



VALUATION TRIBUNAL FOR ENGLAND

Council Tax Liability appeal: Local Government Finance Act 1992; sole or main residence; R (on the application of Williams) v Horsham [2004] EWCA Civ 39 RA 49; appeal dismissed.

APPEAL NUMBER: VT00019001

RE: 25 Wilton Road, London N10 1LX
(the "subject property")

BETWEEN:	PGC	Appellant
	and	
	London Borough of Barnet (Billing Authority)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 15 May 2024

BEFORE: Ms J Gittens, Presiding Senior Member
Mr MH Smith, Senior Member

CLERK: Mrs A Sloan IRRV(Hons)

APPEARANCES: PGC (Appellant)
JK (Appellant's husband)
Ms L Squires (Billing Authority's representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.
2. The panel found that the subject property remained JK's sole or main residence for the period in dispute and therefore the appellant was not the sole occupant from 9 April 2013.

Introduction

3. On 28 April 2021, the appellant contacted the Billing Authority (BA) to notify it that she and her husband had separated in April 2013 and he had moved to another property, 3 Darcy Close. She claimed to be the sole adult occupier at the subject property and requested a 25% single person discount with effect from 9 April 2013. There had been considerable correspondence between the parties on this subject and on 21 July 2023 the BA wrote to the appellant refusing to award the discount and providing her with a right of appeal to this Tribunal.
4. On 20 September 2023, 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 to a person aggrieved with any decision of a billing authority that a dwelling is a chargeable dwelling or that they are liable to pay council tax in respect of such a dwelling, or the calculation of the amount they are liable to pay.
5. On 14 May 2024, the day before the hearing, the appellant made an application for the appeal to be heard in person at a physical venue, rather than remotely using MS Teams. The matter was considered by the Tribunal’s President on the same day and a decision issued refusing the application and ordering the appeal continue remotely as notified on 16 February 2024. The appellant and her husband joined the hearing by telephone as they were not comfortable using the video conferencing option. They could be heard clearly throughout the hearing and confirmed they could hear others present during proceedings. The panel was satisfied the appellant could fully participate in the hearing.
6. After dealing with the preliminary issue, to assist the appellant who expressed a wish to present her evidence second, the panel varied the Tribunal’s model procedure and invited the BA’s representative to begin.
7. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Preliminary issue

8. Before hearing the substantive appeal, the panel was required to address a preliminary issue regarding late evidence provided by both the BA and the appellant. Both parties had been notified of the hearing on 16 February 2024 and provided with the Tribunal’s directions, which required evidence to be exchanged to a prescribed timetable. The timetable culminated with the BA serving a joint evidence bundle no later than two weeks before the hearing. The BA was late serving the bundle and it was received by the Tribunal on 8 May 2024, one week late. Ms Squires explained that, as no further evidence was served by the appellant under the directions in response to the BA’s case, it had not changed since being served on her six weeks before the hearing. She submitted that it was an oversight that the bundle was not re-served and sent to the Tribunal two weeks before the hearing, for which she apologised. She confirmed that the BA had no objection to the appellant’s late evidence.
9. The appellant stated that she had assumed the BA would include all correspondence between the parties in the evidence bundle and only when looking at the bundle shortly before the hearing did she realise some of the documents she wished to rely on were not included. Two emails were received by the clerk and the BA on 14 May 2024 from the appellant with various documents attached. The appellant objected to the BA’s late service of the bundle as she stated it was a clear breach of the directions.

