

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; Class G exemption; Watson v Rhondda Cynon Taff County Council [2001] EWHC 913 (Admin); Appeal dismissed.

RE: 16 Goodhale Road, Norwich NR5 9AY

APPEAL NUMBER: VT00014809

BETWEEN: J B Appellant

and

Norwich City Council Respondent
(Billing Authority)

PANEL: Mr M Aslam (Presiding Senior Member)
Mr S Chappell (Senior Member)

CLERK: Mr R Gath (IRRV Hons)

REMOTE HEARING 2 on 29 August 2023

APPEARANCES: J B (Appellant who was joined by Ms Diegel)
Ms Linsey Rudd (Billing Authority's representative)

Summary

1. Appeal dismissed. No change was made to the appellant's council tax liability.

Introduction

2. This was a Council Tax liability appeal made under section 16 of the Local Government Finance Act 1992 (LGFA 1992). The appellant was aggrieved by the Billing Authority's (BA) determination not to award class G exemption. The period in dispute was 1 March 2022 to 17 April 2022 (inclusive).
3. There was a preliminary issue in that the BA failed to provide its final evidence bundle until the clerk had contacted the BA. Furthermore, when the clerk asked the BA if they had prepared a final evidence bundle, Ms Rudd only sent a brief

summary of the appeal and additional comments the appellant had made in respect of the BA's evidence bundle it had issued to the appellant and this Tribunal six weeks before the hearing.

4. The Tribunal only requires the one evidence bundle to be served on the Tribunal, two weeks before the hearing, comprising of the BA's evidence, the appellant's evidence (if any additional evidence has been provided) and any rebuttal statement in response to the appellant's evidence.
5. The panel considered this matter in light of the Upper Tribunal decision in *Simpsons Malt Ltd and Other v Jones* (VO) UKUT [2017] 460 and had regard to *Denton v TH White Ltd* [2014] 1 WLR 3926 which dealt with the non-compliance to directions. This laid out the three stage test which the panel had to consider.

Stage 1 – If panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

Stage 2 – Then the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

Stage 3 - The panel must consider all the circumstances of the case including:

- a. the need for litigation to be conducted efficiently and at a proportionate cost;
 - b. a failure to grant a sanction may leave an inaccuracy being uncorrected; and
 - c. the need to enforce compliance with rules, directions and orders (para. 55); However, such matters must never be allowed to assume a greater importance than doing justice (para. 56).
6. The panel considered these three stages in light of the events. The only explanation given by the BA was that they were unfamiliar with the Tribunal's directions.
 7. The panel found that the breach was significant as the Tribunal would expect the respondent to be familiar with the Tribunal's directions. However, the panel did not impose any sanctions on the BA. This was because no prejudice had been caused to the appellant and the panel was still able to view all of the evidence prior to the hearing.
 8. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

9. Whether the class G exemption should be awarded to the appeal property for the disputed period.

Evidence and submissions

10. The Billing Authority provided an evidence bundle which included copies of correspondence that had been exchanged between the parties, photographs of the appeal property, a letter from Mr Hunter, a builder confirming the work the appeal property required to the bathroom and toilet ceiling, a letter from St Martins Housing Trust confirming that the appeal property was not able to be relet due to significant condensation, subsequent mould and a lack of heating, a tenancy pack for the appeal property including a tenancy agreement and extracts of The Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558), The Council Tax (Exempt Dwellings) (Amendment) Order 1993 (SI 1993/150), The Council Tax (Exempt Dwellings) (Amendment) (No. 2) Order 1999 (SI 1999/1522), The Council Tax (Exempt Dwellings) (Amendment) (England) Order 2000 (SI 2000/424) and The Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012 (SI 2012/2965).
11. Having regard to the evidence presented, the respondent contended that it was not possible to award a class G exemption in this case, as there was no order to prohibit the occupation of the appeal property.
12. The clerk drew to the attention of the Tribunal, the High Court judgment of *Watson v Rhondda Cynon Taff County Council* [2001] EWHC 913 (Admin).

