9-6-2017

Student Union Lettings Ltd and Leicester City Council

Valuation Tribunal for England

VALUATION TRIBUNAL FOR ENGLAND

Council Tax Liability; section 4(1) & (2) Local Government Finance Act and article 3 of the Council Tax (Exempt Dwellings) Order 1992 SI 558 as amended by the Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012 SI 2965; whether purpose-built student flats separately entered on the list comprised a hall of residence within Class M of the Order; appeal Dismissed.

RE: UPP-D47 Block D 2A Upperton Road LE3 0AD
265, The Summit, LE2 7BF
EB31, 70 Eastern Boulevard, LE2 7HT

APPEAL NO: 2465M197400/037C
APPEAL NO: 2465M196502/037C
APPEAL NO: 2465M197018/037C

BETWEEN: STUDENT UNION LETTINGS LTD Appellant

AND

LEICESTER CITY COUNCIL Respondent

PANEL: Mr M Young (Vice President)
Mrs N Carr

SITTING AT:

NSPCC National Training Centre, 3 Gilmour Close, Beaumont Leys, Leicester LE4 1EZ

ON: Wednesday, 6 September 2017

APPEARANCES:

Mr Alan Murdie, Counsel, for the Appellant
Ms J Wigley, of Counsel, for the Respondent.

Summary of Decision

1. The appeals are dismissed. The appeal dwellings do not qualify for a class M exemption from council tax within the meaning of section 4(1) and (2) of the Local Government Finance Act 1992 and the Council Tax (Exempt Dwellings) Order 1992 SI 558 article 3 as amended by the Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012 SI 2965.

Introduction

2. The Appellant brought these appeals under section 16 of the Local Government Finance Act 1992 ('the Act') against a decision of the Respondent that, for the purposes of section 4(1) & (2) of the Act and article 3 of the Council Tax (Exempt Dwellings) Order 1992 SI 558 as amended by the Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012 SI 2965, the student dwellings known as UPP-D47 Block D 2A Upperton Road LE3 0AD, 265, The Summit, LE2 7BF, and EB31, 70 Eastern Boulevard, LE2 7HT (collectively hereafter 'the appeal Accommodation') did not fulfil the requirements of the Class M exemption from council tax liability.

3. On 27 February 2017 it was directed that these three appeals should be heard as lead appeals, the decision in which would determine the question for all other appeals made by the appellants on the same grounds. Directions for provision of evidence were given. By the date of the hearing, neither party was able to provide the date ranges to which these appeals related, and it was agreed that relevant dates would be provided after the Panel's decision as necessary.

Legislation

4. Council tax is payable in respect of any chargeable dwelling within a Billing Authority's area that is not an exempt dwelling: section 4 (1) & (2) of the Act.

5. Section 4(3) of the Act provides for the Secretary of State to prescribe factors for classes of dwellings to be exempt. By the Council Tax (Exempt Dwellings) Order 1992, as amended by the Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012, the Secretary of State prescribed for certain classes of dwellings to be exempt.

6. Class M is one such exemption: "a dwelling comprising a hall of residence provided predominantly for the accommodation of students which is either:

   (a) owned or managed by an institution within the meaning of paragraph 5 of Schedule 1 to the Act or by a body established for charitable purposes only; or

   (b) the subject of an agreement allowing such an institution to nominate the majority of the persons who are to occupy the accommodation so provided".

7. A further exemption, also relating to students, is class N:

   (1) a dwelling which is either –

      (a) occupied by one or more residents all of whom are relevant persons; or

      (b) occupied only by one or more relevant persons as term-time accommodation;

   (2) for the purposes of paragraph (1) –

(a) "relevant person" means –

(i) a student;

(ii) a student's spouse, civil partner or dependant… [subject to various conditions, none of which are relevant to the present appeals]; or

(iii) [a person to whom Class C applies, also not relevant to the present appeals);

(b) a dwelling is to be regarded as occupied by a relevant person as term time accommodation during any vacation in which he –

(i) holds a freehold or leasehold interest in or licence to occupy the whole or any part of the dwelling; and

(ii) has previously used or intends to use the dwelling as term time accommodation.

Decision and Reasons

8. The Registrar has authorised that, in a variation from usual practice under the tribunal's Practice Statement VTE/PS/C5 Statement of Reasons in Council Tax Liability Appeals, which requires only summary reasons to be issued with the decision notice, the following full written statement of reasons will be issued.

