

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; liability of the owner in dispute; section 6 of the Local Government Finance Act 1992; appeal allowed.

RE: 17 Durham Road, Bowburn, Durham, DH6 5AT

APPEAL NUMBER: VT00015232

BETWEEN	A C	Appellant
	and	
	Durham County Council	Respondent

PANEL: Mr I Lonsdale (Presiding Senior Member)
Mr K Everett (Senior Member)

CLERK: Mrs L Horne

REMOTE HEARING ON: Tuesday 26 September 2023

APPEARANCES: The appellant
Mr P Stokes representing Durham County Council

Summary of decision

- 1 Appeal allowed. The panel determined that the appellant was not liable for council tax as the owner of 17 Durham Road, Bowburn, Durham, DH6 5AT (the appeal property) for the disputed period.

Introduction

- 2 The appeal was made under section 16 of the Local Government Finance Act 1992. It challenged a decision made by the billing authority that the appellant was liable for council tax as the owner of the appeal property, for the period from 1 September 2018 to 22 September 2022.
- 3 The appellant made his appeal to the Tribunal on 16 February 2023, on the grounds that the property had been occupied by tenants for the disputed period.

- 4 In order to assist the appellant, and with the agreement of the parties, the panel varied its model procedure and invited the billing authority's representative to present his evidence first.
- 5 This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

- 6 Whether the Billing Authority had correctly determined that the appellant was liable for council tax as the owner of the appeal property for the period from 1 September 2018 to 22 September 2022.

Evidence and submissions

- 7 In advance of the hearing, the panel was presented with the appellant's appeal documents and an evidence bundle which included contributions from both parties to the appeal. To summarise, it comprised various correspondence between the parties and reference to section 6 of the Local Government Finance Act 1992.
- 8 Mr Stokes explained that the appellant had emailed the billing authority on 24 April 2018 to notify that G N was a tenant at the appeal property from 22 January 2018. A copy of the tenancy agreement had been provided.
- 9 On 16 May 2022, information was received by the billing authority from an enforcement agency, that G N was no longer resident at the appeal property, and that S H had been in occupation since September 2018.
- 10 A decision was made on 29 June 2022 to make the appellant liable for council tax from 1 September 2018 to prompt further information regarding occupancy and rent liability. Following correspondence with the appellant, the billing authority had not been able to contact the former tenants, and in the absence of tenancy agreements or proof of rental payments, the final decision was that the appellant would remain liable.
- 11 The appellant explained that the appeal property had been a rental property since 1989, and at no time had the billing authority made him aware that it was his duty to provide resident's details when entering or vacating the property; correspondence from the billing authority had always been with the tenant. He was critical of the billing authority's delay in resolving non-payment of council tax by G N, but acknowledged that he was not very organised and had not kept tenancy agreements. At the hearing he stated that he would be

able to provide proof of rental payments from his tax records and bank statements.

Decision and reasons

- 12 The only issue for determination by the panel was whether the billing authority had correctly determined that the appellant was liable for council tax as the owner for the disputed period.
- 13 The hierarchy of liability is contained within section 6 of the Local Government Finance Act 1992:

- (1) The person who is liable to pay Council Tax in respect of any chargeable dwelling on any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next and so on.
- (2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day-
 - (a) he is a resident of the dwelling and has a freehold interest in the whole or any part of the dwelling;
 - (b) he is such a resident and has a leasehold interest in the whole or part of the dwelling which is not inferior to another such interest held by another such resident;
 - (c) he is both a resident and a statutory or secure tenant of the whole or any part of the dwelling;
 - (d) he is such a resident and has a contractual licence to occupy the whole or any part of the dwelling.
 - (e) he is such a resident; or
 - (f) he is the owner of the dwelling

“owner”, in relation to a dwelling, means the person as regards whom the following conditions are fulfilled –

- (a) he has a material interest in the whole or part of the dwelling; and
- (b) at least part of the dwelling or, as the case may be, of the part concerned is not subject to a material interest inferior to his interest;

“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.

- 14 The billing authority had determined that liability fell upon the appellant as the owner of the property in the absence of sufficient evidence to support that the appeal property was occupied for the periods in dispute.

- 15 The panel acknowledged that the billing authority was under a duty to seek sufficient evidence to confirm that the appeal property was occupied. While the appellant was unable to provide tenancy agreements, he had provided email addresses for the tenants he contended were resident. Unfortunately, there had been no response to the billing authority's request to the tenants for information regarding their periods of occupation.
- 16 The panel made a finding that the property was occupied by S H on 16 May 2022, as confirmed by the visiting enforcement agent. During that visit, S H confirmed that he had occupied the property since September 2018. Although a tenancy agreement had not been provided, the appellant submitted that S H occupied the property between May 2018 and October 2022. It was clear to the panel that conflicting dates had been provided for when G N had left the property, but by his own admission, the appellant's administration skills were somewhat lacking.
- 17 It was significant to the panel that in summarising the case for the billing authority, Mr Stokes stated that he did not dispute that the property may have been occupied. The reason the appellant had been held liable was due to the absence of information to confirm that there was a tenant in occupation. While it would usually be reasonable to request proof of occupation for a retrospective period, the billing authority had failed to take into account the fact that S H had been found in occupation of the appeal property by an enforcement agent.
- 18 The panel was satisfied that the appeal property was occupied throughout the disputed period. Whether or not the billing authority was able to trace the occupants was of no relevance to the determination of the liable person.
- 19 The panel concluded that the billing authority's decision to hold the appellant liable for council tax for the disputed period was incorrect, and therefore the appeal was allowed.

Order

- 20 Under the provisions of Regulation 38(1) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the Tribunal orders the billing authority to revoke the appellant's liability for the period from 1 September 2018 to 22 September 2022, and to alter its records accordingly within two weeks of the date of this order.

Date: 13 October 2023

Appeal Number: VT00015232

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.