

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeals; section 11B of the Local Government Finance Act 1992; empty property premium council tax; appeal against Billing Authority's decision to impose the premium; appeals allowed.

RE: Flats 1A, 1, 2, 3, 5, 6, 8 and 9, Marske Hall, Marske, Richmond, North Yorkshire DL11 7NB

APPEAL NUMBERS: VT00012472, VT00012474, VT00012475, VT00012476, VT00012477, VT00012478, VT00012479 and VT00009546

BETWEEN: E J S and N J H Joint Appellants

and

Richmondshire District Council
(Billing Authority) Respondent

BEFORE: Mr A V Clark (Vice President)

CLERK: Mr R Gath IRRV (Hons)

REMOTE HEARING 4 on 14 October 2022

APPEARANCES: EJS (Joint Appellant)
Mr J Hunt (Appellant's Counsel)
Mr N White (Appellant's solicitor)
Ms L Wilson-Barnes (Respondent's Counsel)
Ms B Symonds (Respondent's representative)

Summary of decision

1. Appeals allowed. I determined that the appeal properties should be exempt from the empty property premium as the Billing Authority had failed to correctly apply their approved and published policy on empty properties.

Introduction

2. These were council tax liability appeals made under section 16 of the Local Government Finance Act 1992 (the "Act"). They challenge the Respondent
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Billing Authority's (BA) decision that the joint Appellants were not exempt from the empty property premium in respect of each of the appeal properties.

3. The joint Appellants initially appealed the BA's decisions to this Tribunal on two grounds. Firstly, that the BA's policy allows for properties that were being marketed for sale or where there was a legal issue preventing the sale of the property not to have the premium applied. Secondly, that the BA should consider a discretionary reduction under section 13A(1)(c) of the Local Government Finance Act 1992 (the Act).
4. The period in dispute was primarily from 24 July 2019 (when an option to purchase agreement was entered into) to 22 September 2022 (when a sale of the appeal properties was completed as per the option to purchase agreement). However, it was noted that the BA had imposed an empty property premium in respect of the appeal properties from a variety of dates (as set out in the Council Tax bills provided as part of the hearing bundle)
5. The appeals had previously been listed for a hearing before a lay panel on 12 July 2021. Although the panel could not reach agreement on the substantive appeal, it had concluded that the joint Appellants had not made a formal application for a discretionary reduction under section 13A(1)(c) of the Act and made a verbal order to this effect which was confirmed in an adjournment notice issued by the Tribunal and dated 2 September 2022.
6. As a Vice-President I was authorised to hear this appeal alone, in accordance with the Tribunal's Business Arrangements.
7. The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be taken as it having been overlooked.

Issues

8. Whether the joint Appellants should be liable for empty property premium in respect of the appeal properties during such time as they remained empty and within their ownership.

Evidence and submissions

9. Both parties had produced substantial evidence bundles. However, I would like to thank the parties counsel for the clear and concise way in which they presented their respective cases.
10. The hearing bundle contained the following:
 - a) both parties' summary arguments;
 - b) copies of correspondence that had been exchanged between the parties;
 - c) the appeal form;
 - d) letters dated 12 February 2019 and 17 August 2021 from Marcus Alderson estate agents. The letter dated 12 February being their terms of engagement. The letter dated 17 August 2021 stated "we must consider the property 'sold', however,...we do continue to discretely generate 'second-string buyers'";