10. In considering a breach of the Tribunal's directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. Stage one requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred: if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case, the need for litigation to be conducted efficiently and at proportionate costs, that the failure to grant relief may leave an inaccurate calculation of council tax liability and the need to enforce compliance with the rules, directions and orders of the Tribunal.
11. Firstly, the panel considered the BA's late service of the evidence bundle. It found that the breach here was minor. The appellant had confirmed to the panel that she did receive the original evidence from the BA in early April and accepted that she does not check her emails daily so could not confirm the exact date. The panel found that, as the appellant had not served any additional evidence by the prescribed deadline in the directions, the BA had nothing to rebut, and its evidence remained as served on the appellant six weeks before the hearing. It therefore considered there was no prejudice to the appellant, as she was in possession of the BA's evidence in plenty of time to consider it and respond if she wished. The only disadvantage in the late service of the final bundle was to the Tribunal, but the panel had managed to read the bundle in good time before the hearing. Sanctions were not applied to the BA.
12. Secondly, the panel considered the appellant's late evidence, served the day before the hearing. The panel found this to be a significant breach in the directions as it was considerably late and could potentially place the BA at a serious disadvantage. The appellant's only mitigation appeared to be that she had not properly read the BA's evidence when it was first served to ensure any further evidence was served in response on time. However, as the BA's representative raised no objection to the appellant's late submission and both parties were present and ready to proceed, the panel decided to waive sanctions for the appellant and hear the appeal on all the evidence before it.

Issue and Relevant Law

13. The issue before the panel was to determine whether the appellant was eligible for the single person discount, on the basis that her husband had moved out of the subject property in April 2013.
14. 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”

15. There was some mention in the evidence bundle that the appellant's daughter spent time with both her mother and her father at the different properties while growing up. The panel found that, if it were to accept that the appellant's husband, JK, had permanently left the subject property in April 2013, it would need to consider whether their daughter was living with her mother and whether she qualified to be disregarded as a full-time student when she reached 18 years of age. However, if the panel found JK remained resident at the subject property, there would be no need to consider a disregard for their daughter as there would be two adults who did not fall to be disregarded in the household. Therefore, this appeal turned on whether the appellant's husband was living in the subject property from April 2013. Put simply, was JK's sole or main residence at the appeal property?

Discussion

16. In order to determine the number of residents at the subject property, the panel had regard to the definition set out in Section 6 of the 1992 Act. The definition of "resident" was contained in section 6(5) of the 1992 Act as follows:

"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."

17. The expression "sole or main residence" was not defined in legislation but there have been several High Court and Court of Appeal judgments to consider its meaning. A person's sole or main residence can only be at one address at any given period of time. Time spent at an address was not considered to be a determining factor. The BA's evidence referred to case law from the 1990s and the clerk circulated to the parties, prior to the hearing, the most recent case from 2004. The Court of Appeal judgment *R (on the application of Williams) v Horsham* is the leading case for appeals regarding sole or main residence. It introduced the 'reasonable onlooker test' in determining the sole or main residence of an individual. The test stipulates that *"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"*.
18. The panel understood from the parties that the appellant had purchased the subject property in her sole name on 16 August 1993 and lived there with her family. On 9 April 2013, the appellant and her husband jointly purchased 3 Darcy Close and the council tax liability was placed in both their names. The appellant contended that she and her husband separated, and he moved into 3 Darcy Close as soon as the purchase was complete. She stated that she had not notified the BA of their separation or claimed the single person discount earlier because she was not aware of its existence. Throughout the hearing the appellant referred to JK as her husband and confirmed they remain legally married with no intention of divorcing.
19. The BA had requested various documents to support the request for a backdated discount and to evidence that JK's sole or main residence had changed from the subject property to 3 Darcy Close in 2013. The appellant provided some utility bills addressed to JK at 3 Darcy Close. However, the panel placed little weight on utility bills as they are generally sent to the owner at the property concerned, unless specifically requested to send them elsewhere. Being named on the utility bills was entirely in line with JK being a joint owner of 3 Darcy Close but did not confirm residence.
20. The appellant and her husband confirmed that he had not changed his driving licence to 3 Darcy Close and his car insurance remained based on the subject property. The panel noted that JK had notified his insurance company that his car is garaged at 3 Darcy Close but had not changed the policy to reflect residence there. The panel found this concerning and noted

that this could potentially invalidate the policy if JK were in fact permanently residing at 3 Darcy Close. The panel also understood that it is a requirement of the DVLA to change a driving licence to reflect a change of address and failure to do so may result in a fine. It was also noted that the appellant is a named driver on JK's car insurance policy but, when questioned by the panel, she stated she has not driven for 20 years.

