

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; Local Government Finance Act 1992; Hierarchy of liability; Material Interest; Macatram v London Borough of Camden [2012] EWHC 1033 (Admin); Appeal dismissed.

Re: 16 Morgan Drive, Greenhithe DA9 9DT

Appeal Number: VT00010714

BETWEEN:	MG	Appellant
	and	
	Dartford Borough Council (Billing Authority)	Respondent

PANEL: Mrs A Adeola (Presiding Senior Member)
Mr W Read (Senior Member)

APPEARANCES: MG (the Appellant)
Mr T Dennington (for the Respondent)

CLERK: Mr A Johnson

DATE: 30 January 2023

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

Summary of decision

1. This appeal was dismissed. The panel upheld the billing authority's decision that the appellant was liable for council tax in respect of 16 Morgan Drive, Greenhithe DA9 9DT (hereafter referred to as 'the dwelling') for the period in dispute, i.e. 10 July 2020 to 11 February 2021.

Introduction

2. This decision notice is not intended to be, and does not purport to be, a contemporaneous or verbatim record of the proceedings.
3. This appeal had been made to the Valuation Tribunal for England in accordance with section 16 of the Local Government Finance Act 1992 (hereafter referred to as 'the 1992 Act'). The appellant had challenged the billing authority's decision that she was liable for the council tax in respect of the dwelling for the period in dispute.

4. At the commencement of the hearing it became apparent that Mr Read, a senior member of the panel, was experiencing some technical difficulty with his visual link and was unable to be seen during the remote hearing. However, Mr Read was able to see the parties and he was able to hear their submissions in full. For the avoidance of any doubt, Mr Read's technical difficulty did not hinder his ability to fully consider and determine this appeal along with the other senior member of the panel, Mrs Adeola.

Preliminary matters

Preliminary matter one

5. The appellant had alleged that the respondent had failed to supply its evidence to her at least six weeks before the remote hearing which had been scheduled to take place on 29 September 2022 (and was subsequently postponed by the Tribunal). This, she also alleged, had prejudiced her case by reducing the amount of time she had to provide her response. Consequently, she had asked that the respondent be prevented from being able to submit any further evidence. When this matter was raised by the clerk during the remote hearing the appellant advised that she wished to withdraw it.
6. As the request had been withdrawn the panel was not required to consider the matter and it therefore chose not to make any comment in respect of it.

Preliminary matter two

7. In preparation for the remote hearing the clerk considered the lease between the appellant (the lessor) and the respondent (the billing authority was also the lessee) to be pertinent and, on 24 January 2023, he emailed the parties asking that one or both of them provide a copy. On 25 January 2023 Mr Dennington, on behalf of the respondent, provided a copy. This was accepted into evidence without any objection from the parties.

Preliminary matter three

8. On 27 January 2023 the appellant emailed the Tribunal and the respondent to correct part of the evidence she had submitted to the respondent. When asked, Mr Dennington stated that he had no objection and it was therefore accepted into evidence by the panel.

Preliminary matter four

9. Attached to the email of 27 January 2023, was an eight page document which the appellant had titled "Appellant response to Billing Authority Rebuttal 29 December 2022". The panel considered the Standard Directions at PS1 of the Consolidated Practice Statement for the Valuation Tribunal for England 2022 which do not provide an appellant the opportunity to submit a rebuttal once the respondent has submitted its evidence. However, when asked, Mr Dennington stated that the billing authority would not be prejudiced if the appellant's rebuttal was accepted into evidence and he did not raise any objection.

10. Whilst the panel considered the late submission of this document to be a serious breach of the Standard Directions it was mindful of Mr Dennington's comments and the fact that no prejudice was claimed in the event it was accepted into evidence.
11. The panel therefore decided not to apply a sanction and it allowed the document to be added into evidence.

Issue

12. The issue for the panel to determine was whether the respondent had correctly held the appellant to be the liable person for council tax in respect of the dwelling for the period in dispute.

Evidence and submissions

13. The panel had been provided with an evidence bundle which contained the submissions of both parties. The items referred to in the preliminary matters were added.

Decision and reasons

14. This circumstances giving rise to the appeal can be briefly summarised as follows:
 - (a) With effect from 10 April 2017 the respondent leased the dwelling from the appellant. The term was for a fixed period of two years. This, the panel understood, was for the purpose of temporarily housing local people who would otherwise be homeless.
 - (b) The parties were unable to agree a renewal lease and, upon expiry of the two year fixed term, the lease was replaced by a periodic monthly tenancy.
 - (c) Mr Dennington submitted that the dwelling became unoccupied on 29 September 2019 and a locally determined discount of 100% was applied for a period of one month from this date. Mr Dennington further submitted that the dwelling was not occupied again after this date. The appellant argued that the dwelling became unoccupied on 22 March 2020.
 - (d) On 10 July 2020 the respondent returned the keys to the dwelling by putting them through her letterbox. It was the respondents position that its liability for council tax ended on this date and, having determined that the appellant had become liable (as the 'owner' of the dwelling) it issued her with a council tax demand notice.
 - (e) The appellant did not accept surrender of the dwelling and she referred the panel to the High Court case of *Padwick Properties Limited v Punj Lloyd Limited* [2016] EWHC 502 (Ch) in support of her view that there must be clear and unequivocal conduct by both parties in order for a lease to be surrendered; the appellant had been clear that she had not

accepted surrender of the dwelling and would not be doing so until some remedial work had been completed to a satisfactory and acceptable standard.

