

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; entitlement to single person discount in dispute; sole or main residence of the appellant's husband; Williams v Horsham District Council [2004] EWCA Civ 39; appeal dismissed.

APPEAL NUMBER: VT00013613

BETWEEN: A W Appellant

and Mid Devon District Council Respondent
(Billing Authority)

RE: Croft House, Cheriton Bishop, Exeter EX6 6JU
("the subject property")

PANEL: Mrs L Bryning (Presiding Senior Member)
Mr D Winters (Senior Member)

CLERK: Mrs A Sloan

SITTING ON: 6 June 2023 (remote hearing no.1)

APPEARANCES: A W (Appellant)
Mrs B Saull-Hunt (Billing Authority's representative)

Summary of decision

1. Appeal dismissed. The panel found that the appellant's husband had his main residence at the subject property and therefore the appellant did not qualify for a discount as the sole adult resident.

Introduction

2. On 3 November 2022, the Valuation Tribunal for England (VTE) received this appeal pursuant to section 16 of the Local Government Finance Act 1992 ("the 1992 Act"). Section 16 establishes a right of appeal to this Tribunal for a person aggrieved with any calculation made by a Billing Authority (BA) of an amount which they are liable to pay to the authority in respect of council tax. The appeal was against the BA's email of 18 October 2022, refusing to award a 25% sole occupier discount for the subject property.

3. The hearing was conducted via an audio/visual link using Microsoft Teams. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties' evidence.

Preliminary issue

4. The clerk advised the panel that there was a preliminary matter to be considered, concerning compliance with the Tribunal's standard directions. Both parties had exchanged their respective evidence in advance of the hearing to the deadlines prescribed. However, the respondent had failed, when compiling the final evidence bundle to be served two weeks before the hearing, to include the appellant's further submissions. After multiple email exchanges between the appellant, respondent and the clerk to the Tribunal, the BA provided the appellant's evidence on 30 May, a week before the hearing. The appellant's evidence was not compiled, along with the BA's submissions, into one indexed and paginated document by the respondent, as set out in the Tribunal's guidance.
5. The panel needed to identify the areas of non-compliance against the Directions in accordance with the *Denton* test as reaffirmed by the Upper Tribunal (Lands Chamber) in *Simpsons Malt Limited & Others v. Mr Craig Jones & Others* (VOs) [2017] UKUT 0460 (LC)UTLC Case Nos: RA/7-10/2017, RA/15/2017, RA/21/2017, RA/22/2017, RA/28/2017.

Stage 1 – The panel found that the BA's failure to provide the appellant's further evidence along with its own was a serious breach.

Stage 2 – Mrs Saull-Hunt apologised to the panel and the appellant at the hearing for the oversight and explained that she was not familiar with the Directions. The panel found that this was not a good reason as advice could be sought from the Tribunal if she had been unsure on how to prepare the evidence bundle.

Stage 3 - The panel then considered all the circumstances of the case. Whilst the appellant's further evidence was supplied late to the Tribunal on 30 May, both parties were aware of the content from when the appellant initially served her response to the BA's case on 3 May 2023.

6. Whilst the panel was concerned about the respondent's failure to supply both parties' submissions two weeks before the hearing as directed, it concluded that the only prejudice from the late service was to the Tribunal. The panel had received the appellant's evidence in time for it to read and prepare for the hearing. The appellant was offered an adjournment, for the respondent to rectify the format of the bundle, which she declined. The panel concluded that, as there had been full exchange, the need to ensure justice is done when both parties were able to proceed meant the appeal should be heard. It therefore proceeded to hear submissions from the parties.

Issue

7. The issue before the panel was to determine whether the appellant qualified for a 25% sole occupier discount. The appellant confirmed at the hearing that she sought the discount from 3 January 2022.