Decision and reasons

13. The dispute between the parties concerned whether or not the appeal property fell within class G of The Council Tax (Exempt Dwellings) Order 1992 (as amended), during the period in dispute. Referred to as “the Order” for the purposes of this decision.
14. The relevant provisions in the Order are as follows:

Class G:

an unoccupied dwelling-
 - a) the occupation of which is restricted by a condition which—
 - (i) prevents occupancy, and
 - (ii) is imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990;
 - or
 - b) the occupation of which is otherwise prohibited by law; or
 - c) which is kept unoccupied by reason of other action taken under powers conferred by or under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it;”

The Order provides that an unoccupied dwelling means a dwelling in which no one lives and “occupied” must be construed accordingly.

15. Ms Rudd had contended that under the above regulations, no prohibition notices had ever been issued in respect of the appeal property. Its occupation had never been prohibited by law, nor had it been kept unoccupied by reason of action taken under powers conferred by or under any Act of parliament, with a view to prohibiting its occupation.

16. Therefore, she contended, that it was not possible to award a Class G exemption for the appeal property.
17. The appellant argued that for the period in dispute he was unable to let the appeal property out due to severe mould in the bathroom and toilet and the ceilings needed replacing. He argued that it was illegal for him to let the appeal property out in that condition and to support his argument, the appellant referred to the Homes (Fitness for Human Habitation) Act 2018 and the Housing Health and Safety (England) Regulations 2005 which he argued prevented him from letting the appeal property out until he had repaired the ceilings and removed the mould.
18. The panel gave careful consideration to all of the evidence presented and in particular the authoritative judgment in *Watson v Rhondda Cynon Taff County Council* [2001] EWHC 913 (Admin). In this judgment a notice was issued to the appellant requiring works to be undertaken to make the property suitable for the number of occupants. However, even after service of this notice, it was held that the class G exemption should not be awarded as occupation was not prohibited by law.
19. The BA argued that this judgment supported their reasons for not allowing the exemption. The appellant did not consider this judgment to be relevant as it was in respect of a property in Wales which has a devolved government and the regulations may be different, and, the judgment predated the Acts of Parliament which he provided and considered to have superseded this judgment.
20. During the hearing, the panel made the following finding of facts:
 - a) No notice was issued to the appellant either requiring works to be undertaken or to prohibit the occupancy of the appeal property; and
 - b) it was not kept unoccupied by reason of action taken under powers with a view to prohibiting its occupation, or, with a view to acquiring the property.
21. The appellant did not argue that there was a planning condition that restricted or prevented the occupation of the appeal property as required under part A of The Order.
22. Turning to parts B and C of The Order, there was no dispute that it would have been unsuitable to let the appeal property to tenants and the panel understood that the appellant preferred to undertake the work first.
23. Although the appellant had referred to the Homes (Fitness for Human Habitation) Act 2018 and the Housing Health and Safety (England) Regulations 2005 these regulations were not specific to the appeal property. Furthermore, the panel applied most weight on the fact that no notices or order had been issued by the BA or any other statutory body that specifically prohibited the occupation of the appeal property and no evidence had been presented to the panel to show that the appeal property was kept unoccupied with a view to prohibiting its occupation or to acquiring it. The panel therefore dismissed the appeal.
24. However, the BA have the power to reduce a person's council tax bill under Section 13A (1)(c) of the LGFA 1992. As the appellant had not requested a

discretionary discount and the BA had not considered this as part of his grievance, the appellant would need to submit an application to the BA for a discount under this regulation. If the BA refuses this application, the appellant can submit another appeal to this Tribunal.

25. The appellant was also unhappy at being issued with a Magistrates court summons for not paying the council tax and other issues which were more of an administrative matter. Such matters did not fall within this Tribunal's jurisdiction. Complaints regarding maladministration are dealt with by the Local Government and Social Care Ombudsman. The appellant would need to follow the BA's complaints policy before he could refer the matter to the Ombudsman.

Date: 25 September 2023

Appeal number: VT00014809

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.