- (f) The appellant accepted surrender of the lease on 11 February 2021 prior to its sale.

15. It was clear to the panel that the appellant was relying upon the contractual lease agreement and the respondents breach of their contractual obligations which required remedy before the appellant would accept the return of the dwelling. However, these contractual matters were between the parties (in their capacities as lessor and lessee) which could not override statutory legislation contained within the 1992 Act which sets out the rules for determining the person liable for council tax. Therefore, the panel found that the evidence relating to condition of the dwelling together with the case of *Padwick Properties* was not materially relevant when determining liability for council tax in this appeal.

16. The legislation which is pertinent is contained within section 6 of the 1992 Act:

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. a resident with a freehold interest in the whole or any part of it;
- b. a resident with 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;
- ea. in the case of a dwelling situated in the area of a billing authority in England, the person is a mortgagee in possession of the owner's interest in the dwelling; or
- f. he is the owner of the dwelling.

17. Whilst subsection ea was inserted into section 6(2) of the 1992 Act by section 13(1) of the Local Government Finance Act 2012, it has not been enacted by the Secretary of State.

18. Subsections a to e of the hierarchy refer to a person being liable for council tax as a 'resident' and, in the case of an unoccupied dwelling, the 'owner' is liable. These terms are defined within section 6(5) of the 1992 Act as:

Resident - an individual who has attained the age of 18 years and has his sole or main residence in the dwelling

Owner - a person who:

- a. 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.

19. A 'material interest' is defined within section 6(6) of the 1992 Act as:

"...a freehold interest or a leasehold interest which was granted for a term of six months or more."

20. In determining this appeal the panel also had regard to the High Court case of *Macatram v London Borough of Camden* [2012] EWHC 1033 (Admin), the circumstances of which were found to be remarkably similar to those in this appeal.

21. The appellant argued that the respondent was liable for the payment of council tax for the period in dispute in accordance with section 6(2)(b) of the hierarchy. However, Mr Johnson advised in open Tribunal that the respondent could not be liable in accordance with this subsection because, as a billing authority, it did not meet the definition of a 'resident' (i.e. it was not an individual who had attained the age of 18 and it did not have its sole or main residence in the dwelling). Mr Johnson further advised that it was for the Tribunal to determine liability in accordance with subsection 6(2)(f). This is supported by paragraphs 31 and 32 of Her Honour Judge Robinson's judgement in *Macatram* supports this finding:

"31. That should be sufficient to dispose of this appeal, however, I deal briefly with the other grounds relied upon. Turning to the argument that the hearing was unfair; first, the appellant complained that she put her case before the Tribunal on the ground that Camden was a resident of the property with a leasehold interest and therefore liable for council tax by virtue of section 6(2)(b) of the 1992 Act. At the hearing, the Chairman appears to have stated that she should be putting her case under section 6(2)(f),

32. It is quite right that in her written submissions to the tribunal, the appellant expressly refers to section 6(2)(b) by reference to a case called Kinsley v London Borough of Barnet [2009] EWHC 464 (Admin), where the court considered the definition of resident in various subparagraphs of section 6(2). However, in my judgment, Camden

could never have been resident itself, being a local authority, and so could never have been liable under section 6(2)(b), and the Tribunal was quite correct to address the issue which arose before them as to whether it was the appellant or Camden who were liable to pay council tax under subsection (2)(f) as an owner. Therefore, far from the appellant's case suffering any prejudice in this regard, the Tribunal were assisting her in putting her case forward”.

22. The panel, having considered Mr Johnson's advice and the principle set out in *Macattram*, found that it must reject the appellant's argument that the respondent was liable for the payment of council tax for the period in dispute in accordance with section 6(2)(b) of the 1992 Act. Instead, liability for the period in dispute would be the 'owner' in accordance with subsection 6(2)(f).
23. The lease which commenced on 10 April 2017 was for a term of two years and, because it was for a period of more than six months, the panel found that it created a 'material interest' for the duration of the fixed term, thereby resulting in the respondent being liable for council tax as its owner ('owner' in accordance with the 1992 Act's definition) for periods when it was without a resident. This, of course, was not in dispute.
24. It was common ground between the parties that when the two year fixed term expired the tenancy continued on a month by month basis. However, the panel found that it was *not* a continuation of the two year fixed term; this had been replaced by a monthly periodic tenancy. Whilst this did not materially change the contractual relationship between the lessor (the appellant) and the lessee (the respondent), it did have significant implications for council tax liability for periods where the dwelling was without a resident. This is because a monthly periodic tenancy does not confer a 'material interest' because it is not granted for a period of six months or more. This is supported by paragraph 17 in *Macattram*:

“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.”

25. In view of the foregoing, the panel found that the appellant was liable for the payment of council tax in respect of the dwelling for any day it was without a resident once the fixed two year term had expired, which included the period in dispute. This was because the appellant held a material interest in the dwelling which was not subject to a material interest which was inferior to her interest.

26. The panel found that it was unnecessary for it to address the dispute between the parties concerning the date the dwelling became unoccupied and, therefore, entitlement to the locally determined discount (which applies for one month from this date). If the respondent's date was accepted then the one month would run from 29 September 2019; if the appellant's date was accepted it would run from 22 March 2020. In both cases, the period of one month will expire before the period in dispute.
27. As the panel found nothing erroneous with the billing authority's determination that the appellant was liable for council tax in respect of the dwelling for the period in dispute it dismissed this appeal.

Date: 2 February 2023

Appeal number: VT00010714

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.