

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003; class D; uninhabitable property; foul water flood as a result of storm Christoph; appeal allowed.

APPEAL NUMBER: VT00013228

BETWEEN: RL Appellant
and

Warrington Borough Council Respondent
(Billing Authority)

RE: 459 Winwick Road, Warrington, WA2 8QF

PANEL: Mrs L Bryning (Chair)
Mrs F Duggan

CLERK: Mrs K Edhouse-Thomas IRRV (Tech)

SITTING ON: Tuesday 12 September 2023

APPEARANCES: RL (appellant)
Mrs J Whitfield (representative for the respondent)

Summary of decision

1. Appeal allowed. The panel found that the appeal property met the requirements for the Class D discount from 29 July 2021 to 28 April 2022.

Introduction

2. The appellant is the owner of the appeal property and argues that as a result of storm Christoph in January 2021, foul water entered the ground floor of the appeal property. This resulted in his former tenants having to vacate the

dwelling in order that repair works could be undertaken. He further argued that the property was uninhabitable until it was occupied on 28 April 2022.

3. The Billing Authority (BA) argument is that the property did not meet the criteria for an uninhabitable dwelling under class D of the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003.
4. The appeal arose under section 16 of the Local Government Finance Act 1992.
5. In order to assist the appellant and with the agreement of the parties, the panel varied its model procedure and invited the BA's representative to present her case first.
6. The hearing was held remotely on Microsoft Teams. Whilst the case for the respondent was being presented, the appellant lost internet connection, which resulted in him leaving the hearing for approximately two minutes. On returning to the hearing, he advised the panel of the point which he had lost connection. The respondent repeated her presentation from the point that the connection was lost. Approximately three minutes later, the respondent lost internet connection, which resulted in her leaving the hearing for approximately eight minutes. The respondent re-joined the hearing and was able to continue her presentation. Whilst the appellant was presenting his case, the respondent advised that she had been unable to hear most of the case. The appellant repeated his presentation to ensure that the full case was heard by all attendees. No further interruptions were encountered during the hearing.
7. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

8. Does the appeal property meet the criteria for a discount to be awarded under Class D of the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 between 29 July 2021 and 28 April 2022?

Evidence and submissions

9. The appeal bundle was submitted, which contained the respondent's case, legislation and supporting documentary evidence. The bundle also contained the appellant's submissions which outlined why he believed that the BA's decision was incorrect.
10. The evidence bundle also contained a copy of two previous Tribunal decisions; *Appellants v Liverpool Council* [VTE, 4310M212815/254C, 17 January 2018] and *Mr H v Manchester City Council* [VTE, 4215M237554/280C, 10 April 2019].

Decision and reasons

11. The panel looked at the discount under Class D, of the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003, which have been made under section 11A of the Local Government Finance Act 1992;

The class of dwellings described in this regulation ("Class D") comprises every chargeable dwelling in England –

- (a) which satisfies the requirement set out in paragraph (b) unless it has been such a dwelling for a continuous period of twelve months or more ending immediately before the day in question;
- (b) the requirement referred to in paragraph (a) is that the dwelling is vacant and –
 - (i) requires or is undergoing major repair work to render it habitable, or
 - (ii) is undergoing structural alteration; or
 - (iii) has undergone major repair work to render it habitable, if less than six months have elapsed since the date on which the alteration was substantially completed and the dwelling has continuously remained vacant since that date;
- (c) for the purposes of paragraph (b) above "major repair work" includes structural repair work.

12. The definition of "vacant" for the purposes of Class D is found in regulation 2 of the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003. In this case it means that the dwelling is unoccupied and substantially unfurnished.

13. There was no dispute between the parties that the property had been unoccupied and substantially unfurnished since the appellant became liable for the council tax on 29 July 2021.

14. A Class D property is defined in the Council Tax (Prescribed Classes of Dwellings)(England) Regulations 2003 shown in paragraph 11. This regulation also sets out the maximum period of time that the discount can be awarded, which is twelve months. Within that twelve month period, the discount can be given for up to six months after the works are completed. Each BA is required to set the discount percentage. The BA stated that the local policy for a Class D property had changed from 1 April 2022. A discount of 100% could be

awarded up until 31 March 2022. 0% discount could be awarded after 1 April 2022.

15. The appellant argued that as a result of storm Christoph, the appeal property had been flooded by foul flood water which had entered the ground floor from a nearby drain. The tenants remained in the property immediately after the incident whilst the property was drying out and was disinfected, but they were moved to temporary accommodation by the local council, as it considered that the property was uninhabitable. As a result of the ankle-deep flood water, substantial repair works were required, including the following:
 - Replacement of the damaged kitchen units.
 - Replacement of the damp plaster on the walls in the kitchen, living room and hall.
 - Replacement of the kitchen ceiling, which was covered with black mould from the damp property.
 - Replacement of some of the electrical wiring.
16. The appellant further argued that whilst undertaking this work, it was discovered that there was no supporting lintel above the back door. Also, when the kitchen ceiling was removed, it was established that a leak in the bathroom had resulted in the floor joists being damaged, which had to be replaced, along with the bathroom suite. The works were delayed by the insurance company assessing the extent of the damage, but the claim was settled.
17. The BA argued that the tenants continued to live in the property for six months after the flood took place, which in its opinion demonstrated that the property was not uninhabitable, or that the works undertaken were as a direct result of the flood. It further argued that the discount could not be awarded for replacing a kitchen and bathroom, and the property could be occupied whilst the works were being undertaken.
18. The BA also referred to two previous tribunal decisions: *Appellants v Liverpool Council* and *Mr H v Manchester City Council*. The panel noted that the tribunal decisions were not binding, and it preferred to consider the facts in the present case, applying the facts to the criteria of the legislation.
19. The panel appreciated that the replacement of a kitchen and bathroom would not normally fall within the meaning of major repair work and would fall within the category of home improvement. The BA's position was therefore understood. However, in cases of this nature, the panel considered it important to have regard to the overall cost, time and extent of the work carried out, along with the flood that had led to the work being done.
20. In doing so, the panel found that the aggregation of the combined works required at the property constituted major repair works. As a result of the flood at the property, substantial repair work was required. This was undertaken to make the property safe to live in. It included essential structural work to install a lintel above the kitchen door and replace floor joists in the upstairs

bathroom. There was further building work to remove plaster and replace it, along with electrical work. The panel noted that the only rooms not affected by the repair works were the two upstairs bedrooms. The photographs provided demonstrated to the panel's satisfaction that the dwelling was uninhabitable during the period it required or underwent major repair work that was needed after the flood.

21. In conclusion the panel was satisfied that major repair works were required and undertaken at the property to render it habitable, as well as the property having undergone essential structural repair work. On that basis the appeal was allowed.

Order

22. Under the provisions of Regulation 38 (1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Billing Authority must reverse its decision, and amend its records to show that the appellant is eligible for the Class D discount in respect of the appeal property from 29 July 2021 to 28 April 2022. 100% discount to be awarded from 29 July 2021 to 31 March 2022 and 0% Class D discount from 1 April 2022 to 28 April 2022 (due to the change in the Billing Authority local policy).
23. Under Regulation 38 (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Billing Authority must comply within two weeks of the date of this order.

Date: 2 October 2023

Appeal number: VT00013228

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.