- e) an extract of the Land Registry entry showing the joint Appellants as the owners of Marske Hall;
 - f) a copy of the option agreement dated 24 July 2019 between the joint Appellants and Heritage Property (Marske) Ltd and deeds of variation dated 18 June 2020 and 25 March 2021;
 - g) an application for planning permission submitted by Heritage Property (Marske) Ltd;
 - h) Decisions of Prof Graham Zellick (former President of this Tribunal) in *K v Wolverhampton City Council*, appeal number 4635M121095/176C; *F v Wychavon District Council*, appeal number 1840M127193/176C and *J v South Staffordshire District Council*, appeal number 3430M119853/176C; and
 - i) the judgments in *Blake v Midland Railway Company* [1904] 1 KB 503; *Mears Ltd v Shoreline Housing Partnership Ltd* [2015] EWHC 1936; *R v The Director of Passenger Rail Franchising* [1995] CA 1263; *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.
11. The hearing bundle also included a copy of the BA's approved and published policy on empty properties which states "There are two classes of dwellings that are exempt from the ...premium charge...it is also recommended that the following discretionary exemptions apply:
- 1) where owners are genuinely attempting to sell or let their property which has been vacant for at least two years (evidence of activity throughout the two year period will be required)
 - a) The property must be currently marketed by a professional estate agent and to have been so continuously for a period of at least 18 months since becoming empty;
 - b) It must have been advertised in line with recent sales or rental prices, unless it has special features that reasonably warrants a higher sale or rental price.
 - 2) Where owners are experiencing particular legal or technical difficulties which are preventing the sale, letting or occupation of the property.
12. Mr Hunt submitted that the appeal properties should be exempt from the premium as they were being marketed and whilst a prospective purchaser had taken out an option to them they still continued to be marketed, albeit passively.
13. Furthermore, he also submitted that the exemption from the premium should be granted as the option to purchase agreement included restrictions preventing the joint Appellants from letting the appeal properties and that the agreement also prevented them from being sold to any other party whilst the agreement was in place.
14. He also suggested that the BA were interpreting their policy as they wanted it to mean whereas he submitted that it 'means what it means' not what the BA wanted it to mean, such as suggesting that the appeal properties needed to be actively marketed. He submitted that the judgments in *R v The Director of Passenger Rail Franchising* (which stated "document must be read in a practical down to earth way"); and *Tesco Stores Ltd v Dundee City Council* (paragraph 18 which states "policy statements should be interpreted

objectively in accordance with the language used, read as always in its proper context” and paragraph 35 which states “reading the words used objectively in their proper context”) fully supported his submissions.

15. He also submitted that the BA had initially allowed the exemption, which suggested that it should be awarded, before subsequently changing their minds.
16. Given all of the above Mr Hunt considered that the requirements for exemption from the empty property premium had been met and he accordingly put forward that I should allow the appeals.
17. Although the BA had initially allowed the exemption from the premium, it had subsequently sought legal advice prior to its removal. The BA did not consider that the option to purchase the appeal properties was a legal difficulty.
18. Furthermore, the BA would expect the legal difficulties to be issues such as a Land Registry issue, but it did not consider there to be any legal or technical impediment that prevented a sale as there was a sale progressing on the appeal property. The joint Appellants had agreed, under their own volition, to sign the option to purchase which was in effect a conditional contract of sale. The BA was of the view that this merely prevented the sale to another person. It did not prevent the occupation of the appeal properties and the joint Appellant could, if they so choose, let the appeal properties provided they had obtained permission from the prospective purchaser, which could not unreasonably be withheld.
19. The BA did not consider that the appeal properties were being actively marketed. The BA was of the view that the policy required evidence of activity over the two year period, yet there were just two letters from the estate agents and by their own admission, the appeal properties were only being passively marketed.
20. Furthermore, the BA considered that the estate agents were only acting as a broker and with the option to purchase the appeal properties must be considered sold and therefore the BA argued that the appeal properties were not being actively marketed after the option to purchase agreement had been put in place. No evidence was provided to the BA to show that the appeal properties were being advertised, although it was noted that the BA did not ask for any specific evidence.
21. As such it did not consider that the appeal properties met the criteria for exemption from the premium. The BA was of the opinion that nothing in the policy was unclear and Ms Wilson-Barnes put to me that I should dismiss the appeals.
22. By way of clarification, Ms Wilson-Barnes confirmed that the policy had not changed since February 2020 (having been initially approved by Richmondshire District Council on 15 December 2015), which was the date on the copy provided to me within the hearing bundle.

