

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Anthony Rose & Mrs Helen Rose

Appeal Number: 6830M429/CTL/1

Appellant's Address: Hengoed Coach House, Bontuchel, Ruthin LL15 2DD

The Matter Appealed against: Council Tax Liability Appeal

Date of Hearing: 25 April 2023

Appearances: Mr & Mrs Rose
Mrs E Edge on behalf of Denbighshire County Council (DCC)

Date of Decision: 18 July 2023

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Miss M Jones
Mr C Newman
Mr B Bagnall

Tribunal Clerk: Mrs C Jones

Introduction:

1. This was a Council Tax Liability appeal made in accordance with *Section 16 of the Local Government Finance Act 1992 (the act)*. The appellants were aggrieved by Denbighshire County Council's (DCC) refusal to allow a reduction in their Council Tax charge in accordance with their discretionary powers under section 13A (*of the act*) in respect of the appeal property. Furthermore, they were aggrieved with DCC decision to charge them the Second Home Premium from the 1 April 2020 to 1 April 2021.
2. This is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the Tribunal before it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.

Legislation

3. Under the *Local Government Finance Act 1992, section 13A* prescribes the following:

Reductions by Billing Authority

- (1) The amount of council tax which a person is liable to pay in respect of any chargeable dwelling and any day (as determined in accordance with

sections 10 to 13) tax reduction scheme.

(a) in the case of a dwelling situated in the area of a billing authority in England, is to be reduced to the extent, if any, required by the authority's council tax reduction scheme.

(b) in the case of a dwelling situated in the area of a billing authority in Wales, is to be reduced to the extent, if any, required by any council tax reduction scheme made under regulations under subsection (4) that applies to that dwelling.

(c) in any case, may be reduced to such extent (or, if the amount has been reduced to under paragraph (a) or (b) , such further extent) as the billing authority for the area in which the dwelling is situated thinks fit.

Second Home Charge – *Section 139 of the Housing (Wales) Act 2014* and appended to *Section 12A of the Local Government Act 1992*.

Listing Officer – *Section 22 of the Local Government Finance Act 1992*.

Summary of the case

4. The appellants had traded as Hengoed Farm Holidays at the subject property since 2010. They had significantly exceeded the availability and occupancy thresholds for Non-Domestic Rating (NDR) in each year of operating except for the 2020-21 Financial Year, when the COVID-19 pandemic hit. In that year only 69 nights occupancy had been achieved, one night less than the 70-night occupancy threshold. Consequently, the Valuation Office Agency (VOA) had taken the appeal property out of the NDR list and had entered it on to the Council Tax (CT) list.
5. It was explained that during the relevant period, from 1 April 2020 to 1 April 2021, a Second Home charge of a 150% was levied on the property as it was deemed to be a furnished property that was no one's main residence.
6. Mr & Mrs Rose maintained that DCC had not considered its discretionary power fully in this case. They had not considered the unique challenges which the pandemic and lockdowns created. The appellants had received a significant number of bookings during the 83 days available for self-catering lets to operate in Denbighshire between 1 April 2020 and 31 March 2021. Unfortunately, cancellations due to the lockdowns had eroded their opportunity to achieve the 70-night occupancy needed to qualify as a self-catering holiday let. In such circumstances the lack of one night's occupancy in their opinion could and should have been adjudged 'de minimis' and ignored.
7. The appellants believed DCC's view that the discretion afforded under section 13A was confined to matters of personal hardship only was too narrow and wrong. DCC should have considered the reduced operating period along with the fact that Denbighshire, and in particular Ruthin, was not

an area affected by a significant 'second homes' problem. The appellants' contribution to the financial well-being of their community was also a matter that should have been considered.

8. Furthermore, the appellants claimed that DCC had failed to give proper regard to Statements from Welsh Government, in particular a letter to Sam Rowlands MS from the Finance Minister Rebecca Evans MS, dated 18 October 2022. In addition, they had not given regard to Welsh Government's "Guidance on the Implementation of the Council Tax premiums on long-term empty homes and second homes in Wales" published in January 2016, in particular paragraphs 47 to 49 concerning the circumstances in which council tax liability may be reduced.
9. Mrs Edge on behalf of DCC explained a letter was issued to the appellants on the 18 October 2022 to make them aware of the reassessment of the property retrospectively by the VOA. The letter notified the appellants of the second home premium charge being levied, along with the definition of a second home. Confirmation that no further reductions were legislated during the COVID-19 period was also included.
10. Mrs Edge clarified that DCC were governed by the VOA's decision to place the appeal property in the CT List for the period in question, in accordance with the Local Government Finance Act 1992. Therefore, the appellants were advised to make a separate appeal directly to the VOA. They were also informed that the only available option for the authority to explore for the adjusted charge periods would be a Section 13A as no discount or exemption was available to award.
11. DCC had offered support by means of a reasonable arrangement if payment of the charge could not be made in full. This was considered the best option to support the appellants following the reassessment of the appeal property.
12. No additional reductions were introduced in Council Tax legislation for properties due to Covid-19 and therefore, no further exemption could be awarded. Mrs Edge quoted a previous Tribunal decision (6830M299/CTL) to support this contention. She referenced a quote from the decision that stated no legislation enabling discounts due specifically to the Coronavirus pandemic had been enacted by the Welsh Senedd.
13. DCC decided that as Council Tax helped fund a wide range of vital services, and a Section 13A reduction was taken from the Council Tax Budget, which was funded by the Council Taxpayer, they would look at alternatives where applicable. The Revenues Manager and the Section 151 Officer resolved that applications were considered on a case-by-case basis for the Section 13A reduction where the customer was suffering significant financial hardship because of the premium charge. It decided not to take a blanket approach for people in the same circumstance as the appellants because it would increase the financial burden on taxpayers in Denbighshire. The circumstances of the appellants were not deemed to be ones that the Authority felt would be appropriate for a reduction.

