

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Local Government Finance Act 1992; The Council Tax (Exempt Dwellings) (England) Order as amended; Class G; Improvement Notice; Appeal dismissed.

RE: 38A Balfour Road, Derby DE23 8UN

APPEAL NUMBER: VT00011962

BETWEEN:	SB	Appellant
	and	
	Derby City Council	Respondent
	(Billing Authority)	

PANEL:	Mr Carlton Williams	(Chair)
	Mr Alan Wheeler	

CLERK:	Mr Duncan Adamson IRRV (Hons)
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REMOTE HEARING 1:	1 February 2023
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PARTIES PRESENT:	NM,MH,SB and AM	Appellant and family
	Ms Emma Whitehead	Respondent's representative

Summary of decision

1. The appeal against the billing authority's (BA) decision not to exempt the appeal property from council tax was dismissed.

Introduction

2. This appeal had been brought in respect of the following: the appellant was the sole owner of the property at 38A Balfour Road, Derby DE23 8UN and the property became empty for the period 17 November 2020 to 11 September 2021.
3. The BA had awarded an exemption in accordance with its empty property policy for the period 17 November 2020 to 14 December 2020. The period in dispute was therefore 14 December 2020 to 11 September 2021.

4. On 16 November 2018 the BA's Environmental Health Office served an Improvement Notice and a Suspended Improvement Notice on the owner of the appeal property requiring work to be undertaken to bring it up to current housing standards.
5. At the end of September 2021 the appellant's husband emailed the BA's council tax team in response to a demand for payment that he had received advising that he had been informed by a member of the housing standards team, Ms Sara Brown, that the improvement works had been completed. Further, that the works were in compliance with the required standards and the property could now be re-let.
6. On 30 September 2021 a council tax officer replied stating that the BA was unable to award an exemption. Various correspondence took place between the appellant and the BA until, on 7 April 2022, the BA advised there was no prohibition order in place or planning restriction and therefore no exemption could be awarded. The decision notice advising the appellant of his appeal rights was issued on 13 May 2022.
7. The appellant appealed to this tribunal on 19 July 2022.
8. This is not intended to be an exhaustive record of the proceedings. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Preliminary Issue

9. With the agreement of the parties the panel varied the procedure outlined in the Consolidated Practice Statement PS8 - Model Procedure and requested the respondent to present her evidence first.

Issue

10. The issue for the panel to determine was whether the property should or should not be exempt from council tax.

Evidence and submissions

11. The appellant and three members of her family were in attendance at the hearing and the panel established that whilst the husband of the appellant had been engaged with the BA in respect of the property, it was the daughter that was to represent the appellant at the hearing.
12. The start of the hearing was delayed as the appellants were able to be seen but were not able to be heard. They then switched to another laptop and the panel found that they were then able to participate fully throughout the hearing.
13. The respondent had served, prior to the hearing, a bundle containing the evidence of both parties to the appeal. This contained the BA's summary of the case and the decision notice and extracts of the relevant legislation and case law. On 31 January 2023 the appellant had issued further documentation in respect of the appeal.
14. This included a copy of the Improvement Notice, notes of an inspection report and some other correspondence. This was immediately forwarded to the BA representative and the panel. The BA respondent stated that she was happy for the evidence to be included.

15. The appellant had submitted that she could not re-let the appeal property for the period when work was being undertaken. This involved fitting a new kitchen, installing a bathroom and some other more minor works.
16. The property could not have been occupied and she had submitted an email from Mrs Sara Brown, the BA's Senior Environmental Health Officer, dated 26 November 2021 which stated that:-
- “For the period when work was being undertaken to fit a new kitchen in to the rear reception room of the flat and install a bath in the bathroom it would not have been possible for the property to be occupied”
17. The appellant felt that she had been misled as she thought no council tax would have been due for the relevant period and had suffered financial loss as the tenant at the time stopped paying rent on the property.
18. Once the EHO had given permission for the property to be re-let, it was placed back on the rental market.
19. The respondent stated that only an improvement notice had been served on the property. There had never been a Prohibition Notice served and there was no entitlement to an exemption for the appeal property.

Decision and reasons

20. The panel made reference to The Council Tax (Exempt Dwellings) Order 1992 S.I. No. 558 1992 as amended.

“ 1. A dwelling is an exempt dwelling [...] on a particular day if on that day it falls within one of the following classes- [...]”

In particular, class G which stated:

“Class G: an unoccupied dwelling the occupation of which is prohibited by law, or which is kept unoccupied by reason of action taken under powers conferred by or under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it.”

21. The panel noted that an Improvement Notice had been served by the Environmental Health department of the BA but this did not have any effect on any liability for council tax. The Notice clearly stated that the works were to be completed within 60 days after the end of the current tenancy or before the flat is re-let.
22. The panel found that it was clear that occupation of the property at 38a Balfour Road had not been prohibited by law. No such notice had been served.
23. The panel found that the appellant had not provided any evidence that the occupation of the property was prohibited by law.
24. The panel therefore dismissed the appeal.

Date: 16 February 2023

Appeal number: VT00011962

Rights 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.