Relevant law

Council tax

23. Part I of the Act makes provision for the payment of council tax in respect of domestic hereditaments ("dwellings") in England and Wales.

24. Section 11B of the Act allowed the BA to charge a premium of 100% effective from 1 April 2019. From 1 April 2020 if a dwelling had been unoccupied for at least five years the premium increased the charge to a maximum of 200% of the council tax and from 1 April 2021 a maximum of 300%. The regulations state (as far as relevant for this appeal)-

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 shall be increased by such percentage of not more than 50 (the relevant amount) 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; and
- (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; and
- (c) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is at least 10 years, 300.

- (2)...;
- (3)...;
- (4)...;
- (5)...;
- (6)...;
- (7)...;

(8) 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.

(9) In determining whether a dwelling is a long-term empty dwelling, no account is to be taken of any one or more periods of not more than 6 weeks during which either of the conditions in subsection (8)(a) and (b) is not met (or neither of them is met); and

(10)...

25. A long-term empty dwelling for the purposes of the premium is one that has, for a continuous period of not less than two years, been unoccupied and substantially unfurnished. In determining this period no account shall be taken of any period of not more than six weeks during which the dwelling has not been either unoccupied or substantially unfurnished.

26. However, the BA allowed for a number of additional exemptions as detailed within its policy.

Decision and reasons

27. I noted that the appeal properties formed part of a grade 2 listed building with extensive gardens. The host property had had been converted into flats in the 1950s. It also required a considerable amount of renovation/refurbishment and I noted that it was being purchased for £1.3million.

28. The policy states “The property must be currently marketed by a professional estate agent and to have been so continuously for a period of at least 18 months since becoming empty and it must have been advertised in line with recent sales or rental prices, unless it has special features that reasonably warrants a higher sale or rental price”.

29. Clearly the appeal property has special features and I had to take into account that the appeal property was unusual and that it would as of necessity be marketed differently from a typical property. I also noted that there was a willing buyer and that the appeal property was still being marketed albeit passively, whilst the option to purchase was in place.

30. Although the BA had argued that the appeal properties were only being passively marketed, I applied less weight to this argument as the policy did not state how rigorous the marketing had to be. It just stated “marketed” which it had been throughout the primary period in dispute and earlier which resulted in a potential purchaser being found. I agree with Mr Hunt that the policy means what it means. Although the BA had stated that the exemption could not be awarded as the appeal properties were not being actively marketed, the policy stated that evidence of activity throughout the two year period will be required, which had been provided by the joint Appellants.

31. The BA could not impose further criteria or rules over and above the policy, which made no distinction between active and passive marketing.

32. Furthermore, I considered that the option to purchase, did place restrictions on the use of the appeal properties. Although this was entered into by the joint Appellants, it was clear that the prospective purchaser would require access to the appeal properties at very short notice. Therefore, it would have been difficult, if not impossible, for the Appellants to let them. In addition the option to purchase also prevented the sale to any other purchaser whilst it was in force.
33. Therefore, I considered that the appeal properties met both parts of the criteria stated earlier, although only one criteria was required for the exemption from the premium. Accordingly, I allowed the appeals in respect of all of the appeal properties for the periods in dispute. Furthermore, at all other times whilst empty, prior to the completion of the option to purchase agreement, they were being marketed for sale and as such should not have been subject to empty property premium.

Order

34. 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 that the BA's decision not to grant exemption from the Council Tax empty property premium be reversed in respect of any period ending 22 September 2022.
35. Under regulation 38(9), the Billing Authority must comply with this order within two weeks of the date of its making.

Date: 11 November 2022

Appeal numbers: VT00012472, VT00012474, VT00012475, VT00012476, VT00012477, VT00012478, VT00012479 and VT00009546

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.