21. The BA had carried out searches against both properties and the panel noted the electoral registration records. The subject property shows both the appellant and her husband registered since 28 October 1994 and 3 Darcy Close showed both of their names from 3 May 2013 to 14 October 2019. When questioned on this anomaly, the appellant stated that they do not vote and therefore did not feel it necessary to update the electoral register. The panel noted that there was no current record for JK at 3 Darcy Close on the electoral register but he remained on the register for the subject property.
22. The panel noted from the searches carried out by the BA that there were multiple accounts in JK's sole name registered to the subject property. These included mobile phone contracts, a mortgage, credit card, and a loan, some of which had been taken out after 2013 and, in one case, as recently as May 2023. There was also evidence of searches for insurance quotes in his name at the subject property from 2023 and 2024. The panel found that this did not indicate that JK considered 3 Darcy Close to be his sole or main residence.
23. JK had provided the BA with some correspondence that showed an invoice for a professional publication addressed to him at Darcy Close which the panel noted but placed little weight on as this was just one document, and it was an accepted fact he is a joint owner of the property. A further document was an invoice from an electrician dated 6 June 2013, addressed to JK at 3 Darcy Close. However, the panel noted that the work carried out was a 'Domestic Periodic Inspection Report' and certificate. The panel noted this appeared more akin to work required for the letting of a rental property than something an owner would require for his own residence.
24. When questioned on the nature of their relationship, the appellant stated that the separation was very amicable, and she still sees her husband regularly, at least once a week. She stated that she lets him know if any mail is received at the subject property for him to collect and they meet up at both properties. It was contended that they had purchased 3 Darcy Close in joint names and remained legally married to avoid 'red tape' and make life easier for the surviving spouse in the event of one of their deaths. JK's submissions stated that he did not feel it necessary to update the correspondence address for many things, including his banking records, as he accessed them online and could collect any mail from the appellant at the subject property if necessary. Ms Squires pointed out that banks require addresses to be updated for security reasons as, for example, replacement bank cards or other secure mail would be sent to the address on file.
25. The appellant referred to the subject property as the 'key correspondence address' and submitted that both her husband and daughter continue to receive mail there, although neither are resident. She stated that they all still use the same doctor's surgery and Darcy Close is only three or four miles from the subject property so it is convenient if JK needed to collect his mail, or she could deliver it.
26. The panel noted the appellant's comments regarding the amicable nature of her separation from her husband and that neither had new partners. However, it found that their lives appeared to remain very much entwined. While it accepted the concept of collecting mail from the subject property, the panel found that this is something it would expect for a

temporary separation or for a short time after the split. In this case, the panel was asked to accept that a decade after the separation, JK was living elsewhere but still registering for credit at the subject property, basing his insurance and banking there and had still not updated DVLA of his change of address. It was clear that the correspondence on this matter with the BA was extensive and lengthy, yet JK had still not updated his various records in an attempt to assist the appellant in gaining a discount, even if not retrospectively.

27. After considering all the evidence, the panel was not persuaded that there was sufficient evidence that JK's sole or main residence was not at the subject property. It accepted that the appellant and her husband were joint owners of 3 Darcy Close. JK retained significant ties to the subject property, financial or otherwise, and that had not changed in over 10 years. He had continued to declare it to be his home for various credit or insurance applications and for electoral registration. The actions of the appellant and her husband did not, in the panel's opinion, reflect those of a couple that had separated and there was little evidence of JK's ties to 3 Darcy Close, other than ownership.
28. The burden of proof for this Tribunal is different to that at other courts, where a jury is required to find that evidence supports a verdict "beyond reasonable doubt". In this Tribunal the panel needs to be satisfied one way or another "on the balance of probabilities" that the evidence supports its decision. Considering the test set out in *R (on the application of Williams) v Horsham* the panel found that a reasonable onlooker considering the facts available would conclude that JK, whilst perhaps having more than one residence, retained his main residence at the subject property.

Disposal

29. In view of the above findings and conclusions, the panel is satisfied that the appellant is not the sole adult occupier of the subject property from 9 April 2013 and the appeal is dismissed.

Date issued to parties: 10 June 2024

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.
