

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax liability appeal; whether the dwellings were chargeable for council tax or whether they should be exempt: Class G exemption; Council Tax (Exempt Dwellings) Order 1992; Appeal dismissed.

RE: 38 Belsize Court, 18 Burnnell Road, Sutton, SM1 4BH

APPEAL NUMBER: VT00016461

BETWEEN:	AS	Appellant
	and	
	London Borough of Sutton (Billing Authority)	Respondent

PANEL: Ms N Ryan (Senior Member) and Mr N De Freitas

CLERK: Miss K Hendry

REMOTE HEARING: Monday 27 November 2023

PARTIES PRESENT:

The Appellant
Mr Attoe (Respondent's Representative)

Summary

1. Appeal dismissed. No change was made to the appellant's council tax liabilities for the appeal property.

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 exemptions in respect of the appeal property for the period 30 April 2020 to 24 May 2023.

3. In order to assist the unrepresented appellant and with the agreement of all parties, the panel varied the Tribunal's model procedure and invited the BA's representative to present his case first.
4. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

5. Whether class G exemptions should be awarded to the appeal properties for the disputed period.

Evidence and submissions

6. The bundle provided by the BA contained the parties' respective cases and supporting documents.

Decision and reasons

7. The dispute between the parties concerned whether or not the appeal properties fell within class G of The Council Tax (Exempt Dwellings) Order 1992 (as amended), Referred to as "the Order" for the purposes of this decision.
8. 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.

9. The appellant was the executor.
10. Mr Attoe contended that under the above regulations, no prohibition notices had been issued in respect of the appeal property. The 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 their occupation. It was the lease of the property which prohibited occupation by Housing 21. Therefore, Mr Attoe contended, that Class G exemption could not be applied in respect of the appeal property.

11. The appellant explained that the property is a Social Housing Shared Ownership flat specifically for an older person needing extra care, in a scheme developed and operated by the landlord, Housing 21. A high proportion of the residents have dementia and other complex needs. Housing 21 is a registered social landlord. Belsize Court is a grant-funded development which opened in 2008. The appeal property is a one-bedroom flat which was in 50% shared ownership.
12. The appeal property has been unoccupied since the death of the leaseholder, and probate was granted on 30 October 2019. The appellant had been held liable as the executor from 30 April 2020, six months after probate was granted.
13. The appellant explained that the property had been placed on the open market in August 2019 and had some interest, but the interest did not amount to a sale. Housing 21 eventually agreed to buy back (surrender of the lease) the share at 80% of the price paid on the grounds that the executors had been unable to sell the property. The buy-back was completed on 24 May 2023. The appellant sought for class G to be applied for the period of 30 October 2019 to 24 May 2023 and therefore sought a refund over all overpaid council tax plus interest.
14. The appellant argued that a clause in the lease prohibited subletting. The effect is that upon death of the leaseholder who did not have a spouse or civil partner living with them, their grant-funded shared ownership flat must be kept unoccupied until sold unless the lease is assigned to a person who satisfies the eligibility criteria for the shared ownership scheme. For Belsize Court the individual was required to be over 55 and in need of subsidised sheltered housing. The appellant sought permission to sublet, initially on 21 June 202 and several other times throughout the disputed period but Housing 21 refused as it was not shown that there was a lack of evidence to reference current or potential hardship and that they did not recognise exceptional circumstances. Housing 21 took legal advice and concluded that the criteria were not met for them to allow subletting.
15. The appellant argued that Housing 21 is subject to statutory guidance issued to grant-funded social housing providers pursuant to the Housing Act 1996. This guidance required shared occupation leases to include clauses that limited occupation unless certain conditions were met. The guidance stated that subletting can be permitted in certain, narrow, circumstances. Therefore, the clause in the lease that prevented occupation was a product of statute (specifically statutory guidance), rather than contract law, and the class G exemption applied because the property was unoccupied because occupation was prohibited by law or as a result of powers conferred by or under an Act of Parliament.
16. Having regard to the legislation, the panel found no error of law with the BA's decision not to grant Class G exemptions in respect of the appeal property. It was accepted by the panel that the lease placed restrictions on who could occupy the property. However, these restrictions did not prohibit occupation but only restricted who the occupier could be. Moreover, as the appellant accepted, it was possible to apply to sublet the property, albeit in this case, the landlord refused. A Class G exemption requires a legal prohibition on occupation. In this case, despite the decision of the landlord, the property could have been occupied if it had been sold to a buyer who met the conditions of the lease. Whilst it is unfortunate that the appellant was unable to find a buyer until the landlord agreed to buy their share back, the panel is not satisfied that the property was subject to a legal prohibition preventing occupation.

17. The appeal was therefore dismissed.

Date: 4 December 2023

Appeal number: VT00016461

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.