Evidence and submissions

8. The evidence provided to the panel contained both parties' written submissions along with supporting documentation. This included, amongst other things, online application forms

completed by the appellant, tenancy agreements for the various properties mentioned, her husband's contract of employment, correspondence between the parties, extracts from relevant legislation and reference to case law and earlier VTE decisions.

9. At the conclusion of the hearing, after the parties had summed up their respective cases, the panel retired to consider whether it had enough information to make a decision. It then resumed the hearing to clarify with the appellant whether some of the documents she had referred to in her oral presentation were included in the evidence bundle, bearing in mind the earlier issues with evidence not being subsumed into a single bundle. The panel then made an oral direction, on its own initiative, asking the appellant to provide copies of her husband's driving licence and bank statement showing the address recorded and when it was changed. The appellant was given seven days to provide this additional evidence and the respondent seven days to comment, before the appeal would be determined.

Relevant law

10. Part I of the 1992 Act makes provision for BAs in England and Wales to levy a tax, known as council tax, in respect of domestic hereditaments ("dwellings") within their area.

11. Section 6 of the 1992 Act provides the following definition of resident as:

"S.6 (5) In this Part, unless the context otherwise requires –

...

"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."

12. Section 11 of the 1992 Act allows for the application of discounts to prescribed dwellings:

"(1) The amount of council tax payable in respect of any chargeable dwelling and any day shall be subject to a discount equal to the appropriate percentage of that amount if on that day—

(a) there is only one resident of the dwelling and he does not fall to be disregarded for the purposes of discount;

...

(3) In this section . . . "the appropriate percentage" means 25 per cent."

Decision and reasons

13. The panel understood, from the parties' submissions, that the appellant had initially sought a 50% discount at the subject property on the basis that her husband was required to be resident in Scotland by his employer. This was refused and the appellant then applied for a 25% sole occupier discount on the basis that her husband was resident in Aberdeen. The refusal to grant a 25% discount was appealed to this Tribunal. The panel found that the scope of this appeal was to consider the appellant's eligibility for the 25% sole occupier discount, and it could not comment on eligibility for a job-related discount on the Aberdeen property, as this Tribunal has no jurisdiction in Scotland.

14. In her written submissions, the appellant provided a timeline of events.

- In November 2003, she moved from Aberdeen to the Netherlands, along with her husband and children.
- In 2012, the appellant returned to the UK to assist her elderly parents. Her husband continued to reside abroad, while she lived at the subject property in Devon.
- In January 2020, the appellant's husband returned to Aberdeen and leased a flat (17 Albyn Grove, First Floor Left, Aberdeen AB10 6SP) from 17 February 2020. He is employed in the oil industry and is required to reside within a 20-mile radius of the base.
- In March 2020, when the country went into lockdown due to the global pandemic, the appellant's husband moved to live at the subject property in Devon. The flat in Aberdeen was maintained until June 2020 but then the tenancy was terminated.
- In October 2021, restrictions in Scotland were partially lifted and the appellant's husband was recalled to his office. A new tenancy agreement was signed for 13 Allenvale Gardens, Aberdeen AB10 7FG from 3 January 2022.

15. Mrs Saull-Hunt submitted that the appellant had been registered at the subject property from 22 August 2012 and was awarded a 25% sole occupier discount from 18 September 2013. The discount was subsequently removed with effect from 21 October 2018, when the BA determined that the subject property was the appellant's husband's main residence. This did not appear to have been disputed at the time.

16. When questioned on why the discount was removed in 2018, the appellant was unable to confirm but suggested it may have been because her husband was working nearby and living at the subject property.

17. The panel was aware that a person may have more than one residence. The term "sole or main residence" was not defined in the 1992 Act but a number of cases have been determined by the Higher Courts where this matter had been considered. Factors that have been held to be relevant by the courts include the financial interest in the properties concerned, the location of immediate family and possessions, the time spent at the locations and the longer term intentions.

