

VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Hierarchy of Liability; definition of owner; material interest; leasehold interest for 6 months or more; Macatram v London Borough of Camden [2012] RA 369; appeal allowed.

RE: 1 Cross Green, Berwick, Shrewsbury, Shropshire SY4 3HO

APPEAL NUMBER: 3245M131738/176C

BETWEEN:	Trustees of the Berwick Settlement and Shropshire Council (Billing Authority)	Appellant Respondent
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PANEL: Mr M Young (Vice President)
Mrs S Gurney
Mrs D Foster

SITTING AT: The Lantern, Shrewsbury

ON: Tuesday 17 June 2014

APPEARANCE: Mr M H Watney of Balfours LLP (Appellant's representative)
Mr P Weir (Billing Authority's representative)

Summary of Decision:

1. The appeal was allowed. The appellants are not liable for council tax with respect to 1 Cross Green, Berwick ST4 3HU for the period 26 June 2013 to 22 July 2013.

Introduction:

2. This was a council tax liability appeal that had been made under section 16 of the Local Government Finance Act 1992. The appellant trustees, who were the freehold owners of the appeal dwelling, were aggrieved by the billing authority's determination that they were liable for the council tax for the period set out above. The appellants' argument was that liability rested with the tenants.

3. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as being overlooked by the panel.

Issue in dispute:

4. The liable person for council tax throughout the period in dispute.

Legal background:

5. Liability for council tax is determined by the hierarchy of liability in section 6 of the Local Government Finance Act 1992 which is as follows:

“(1) The person who is liable to pay council tax in respect of any chargeable dwelling and 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 it;
- (b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident;
- (c) he is both such a resident and a statutory, secure or introductory 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”.

6. There being no person in residence of the appeal dwelling for the period in question, in considering ownership for the purposes of section 6 of the Act liability therefore falls to be determined under section 6(2) (f) of the 1992 Act: who was the owner of the appeal dwelling within the meaning of that sub-section? This is defined by further sub-sections of section 6, which so far as material provide:

“(5) In this Part, unless the context otherwise requires—

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

- (a) he has a material interest in the whole or any 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.

(6) In this section —

...

“material interest” means a freehold interest or a leasehold interest which was granted for a term of six months or more;

..”

Background to the case:

7. By a written tenancy agreement dated 23 July 2010, the appellants let the appeal dwelling out to two joint tenants under an assured shorthold tenancy for an initial term of twelve months up to and including 22 July 2011. After the expiry of the initial twelve month term, the tenancy contracted for continued from month to month. Clause 1.7 of the tenancy agreement stated:

“Unless the Tenant gives notice in accordance with clause 1.81 below then at the end of the fixed term the tenancy hereby created shall continue as a contractual periodic tenancy from month to month until terminated in accordance with the provisions of this agreement. For the avoidance of doubt, the continuing tenancy shall not be a statutory periodic tenancy”.

Clause 1.8.1 stated:

If the Tenant wishes to terminate the tenancy at the end of the fixed term then he must give at least two months’ notice in writing to the Landlord, such notice to take effect on the last day of the fixed term.

Clause 1.8.2 stated:

The Tenant may terminate the contractual periodic tenancy by giving at least two months’ notice in writing to the Landlord.

8. On 6 May 2013, the tenants gave notice to the appellants that they wished to vacate the appeal dwelling. A termination date of 22 July 2013 to end the tenancy was agreed.
9. The tenants moved into another property, within the billing authority’s area, on 26 June 2013. It was accepted that they were no longer resident in the appeal dwelling from this date but the tenancy continued until 22 July 2013.
10. A number of the tenants’ possessions remained in the appeal dwelling until 29 July 2013, a week after 22 July 2013. The check out was delayed because the appellants’ managing agent was not in a position to check out the property until then, because he was on annual leave.
11. The appellants re-let the appeal dwelling to new tenants with effect from 9 August 2013.
12. The billing authority determined that the appellants were liable for the council tax for the period 26 June 2013 to 8 August 2013. The appellants accepted liability for the period 23 July 2013 to August 2013 but disputed liability for the period 26 June 2013 to 22 July 2013.

Decision and Reasons

13. On behalf of the appellants, Mr Watney argued that throughout the period in dispute, his clients did not fulfil the definition of an owner provided by section 6(5) of the Local Government Finance Act 1992 as the tenants retained a material interest in the appeal dwelling which was inferior to the appellants’ interest.