14. In summing up her evidence, Mrs Edge stated the appellants had confirmed they were not suffering financial hardship due to the imposition of the second home premium. She believed that DCC had acted reasonably in its decision to refuse a Section 13A reduction, and no other reductions were introduced in legislation to enable any further discounts or exemptions to be considered because of the Covid-19 pandemic. Therefore, as the appeal property was correctly assessed in accordance with the legislation, she requested that the appeal be dismissed on these grounds.
15. In summing up their evidence, Mr & Mrs Rose stated that ultimately it was a question of fairness. Businesses like theirs must pay their way and contribute to the communities in which they operate, and they had done so for 13 years. Failure by one night to achieve the 70-night threshold during a uniquely difficult period surely did not indicate that they had failed in this. Equally, they did not fall foul of the other primary policy objective of the Welsh Government here. They had not taken a property away from the market which could have provided a home for a local family.
16. Mr Rose said he would have hoped that appreciating the contribution businesses like theirs make to the economy of the country and the circumstances that gave rise to an insignificant shortfall in occupancy, that DCC would have seen fit to waive the whole Council Tax plus premium charges levied for 2020-1, or at least for most part, to reflect these factors.

The Reasons for Decision

17. Having considered all the evidence placed before it, both written and oral, the Panel has decided to dismiss this appeal. It does so for the following reasons.
18. The property was shown in the Council Tax Valuation List as a chargeable dwelling. The Billing Authority has no authority over the matter of inclusion of properties in the Valuation List. This is an issue for the Valuation Office Agency, and any appeal in respect of this should be made directly to them. It remains the fact then that this property was entered in the Valuation List from 1 April 2020 until the 1 April 2021 and it was not an exempt dwelling under any other part of Council Tax legislation. Accordingly, the property was a chargeable dwelling; and Council Tax was payable in respect of it unless the amount due was reduced to zero by another part of the relevant law.
19. Under the relevant law as it currently stands the property was subject to a Second Home Premium. Mrs Edge explained fully in her evidence why the premium had been applied in this case. The Tribunal understands and accepts this explanation. In order, then, for the amount of Council Tax payable in respect of the dwelling to be reduced (either to zero or a lesser amount than the full charge based on the Second Home Premium), the billing authority would have to exercise the discretion given to it under section 13A(1)(c) of the Local Government Finance Act 1992. The

discretion is wide in that it allows the authority to reduce the amount as “it thinks fit”, considering all the relevant circumstances.

20. The authority has addressed the issue of reducing the amount payable by way of the discretion available to it; but it has concluded that the circumstances do not justify a reduction. The Tribunal finds that the authority has acted reasonably in coming to this conclusion.
21. The Tribunal notes DCC’s explanation that their policy was to award applications for the section 13A discretionary reduction where the customer was suffering with significant financial hardship because of the premium charge. As Council Tax helps fund a wide range of vital services and as the Section 13A reduction would be taken from the Council Tax Budget funded by the Council taxpayers in the county, the authority would look at alternatives to the section 13A where applicable. In the Tribunal’s view, that was not an unreasonable matter for the Council to consider when determining applications for discretionary reduction under section 13A. Likewise, the Tribunal also notes the Council had offered to set up a payment arrangement with the appellants if the charge could not be paid in full. Overall, the Council had looked at the detail of Mr & Mrs Rose’s case and it had found that the circumstances were not sufficient to warrant a discretionary reduction.
22. The Tribunal was also satisfied that no legislation enabling discounts due specifically to the Coronavirus pandemic had been enacted by the Welsh Senedd.
23. Although empathising with Mr & Mrs Rose for the difficulties they had experienced during the Covid-19 lockdown period, the Tribunal finds that DCC had acted reasonably in finding that the circumstances were not extreme enough in its view to justify a reduction.
24. For the above reasons, the Tribunal dismisses this appeal.