THE VALUATION TRIBUNAL FOR ENGLAND

Council tax liability appeal; premium for long-term empty dwellings under section 11B of the Local Government Finance Act 1992; appeals dismissed.

Re: East Gate Lodge, Brockley Hill, Stanmore, Middlesex HA7 4LP

Vine Cottage, Brockley Hill, Stanmore, Middlesex HA7 4LN

APPEAL NUMBER: VT00009237 & VT00011803

BETWEEN:	Shree Swaminarayan Mandir Bhuj UK	Appellant
	and	
	London Borough of Harrow (Billing Authority)	Respondent

PANEL: Ms C Jones (Senior Member)
Mr S Bamawo

CLERK: Mrs C McAvoy

REMOTE HEARING No.2 on 4 July 2022

APPEARANCES:

Mr Alan Murdie (representative for the appellant)

Mr Mitesh Patel for the appellant

Mr Michael Rhimes (representative for the respondent)

Summary of decision

1. The appeals were dismissed; the panel found that the long-term empty dwelling premium had been correctly applied in the calculation of the appellant's council tax liabilities in respect of East Gate Lodge, Brockley Hill, Stanmore, Middlesex HA7 4LP and Vine Cottage, Brockley Hill, Stanmore, Middlesex HA7 4LN with effect from 3 September 2018.

Introduction

2. The hearing consolidated two appeals, both of which were brought pursuant to section 16(1) of the Local Government Finance Act 1992 (the “1992 Act”), in that they challenged the respondent’s calculation of the council tax liability, specifically the charging of the long-term empty dwelling premium.

3. The appellant company is a charity and took over ownership of the properties with effect from 3 September 2018. The council tax liability commenced from the date of ownership and the respondent billing authority applied the long-term empty dwelling premium as follows:

   3 September 2018 to 31 March 2019 - 50% premium charged
   1 April 2019 to 31 March 2020- 100% premium charged
   1 April 2020 to 31 March 2021- 200% premium charged
   1 April 2021 to 31 March 2022- 300% premium charged
   1 April 2022 to 31 March 2023- 300% premium charged

4. The properties were purchased as empty properties with the intention to bring them back into use. The appellant’s aim was to develop the site into a multiple faith school. The charging of the premium over the two properties had resulted in an increased council tax liability of over £40,000 since 2018. The appellant’s main contention was that the premium which had been charged was based on how long the properties had been empty, which preceded the date of its ownership. It was therefore disputed that the actions of the previous owner could impact the amount of council tax charged.

5. 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 item of evidence, should not be construed as it having been overlooked.

Issue

6. The issue was whether the billing authority was correct in applying the long-term empty dwelling premium in the calculation of the appellant’s council tax liabilities in respect of East Gate Lodge, Brockley Hill, Stanmore, Middlesex HA7 4LP and Vine Cottage, Brockley Hill, Stanmore, Middlesex HA7 4L.

Evidence and submissions

7. Both parties appointed counsel, Mr Murdie for the appellant and Mr Rhimes for the respondent, and it was agreed that the appeals were to be consolidated and heard together.

8. In advance of the hearing, the panel was presented with an evidence bundle containing contributions from both parties to this appeal, together with a bundle of the authorities referred to and the skeleton arguments from both parties.

9. Mr Patel, for the appellant, was called upon and provided oral submissions at the hearing. He provided information regarding the Charity and the plans it had for the purchased site; detailed the condition of the properties which were derelict and sat on the site a former hospital; together with an overview of the history and relationship between the appellant and the respondent billing authority.

10. In brief, Mr Murdie, for the appellant, submitted that it was the position of the appellant that it should not be liable for empty periods which were incurred before the date the billing authority resolved to set a premium, and that the legislation should not be implied as acting retrospectively to penalise a person who did not have ownership or liability in earlier years.

