tenancy agreements presented on each of the cases:

"28. It follows that I consider that the case of Trustees of the Berwick Settlement v Shropshire CC (2014) VTE 3245M131738/176C, another decision of the Valuation Tribunal (Young V-P, Mrs S Gurney and Mrs D Foster), was correctly decided. The tenancy there granted was for an initial term of 12 months. Clause 1.7 of the tenancy agreement then provided that:

"Unless the Tenant gives notice in accordance with clause 1.81 below then at the end of the fixed term the tenancy hereby created shall continue as a contractual periodic tenancy from month to month until terminated in accordance with the provisions of this agreement. For the avoidance of doubt, the continuing tenancy shall not be a statutory periodic tenancy".

As the Vice-President said in paragraph 22 of his judgment in that case,

“The tenants had been granted a leasehold interest for a term of six months or more and the contractual term of that lease had not ended, being extended from month to month as part of the term. The fact that they no longer held under the initial term is not, in the judgment of the Panel, a relevant consideration: the leasehold interest “was granted” (applying the words of section 6(6) of the 1992 Act) on 23 July 2010 for a term of six months or more and they continued to hold the appeal dwelling under the extended contractual term until it was agreed their notice expired. They continued to have that material interest in the whole of the dwelling. In Macatram there was no contractual provision for the original term to continue: a new tenancy had arisen by the demand and acceptance of rent.”

29. In the present appeal involving The Poplars, the tenancy agreement provided was dated 29 June 2019 and the term specified the following:

Term: a fixed term of 1 (one) year from and including the tenancy commencement date

Term Commencement date: 1 August 2019 or if left blank, the date of this agreement

30. In accordance with this, there was no contractual continuation stated under the term section. The panel also found the following clause within the tenancy agreement to be of assistance:

‘15. Expiry of the Tenancy

15.1 At the end of this Tenancy (however determined), the tenant shall return to the Property and the contents to the Landlord in the condition required by this agreement.

15.2 If the Landlord allows the Tenant to remain in the property after the term has expired then a statutory periodic tenancy shall arise under section 5(2) of the Housing Act 1988. To end the periodic tenancy, the Tenant shall give the landlord one month’s notice in writing. The notice must end on the day before the rent is due.’

31. The panel therefore found that upon expiration of the initial fixed term, a new statutory periodic tenancy commenced rather than a contractual continuation of the original tenancy term. As such, this was more in line with the *Macatram* case which confirmed that when a statutory periodic tenancy arises following an initial fixed term, it is, in effect, a new monthly tenancy. The panel therefore found that the monthly periodic tenancy arising following the expiry of the one-year fixed-term tenancy was not a material interest for the purpose of section 6 of the 1992 Act, because it was not a tenancy ‘granted’ for a period of six months or more.

32. In conclusion, at the end of the day of 30 June 2021, in the absence of a resident or an inferior material interest, the appellant, as owner of the property, was liable in accordance with section 6(2)(f) of the 1992 Act.

33. In view of the foregoing, the panel upheld the BA's decision, and the appeal was dismissed.

Dated: 4 August 2022

Appeal No: VT00009795

Appeal rights

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.