

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; Local Government Finance Act 1992 Section 6, non-resident owner disputes liability; Appeal allowed.

Re: Annexe 30 Ivy Cottages, Meadow Lane, Denton, M34 7PZ

APPEAL NUMBER: VT000011899

BETWEEN

JB

Appellant

and

Tameside Metropolitan Borough Council

Respondent

(Billing Authority)

PANEL: Mr F J Rogers (Senior Member)

Ms R Punia

CLERK : Ms J Routledge

SITTING AT: Remote hearing 3 via Microsoft Teams.

ON: 3 February 2023

APPEARANCES: SG (Appellant)

Ms E Fiveash (representing the respondent)

Summary of decision

1. Appeal allowed. The panel was satisfied that there was a resident who held a material interest in the Annexe at 30 Ivy Cottages Meadow Lane Denton (the appeal property) during the period in dispute.

Introduction

2. The appeal concerns liability for council tax on the appeal property which is an annexe within the grounds of the appellant's home.

3. The appellant advised the Billing Authority (BA) on 18 January 2021 that her goddaughter was occupying the annexe, she requested a 50% discount as the annexe was occupied by a relative. This was refused the BA advising that a goddaughter was not a close relative.
4. The BA made a number of enquiries regarding the occupation of the annexe including an inspection by an officer. The BA then determined that the appellant should remain liable for council tax as the tenancy agreement stated the rent included council tax.
5. On 11 July 2022, the Valuation Tribunal received an appeal from the appellant because she was aggrieved at the BA's determination that she was liable for the council tax on the appeal property. This appeal was made in accordance with Section 16 (1) of the Local Government Finance Act 1992 (LGFA 1992).
6. The period in dispute is from 5 October 2020 to 2 December 2022.
7. The appellant had advised the clerk in advance that she had no means of participating by video and therefore joined the hearing by audio only. She confirmed she was able to hear the panel, clerk and respondent clearly and was able to participate fully in the hearing.
8. In order to assist the appellant (who was not professionally represented) and with the agreement of the parties, the tribunal panel varied its model procedure and invited the BA representative to present her evidence first.
9. This decision notice is not intended to be, and does not purport to be, a contemporaneous or verbatim record of the proceedings.

Issues

10. Whether the appellant was the liable person during the period in dispute.

Evidence and submissions

11. The respondent provided the panel with a joint bundle including an introduction giving the background and history of the case; correspondence between the parties; and evidence of the tenancy agreement.
12. In advance of the hearing the clerk provided the parties with a copy of Section 6 of the LGFA 1992 as the relevant legislation had not been included in the submission.
13. The BA acknowledged that the annexe had been occupied during the period in dispute. It had considered initially that this may be a contrived tenancy as the appellant had previously questioned why she should pay council tax, stating the annexe was derelict. However an inspector had visited and confirmed occupation of the annexe. Having considered the terms of the tenancy agreement, the BA decided the appellant should remain liable for council tax because if this was not paid the tenant could be summonsed for something she had paid.

14. The BA confirmed that it had granted a single occupier discount during the period in dispute. It was also confirmed that the annexe is subject to an exemption whilst it is unoccupied.
15. The appellant explained the annexe was in the garden and did not use separate services. She was not aware that it was separately rated when she purchased the house. She has now been told there is a planning restriction on the annexe that it could not be occupied other than by a relative. She did not understand why she had been made to pay the council tax when her goddaughter was living in the annexe.

Decision and reasons

16. In coming to its decision, the panel considered the best starting point was to have regard to regulatory provisions contained within section 6(2) of the LGFA 1992. This provided a hierarchy of who was liable to pay the council tax on a dwelling as follows:
 - (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 was not inferior to another such interest held by another such resident.
 - (c) A resident with a statutory, secure or introductory tenancy of the whole or any part of the dwelling.
 - (d) A resident with a contractual licence to occupy the whole or any part of the dwelling.
 - (e) A resident.
 - (f) The owner of the dwelling.
17. The person who was liable under section 6(2) was the person who fell within the first paragraph of the foregoing list, taking paragraph (a) of that list first, paragraph (b) next, and so on.
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.
19. The BA had argued that the tenancy had included rent, the panel found this was a contractual matter which has no bearing on the matter of liability. It was the provisions of Section 6 which determined the person who is liable for council tax in this case.
20. The panel found that the legislation was clear, the person who fell within the highest paragraph on the hierarchy of liability is the person liable for the council tax. In accordance with Section 6(2) a resident is above an owner on

the hierarchy of liability and therefore the appellant is not liable for council tax on the appeal property during the period in dispute.

21. Accordingly the appeal was allowed.

Date: 17 February 2023

Appeal number VT00011899

Order

22. Under the provisions of Regulation 38 (2) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Billing Authority to reverse its decision that the appellant is liable for council tax on the appeal property from 5 October 2020 to 2 December 2022 within two weeks of the date of this order.

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.