11. In support, he referred to the interpretation of the relevant legislation and the requirement for there to be a material interest under section 6 of the Local Government Finance Act 1992. He also referred to caselaw and Bennion, Bailey and Norbury on Statutory Interpretation. It was therefore argued that it is without question a legitimate method of purposive statutory construction that one should seek to avoid interpreting a statute so as to create absurd or unlikely results. In this case, it was the appellant's position that the billing authority had sought to impose liability before even the imposition of the empty property premium. It was submitted that neither the provisions of section 11B of the 1992 Act or the resolution passed allow for retrospective imposition of liability on a person such as the appellant who had no ownership or liability in the period concerned

12. Mr Rhimes, for the respondent, submitted that section 11B of the 1992 Act is clear. There is no added requirement that the particular council tax payer must have had a material interest in the property throughout the period of time a dwelling meets the criteria of a "long-term empty dwelling". He considered that the appellant's argument was, in reality, a disagreement with the scheme that Parliament sought to introduce in the 2012 Act and the 2018 Act and it was put to the panel that there is simply no textual support for the appellant's interpretation in the 1992 Act.

13. Further, the respondent seeks only to impose council tax liability from September 2018 when the appellant purchased the Property and that is precisely what the respondent has done, by applying the premium due as of September 2018 when the appellant obtained a material interest in the Property (but not before).

Decision and reasons

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

15. The properties subject to this appeal were both shown in the valuation list and were not exempt dwellings, thus, were chargeable dwellings in accordance with section 4 of the 1992 Act.

16. Liability to pay council tax is to be determined having regard to the provisions of Section 6 of the 1992 Act. This provides as follows:

"(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 or 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. Section 6, paragraph 5 defines both owner and resident for the purpose of this act 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.

"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, paragraph 6, defines material interest as; -

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

19. The appellant acquired the properties on 3 September 2018 and the properties were unoccupied. This fact was not disputed. As the property was vacant, the appellant was held liable for council tax as owner in accordance with section 6 (2)(f) of the 1992 Act. The panel was therefore satisfied that the appellant was liable as owner and was liable in respect of each day during the period in dispute.

20. Due to both properties' empty status, the billing authority had applied a long-term empty dwelling premium to each. The panel had regard to the relevant legislation in respect of the charging of the long-term empty dwelling premium.

21. Section 12 of the Local Government Finance Act 2012 inserted Section 11B into the Local Government Finance Act 1992. This enabling legislation provided the billing authority with a power to introduce a council tax premium with effect from 1 April 2013, which increased the council tax payable by such percentage of no more than 50%.

22. The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 amended section 11B of the 1992 Act which substituted the maximum 50% to the 'relevant maximum'. Section 11B of the 1992 Act (as amended) provides the following:

'11B Higher amount for long-term empty dwellings: England

(1) For any financial year, a billing authority in England may by determination provide in relation to its area, or such part of its area as it may specify in the determination, that if on any day a dwelling is a long-term empty dwelling—

(a) the discount under section 11(2)(a) shall not apply, and
(b) the amount of council tax payable in respect of that dwelling and that day ("the relevant day") shall be increased by such percentage of not more than the relevant maximum as it may so specify.

(1A) For the financial year beginning on 1 April 2019 the "relevant maximum" is 100.

(1B) For the financial year beginning on 1 April 2020 the "relevant maximum" is—

(a) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is less than 5 years, 100;
(b) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is at least 5 years, 200.

(1C) For financial years beginning on or after 1 April 2021 the “relevant maximum” is—

(a) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is less than 5 years, 100;
(b) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is at least 5 years but less than 10 years, 200;
(c) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is at least 10 years, 300.

…….’

23. Section 11B (8) of the Local Government Finance Act 1992 defines a ‘long-term empty dwelling’ as follows:

‘For the purposes of this section, a dwelling is a “long-term empty dwelling” on any day if for a continuous period of at least 2 years ending with that day—

(a) it has been unoccupied, and
(b) it has been substantially unfurnished.’

24. In accordance with this, a billing authority can make a determination to charge a long-term empty dwelling premium but can only excise this within the legislative allowances. A copy of the Council meeting minutes had been provided to the panel which demonstrated that on 21 January 2013, the respondent’s members resolved to charge a 50% premium with effect from 1 April 2013. On 28 February 2019, in accordance with the changes to the legislation, it resolved to charge the following:

Long term empty property criteria giving rise to additional Council Tax premiums;	From 1/4/2019 Financial Year	From 1/4/2020 Financial Year	From 1/4/2021 Financial Year
For Properties which have remained empty for at least 2 Years	100%	100%	100%
For Properties which have remained empty for less than 5 Years	N/A	100%	100%
For Properties which have remained empty for at least 5 & but less than 10 Years	N/A	200%	200%

For Properties which have remained empty for at least 10 Years	N/A	N/A	300%

25. The panel was therefore satisfied that the respondent billing authority had increased the council tax charge by determination within the legislative allowances. The panel was also mindful that, pursuant to 66 of the 1992 Act, such a determination made under this section could only be questioned by way of judicial review.

