

# VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; the panel determined that the tenants held a material interest in the appeal property on the day they remained tenants but were no longer resident; section 2 and 6 and 11A of the Local Government Finance Act 1992; Appeal upheld.*

RE: 32 Haining Gardens, Mytchett, Camberley, Surrey, GU16 6BJ

APPEAL NUMBER: VT00011011

BETWEEN:	RG	Appellant
	and	
	Surrey Heath Borough Council (Billing Authority)	Respondent

PANEL: Mrs N Crawshaw (Senior Member)  
Mrs FER Duggan

CLERK: Jan Smith IRRV Tech

SITTING ON: Remote Hearing 3 - 24 May 2023

APPEARANCES: RG (Appellant)  
Mr R Fox - On behalf of Billing Authority (Respondent)

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## Summary of Decision

1. Appeal allowed. The panel found that the Billing Authority (BA) had been incorrect in holding the appellant liable for the council tax at 32 Haining Gardens, Mytchett, Camberley, Surrey GU16 6BJ for a single day on 28 February 2022.

## Introduction

2. This was an appeal made under section 16 (1) of the Local Government Finance Act 1992 (the 1992 Act). The appellant was aggrieved by the billing authority's (BA's) decision dated

12 April 2022 to hold him liable for council tax as owner of the appeal property on 28 February 2022.

3. The appellant was the landlord of the appeal property. The property had been let to tenants A on a six month fixed term Assured Shorthold Tenancy (AST) from 1 September 2021 and subsequently let to tenants B on a 12 month fixed term AST from 1 March 2022.
4. The dispute was regarding council tax liability council tax for a single day, this being 28 February 2022.
5. The BA maintained that since tenants A had vacated the appeal property during the day of 28 February 2022, having removed the furniture, that the property was vacant at the end of that day.
6. The BA had determined that the appellant, as owner, held a material interest in the property at the end of the day on 28 February 2022 and therefore he was liable for council tax until the property was relet to tenants B on 1 March 2022.
7. The appellant argued that the contractual terms of his tenancy agreements were for complete months ending at midnight. He maintained that tenants A held a material interest in the appeal property until the end of the day on 28 February 2022 and that the BA should not have made him liable for council tax on that date.
8. The BA had a local policy to award a discount of 0% where a property became vacant. In line with its policy a council tax bill had been issued to the appellant in the sum of £5.04 this being the charge calculated for a single day in respect of the appeal property.
9. This hearing was held remotely via Microsoft Teams.
10. This document is not and does not purport to be a full verbatim record of proceedings.

## **Issue**

11. The issue before the panel was whether the appellant had been correctly held liable for the council tax charge for 28 February 2022 and if he was, whether the BA was correct to not award a discount from the first day the appeal property became empty and unfurnished.

## **Evidence and submissions**

12. The appellant had not submitted any evidence to the BA four weeks prior to the hearing as directed in the Tribunal's Standard Directions.
13. The panel was therefore provided with the appellant's appeal statement and copies of tenancy agreements for the period in dispute.
14. The BA's evidence bundle contained a statement of case and decision notice, together with email exchanges between the appellant and the BA.
15. The clerk to the Tribunal provided a relevant VTE decision VT00009795 DV-W v Cheshire West and Chester Council (2022) to assist the panel at the hearing. The proceedings were

temporarily adjourned to allow the parties and panel to read it. The panel proceeded with the hearing after checking with the parties that they were ready.

## Decision and reasons

16. 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.*

17. 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 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*

18. 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.*

19. 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.

20. In this case the BA had held the appellant liable for council tax on 28 February 2022 on the assumption that the actions of tenants A in handing back the keys and vacating the property sometime during the day before midnight brought their tenancy to an end. The BA therefore took the view that, at the end of the day, the property was vacant and the appellant , as owner, held the material interest and was liable for council tax in accordance with section 6 (f) of the 1992 Act.

21. The Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012 (SI 2012/2965) abolished the Class C exemption from council tax with effect from 31 March 2013. From that date , the exemption was replaced by a determination by billing authorities which it may decide what discount, if any, to offer and for how long. Whilst the BA had not submitted a copy of its determination to apply a local discount, the panel accepted its verbal evidence that

from 1 April 2020 the BA had set the local discount where a property becomes empty and unfurnished to be 0%.

22. The appellant described the check-out process during the morning of 28 February 2022 in that the tenants were met at the property and a full inspection and inventory of the contents was undertaken. The tenants then handed over the keys and removed their furniture. The appellant stated that he did not regard the fixed term as having ended at that time and that under the terms of their contractual agreement the tenants A were entitled to return to the property until midnight if, for example, they had to collect a forgotten item.
23. The appellant had submitted copies of tenancy agreements for both tenants A and tenant B, the former was an AST for 6 months commencing 1 September 2021 and the latter an AST for 12 months commencing 1 March 2022. He asserted that tenants A contract ended at midnight on 28 February 2022 and tenants B contract commenced at the start of the following day.
24. In reaching a decision the panel had to consider whether there had been an implied surrender of the lease by operation of law at the time the keys were given back to the landlord and the tenants vacated the property. The panel were mindful of the appellant's assertion that should the outgoing tenants need to regain access to the property at any time up to midnight on 28 February 2022 he would be required to facilitate this and return the keys to them. This introduced an element of equivocation that led the panel to conclude that surrender was not complete until the fixed term tenancy expired by effluxion.
25. Having considered all the evidence the panel concluded that while the appellant had a material interest in the property, he could not be liable to pay council tax because tenants held a material interest inferior to his at the end of the day on 28 February 2022. Ultimately, there was a valid six month AST in existence at the time. The BA decision to hold the appellant liable on 28 February 2022 was therefore incorrect and panel upheld the appeal.

## **Order**

26. Under the provisions of regulation 38(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the billing authority to reverse its decision since the appellant was not liable for council tax in respect of the appeal property on 28 February 2022.
27. Under regulation 38(9), the billing authority must comply with this order within two weeks of the date of its making.

**Date:** 6 July 2023

**Appeal number:** VT00011011

## **Right of further 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.