Both parties referred to the Court of Appeal judgment *R (on the application of Williams) v Horsham* [2004] EWCA Civ 39 RA 49. This case stated that the view of a reasonable onlooker aware of the facts was also to be considered when establishing where such a person would consider the main home to be. The panel noted the "Reasonable onlooker test" at paragraph 26, where it was held that:

"All this reinforces the conclusion (which is one that we would have reached without reference to the dictionary) that in section 6(5) of the Act "sole or main residence" refers to premises in which the taxpayer actually resides. The qualification "sole or main" addresses the fact that a person may reside in more than one place. We think that it is probably impossible to produce a definition of "main residence" that will provide the appropriate test in all circumstances. Usually, however, a person's main residence will be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time. That test may not always be an easy one to apply, but we have no doubt as to the conclusion to which it leads in the present case".

18. From the various documentation and submissions, the panel accepted that the appellant's husband clearly spent most of his time living and working in Scotland. However, it appeared

that the primary reason for his residence in Aberdeen was to fulfil the requirements of his employment. The appellant had suggested, when questioned on the situation in 2018, that his residence at the subject property during that year may have been because he was working nearby. In March 2020, the appellant's husband was not required by his employer to be available in Aberdeen, so he returned to the family home in Devon. The panel questioned whether, if the flat in Aberdeen were his main residence, he would have stayed in Scotland during the period of lockdown rather than terminating the tenancy for the flat?

19. The appellant contended that her husband has family in Scotland and that all of his social life is based there. The panel accepted that may be the case and that it was to be expected that he would register for local services such as dentists, doctors and gym membership because that would be the most convenient option, given the distance between the two residences. However, the facts demonstrated that he did return to live with his wife in Devon when his employment did not require him to be elsewhere.
20. It was clear that, in this case, the appellant's husband has more than one residence and spends most of his time in Scotland. However, the panel noted that the appellant and her husband are joint owners of the subject property, giving them greater security of tenure than at the rented property in Aberdeen. In her email to her local Councillor, dated 19 October 2022, the appellant stated *"Our 'permanent' home is in Cheriton Bishop and I divide my time between Cheriton and Aberdeen, my husband however lives and works in Aberdeen 100% of the time."*
21. After the hearing, under the oral direction, the appellant provided additional evidence to support her case that her husband's main residence is in Aberdeen. The panel placed no weight on the TV licence as this is a requirement for any dwelling where a TV is used. The council tax bill merely confirmed that both the appellant and her husband are jointly liable to pay council tax at the Aberdeen property and the P60 simply confirmed that her husband's employer corresponded with him at his Scottish residence. It was to be expected that her husband would use a local gym and the bank statement, while confirming the postal address was changed in March 2022 did not carry much weight as it was simply a correspondence address. The address shown on the driving licence appeared to have been updated shortly after the hearing and therefore carried little weight. The panel did not find that the additional submissions assisted the appellant's case.
22. After considering all the evidence presented, the panel concluded that the appellant and her husband both spend time living in Devon and Aberdeen, but the appellant's husband is required by the terms of his employment to spend most of his time in Scotland. The panel found that it is not uncommon for people to have a second residence, closer to their place of work, to enable them to better carry out their duties. Many will return home at regular intervals, such as weekends, but the panel accepted that the distance between residences in this case would make that difficult. The appellant confirmed she splits her time between both properties.
23. When not required to be based in Aberdeen, the appellant's husband returned to the marital home from March 2020 to January 2022 (as he had also done in 2018), suggesting a stronger tie to the property he owns in Devon than the rented property in Aberdeen. The assumption must be therefore that, as they remain a married couple, the appellant's husband has an intention to return to the marital home when he is not required to be in Aberdeen for work. The panel found that this would imply to the reasonable onlooker that his main residence is the subject property, with the Aberdeen property being a work-related

second home. The appellant was therefore not entitled to a discount at the subject property, as the sole adult resident, and the appeal was dismissed.

Date: 28 June 2023

Appeal number: VT00013613

Right of further 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.