26. The panel attached little weight to Mr Murdie's reference to section 11B(6) in that ' A billing authority which makes a determination under this section must publish a notice of it in at least one newspaper circulating in its area and do so before the end of the period of 21 days beginning with the date of the determination'. Firstly, because this had not been put to the respondent prior to the hearing to afford the opportunity to respond to this point and secondly, the panel found it to be a moot point given section 11B(7) goes on to provide that failure to comply with subsection (6) does not affect the validity of a determination.

27. The fact that the appeal properties were long-term empty dwellings was not disputed. The billing authority submitted that they had been unoccupied and substantially unfurnished since at least 2008 and an inspection report dated February 2007 confirmed that the properties were derelict, and the Land Registry entry read as 'empty'. Mr Patel had also provided detail of the condition of the properties, reinforcing this point.

28. The panel did not agree that the appellant had been held liable for periods before its ownership. Liability had been determined under section 6 as referred to above and the appellant had only been held liable, as owner, since 3 September 2018. Section 6 was not – as contended by the appellant – being ignored by the respondent. The panel found that the respondent had correctly determined when the appellant became liable, and the billing authority calculated the appellant's council tax liability for each subsequent day. This daily liability included a long-term empty dwelling premium in accordance with section 11B of the 1992 Act and the respondent's determinations under that section.

29. The panel understood that the appellant's contention was that the actions of the previous owner could not impact the appellant's charge, but the panel was not persuaded that this interpretation of the statute was supported. On the contrary, the panel found that the law was clear in that the premium is applied to a property which met the definition of long-term empty dwelling. The definition of long-term empty dwelling in section 11B refers to the classification of the dwelling itself and how long it has been unoccupied and substantially unfurnished. Therefore, it was apparent that when applying the premium, it is based on how long the property had been vacant, irrelevant of the liable person. If Parliament had intended the empty period to effectively 're-set' due to a change in owner/liable person(s) then it would say as such.

30. The panel also attached little weight to the argument regarding a bar on retrospective billing. The determinations were made by the billing authority in advance of the relevant financial years. Furthermore, section 12(15) of the 2012 Act, which inserted section11B into the 1992 Act provided the following:

   'A determination may be made for the purposes of the section inserted by subsection (2) for a financial year beginning with or after 1 April 2013 (and it does not matter whether the period mentioned in subsection (8) of that section begins before this section comes into force).'

31. Similarly, the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 provided a materially identical provision:

   '2 Higher amount for long-term empty dwellings

   …………….

      (4) The amendments made by subsections (1) to (3) have effect for financial years beginning on or after 1 April 2019 (and it does not matter whether the period mentioned in section 11B(8) of LGFA 1992 begins before this section comes into force).'

32. This therefore supports that the vacant period prior to the beginning of the tax year is to be considered and stating this within the legislation demonstrates that this point was considered by Parliament when passing the legislation. In the panel's view, this also reinforces that it is the classification of the dwelling being considered and for how long a period.

33. For these reasons, the panel was satisfied that, in considering whether a long-term empty dwelling premium is to be included within the calculation of the liability for any day, it is a factual question whether on that day the dwelling stands to be a 'long-term empty dwelling'. If it does (and the relevant determinations have been made, as they have in this case), then the relevant premium set out in the determination is applied in the calculation of the liability. This does not represent any kind of retrospective liability or the passing forward of another person's liability as contended by the appellant; it is the liability calculated for that day based upon the factual circumstances.

34. In conclusion, the panel found that the appellant had been correctly held liable under section 6 of the 1992 Act and had not been made liable prior to its ownership commencing on 3 September 2018. The respondent had resolved to charge a premium in line with the powers set by legislation. The properties met the qualifying criteria of being a long-term empty dwellings for each day during the period in dispute and as such, the premiums had been applied correctly.

35. In view of the foregoing, the appeals were dismissed.

Date: 1 August 2022
Appeal numbers: VT00009237 & VT00011803