14. Mr Watney contended that there was a fundamental difference between a contractual periodic tenancy and a new, statutory periodic tenancy which would arise under the Housing Act 1988. He argued that in this case, the assured shorthold tenancy had an initial term, as opposed to a fixed term, and continued on a month to month basis under the same contractual terms. Consequently, the tenancy had not ended or run past the initial term. It was still the same tenancy.
15. Mr Watney stated that had the tenancy agreement been granted for a fixed term, it would have become a statutory periodic tenancy under section 5 of the Housing Act 1988, when the tenants remained in occupation after 22 July 2013. However, that was not the case here.
16. Mr Watney sought to differentiate the facts in this case with the facts in *Genevieve Macattram v London Borough of Camden* [2012] EWHC (Admin.) 1033 [2012] RA 369 where it was held that if a new periodic tenancy arose after the expiry of the term of a lease it was a different tenancy.
17. In support of his client's case, Mr Watney referred to an earlier tribunal decision in relation to an appeal against Leeds City Council (appeal number: 4720M67692/244C), however this decision was of persuasive value only and the Panel preferred to have regard to the High Court's judgment in *Macattram*. The parties also referred to the Upper Tribunal's decision in *CT v Horsham District Council* [2013] UKUT 617 (AAC) but this dealt with a statutory periodic tenancy, not a contractual tenancy.
18. The billing authority's argument was that the tenancy agreement had an initial fixed term and after the expiry of the fixed term, it continued on a month to month basis. As a result, during the period in dispute, the tenants no longer possessed a material interest in the appeal dwelling, because they were monthly periodic tenants only. Therefore, they could not be liable as the owners, when it was accepted that they were no longer resident.
19. Liability for the council tax was determined on a daily basis, having regard to the hierarchy of liability under section 6 of the Local Government Finance Act 1992. Both parties accepted that as there was nobody resident in the appeal dwelling, during the period in dispute, that the owner was liable. The issue for the tribunal to determine was to identify who that owner was,
20. The tenants could only be liable for the council tax if they held a material interest that was inferior to the landlord's interest. In order to fulfil the statutory definition of a material interest, the tenancy agreement had to constitute a leasehold interest of six months or more. Mr Watney's argument was that it was a leasehold interest of six months or more because after the initial twelve months' term had expired the term tenancy continued. It was not therefore the case that a new tenancy had been entered into following the expiry of the initial term, as was the case in *Macattram*.
21. In paragraphs 16, 17 and 18 of her judgment, HHJ Alice Robinson QC set out the correct legal position, which provides authoritative guidance to the Tribunal:

“16. Section 6 of the 1992 Act draws a distinction between different types of legal interest. Subsection 2(b) refers to a resident with a leasehold interest, and subsection 2(c) to a resident who is a statutory or introductory tenant, and subsection 2(d) to a resident who has a contractual licence. Only the definition of an owner for the purposes of 2(f) was constrained by the definition in subsection (6) as being a leasehold interest granted of six months or more. In my judgment, given the careful distinction between different types of interest ranking below that

of a freeholder, any argument which seeks to elide two different types of tenancy should be treated with considerable caution.

17. The whole premise of the inference of a periodic tenancy which arises after expiry of a fixed term by virtue of the payment and acceptance of rent is that by their conduct the parties are taken to have agreed to enter into a tenancy. Although the relationship of landlord and tenant continues, the agreement between them is not one of continuation of a previous fixed term that has expired, rather it is the commencement of a new and different term of years, a monthly periodic tenancy. Although that tenancy is on the same terms and conditions of the previous lease that again is based on an inference from the party's conduct. Those previous terms only apply insofar as they are not inconsistent with the terms of the new and different tenancy, namely the periodic monthly tenancy.

18. For all these reasons, I consider that the periodic tenancy which arose upon the payment and acceptance of rent after expiry of the three year fixed term was a new tenancy or leasehold interest rather than a continuation of the fixed term.”

22. The key difference between this case and *Macattram* is that in this case the tenants had been granted a leasehold interest for a term of six months or more and the contractual term of that lease had not ended, being extended from month to month as part of the term. The fact that they no longer held under the initial term is not, in the judgment of the Panel, a relevant consideration: the leasehold interest “was granted” (applying the words of section 6(6) of the 1992 Act) on 23 July 2010 for a term of six months or more and they continued to hold the appeal dwelling under the extended contractual term until it was agreed their notice expired. They continued to have that material interest in the whole of the dwelling. In *Macattram* there was no contractual provision for the original term to continue: a new tenancy had arisen by the demand and acceptance of rent.
23. The Panel agreed with the Respondent that the term of a lease must be sufficiently certain when granted. However, the fact that the contractual term of this tenancy continued from month to month, after the end of the 12 month fixed term, until terminated by notice does not prevent the term being sufficiently certain, because the tenant has power to terminate but only on notice specified in the tenancy agreement.

Order:

24. Under the provisions of Regulation 38(1) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the billing authority to amend its records to show that the appellants are not liable for the council tax for the period 26 June 2013 to 22 July 2013 inclusive.
26. The billing authority must comply with this order within two weeks of the date of its making.

Date: 22 July 2014

Appeal number: 3245M131738/176C