

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: 9 Pavey Close, Blackpool FY4 4XD

APPEAL NUMBER: VT00018372

BETWEEN:	A G	Appellant
	and	
	Blackpool Borough Council (Billing Authority)	Respondent

PANEL: Miss S Ballentine (Presiding Senior Member)
Dr H Freeman (Senior Member)

CLERK: Mr R Gath (IRRV Hons)

REMOTE HEARING 2 on 16 January 2024

APPEARANCES: A G (Appellant)
Ms Kate Foulkes-Williams (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 19 September 2022 to 15 June 2023 (inclusive).

3. Prior to the hearing, the clerk provided to the parties the High Court judgment of *Watson v Rhondda Cynon Taff County Council* [2001] EWHC 913 (Admin) and the decision of *Moore v Great Yarmouth Borough Council* [1 February 2021] appeal number VT00003541 which was heard by the Tribunal's President, which the clerk considered to be relevant to this appeal.
4. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

5. Whether the class G exemption should be awarded to the appeal property for the disputed period. The appellant also submitted that in the event that no exemption was allowed, he should be entitled to his 25% sole occupancy discount.

Evidence and submissions

6. The BA provided an evidence bundle which included the BA's skeleton argument, a letter from HM Prisons and Probation Services, copies of correspondence that had been exchanged between the parties and extracts of The Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558) as amended. The panel members confirmed that they had read the evidence provided by both parties.
7. 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.
8. The appellant argued that on his release from prison he had been formally excluded from entering the Blackpool area. This prevented him from occupying the appeal property.
9. The appellant also argued that he had not been allowed his sole occupancy discount and that having to pay council tax on the appeal property and the property he was occupying had caused him hardship.

Decision and reasons

10. The principal 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.
11. 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.

12. Ms Foulkes-Williams had contended that under the Order, 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.
13. Therefore, she considered that it was not possible to award a Class G exemption for the appeal property.
14. The appellant argued that he had been banned from the Blackpool area by the courts. After his release from prison, a court order prevented him from occupying the appeal property. He therefore considered that he was prevented by law from occupying the appeal property.
15. He also submitted that he was unable to rent the property as his friends and family owned their own properties and as the appeal property was for sale, he would be unable to sell it with a sitting tenant.
16. In response to the judgment and decision provided by the clerk, the appellant considered that they did not resemble the facts for this appeal.
17. 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.
18. 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.
19. Turning to parts B and C of the Order, there was no dispute that the appellant was prohibited from entering the Blackpool area.
20. 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*. 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.

21. In the President's decision in *Moore v Great Yarmouth Borough Council*, the panel found paragraphs 21 and 25 most compelling. Paragraph 21 stated "The Class G exemption referred to the dwelling and not the personal circumstances of the owner" and paragraph 25 stated "An exemption under Class G would only be applicable if the unoccupied dwelling could not be occupied by **any** person by law". (Emphasis added for effect)
22. Whilst the panel understood the appellant's practical difficulties on release from prison, it was clear to the panel, having regard to the case law, that Class G of the Order only applied if the actual property was prohibited from occupation irrespective of the circumstances of the occupant or property owner.
23. As there was no order or restriction preventing the appeal property being occupied and the restriction was on the appellant rather than the appeal property, the panel concluded that the Class G exemption could not be awarded.
24. Turning to the sole occupancy discount, section 11 of the LGFA 1992 states
- (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; or
 - (b) there are two or more residents of the dwelling and each of them except one falls to be disregarded for those purposes.
 - (3) In this section . . . "the appropriate percentage" means 25 per cent.
- Section 6 of the LGFA 1992 defines a "resident" as an individual who has attained the age of eighteen years and has their sole or main residence in the dwelling.
25. In essence the appellant could only receive the 25% sole occupancy discount if the appeal property was his sole or main residence. However, as the appellant was not occupying the appeal property, he could not return to it and the appeal property was for sale and by his own admission the appellant was residing elsewhere, the panel concluded that the appeal property was not his sole or main residence and therefore he was not entitled to the 25% discount.
26. During the hearing, the appellant stated that he was suffering from financial hardship having to pay council tax for two properties. He could apply for a discretionary reduction under section 13A(1)(c) of the LGFA 1992. If the BA refuses his application, the appellant can submit another appeal to this Tribunal.

Date: 24 January 2024

Appeal number: VT00018372

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.