The Appellant's case

9. The Appellant was incorporated as a not-for-profit limited company on 9 July 2012 for the purpose of management of various University accommodation throughout Leicester and is a registered charity. The appeal Accommodation was being so managed. Mr Irving Hill, CEO of the Appellant, gave evidence regarding the appeal Accommodation, including a digitally pre-recorded tour of two of the units of the appeal Accommodation, other representative accommodation and the surrounding area. He described the respective units as 'typical' of all of the units subject to appeal. In essence, the accommodation in the various blocks comprised either self-contained flats for individual accommodation, or alternatively 'cluster flats'; self-contained units in which were situate a number of separate bedrooms with en-suite bathrooms, which were each served by a communal kitchen and lounge area. Plans relating to the appeal Accommodation were provided. The Appellant also managed university accommodation purpose-built by De Montfort University and sold to the current owners, G. L. Europe, in which separate rooms were let in blocks with shared communal facilities.

10. It was the Appellant's case that the only real difference between the appeal Accommodation and the cluster flats or other typical university accommodation was that the latter were occupied by multiple people with shared kitchen and living space, whereas the appeal Accommodation was entirely self-contained for an individual student (or, as the case may be, a married or otherwise intimately associated couple). Each unit had its own kitchenette and bathroom. Nevertheless, those individual students had access to shared facilities within the student blocks generally, including a gym, study area, and supermarket and coffee shops within the same area of the development, albeit that they were not adjoined. The development area incorporating the appeal Accommodation was substantially on a private road save for public highway access to the supermarket car park. This was very much, in the Appellant's view, a 'campus'. The fixtures and fittings and general appointment of the cluster flats and self-contained flats were to the same high specification.

11. The appeal Accommodation was let to students exclusively or to a student and their partner but the lead person on the tenancy agreement would always be the student. The Appellant described the tenancy as a 52 week letting, although the agreements provided at the hearing were for a term of twelve months but with a period of 8 weeks in which the student was not entitled to occupy the unit without prior consent of the landlord but paid a "summer retainer" for those 8 weeks at half the usual rent in order to reserve, if so wished, the appeal Accommodation for the following year. Therefore, the appeal Accommodation was let for the entire year, from year to year. While this meant that for the whole of the year the student occupying the accommodation was entitled to class N exemption the Appellant asserted the appeal Accommodation also fulfilled the requirements of class M.

12. It was pointed out for the Appellant that the Respondent's classification of the appeal Accommodation as class N only was causing the Appellant an 'administrative nightmare' for the following reasons. Inevitably, albeit that students signed up for the appeal Accommodation at the beginning of the academic year, there was some 'churn' – some would leave early because they had failed their course, some would move to alternative accommodation, others were on shorter courses and each winter there was around a 10% drop-out rate. Because each of these events rendered class N no longer applicable and each occurred on a different day, it was almost impossible to know when the Appellant became liable and for which periods. Sometimes they did not even know that the occupant had left until some time afterwards. The administration was more than a not-for-profit charity, fulfilling the description set out in Class M, should be required to handle. The Appellant accepted that the majority of student lets ran smoothly year to year, but those that fell within the exceptions described had resulted in all sort of problems including service of demands on the flats themselves rather than the Appellant and failure to notify the Appellant or G.L . Europe of enforcement proceedings.

13. The Appellant accepted that each of the flats forming the appeal Accommodation was a separate entry in the council tax valuation list, each at valuation band A. The cluster flats were a each single entry representing a single unit with several bedrooms. An example of this was Flat 56, which was listed in band C. Ultimately, in the view of Appellant there was no difference – the building containing the appeal Accommodation was a university hall of residence and should be treated as such for the class M exemption.

14. Mr Murdie argued that although each separate flat was to be considered a hereditament for the purposes of section 3 of the Act, and therefore each flat was a dwelling, that did not automatically mean that, absent aggregation, the appeal was bound to fail. It was the Panel's job to look at the legislation as a whole. In his submission each of the dwellings fell to be considered as a hall of residence, as the intention of Parliament was that students would be exempt from council tax. The Interpretation Act 1978 provided at section 6 that unless the contrary intention appears the singular includes the plural, so there was no requirement for occupation by 'students'; a single student occupying the dwelling could be sufficient (see *Annicola Investments Ltd & Anor v Minister of Housing and Local Government* [1968] 1 QB 631 per Lawrence J at 642). Moreover, 'a dwelling comprising a hall of residence' in natural language could be read as a dwelling forming part of such a hall. The exemption did not make any mention of a requirement for any form of communal living.

15. In Mr Murdie's submission it was the intention of Parliament as expressed in class M, that student accommodation should not be the subject of council tax, and it was imperative that the Panel considered the nexus or causal link between the right of the

student to occupy and the nature of that occupation, when determining whether some other class of exemption might be applicable. There was no lawful form of occupation of the appeal Accommodation other than through the Appellant, and the Appellant fell squarely within the requirements of Class M(a). Given the nature of the occupation, this was a clear and plain case to which class M applied. It was only if the preconditions (a) or (b) were missing that students would then fall into class N, in which was absent any connection with the educational institution.

16. Mr Murdie relied on what he described as a common-sense approach to the words 'dwelling comprising a hall of residence'. He submitted that there was no technical definition of 'hall of residence', and the types of accommodation that could fulfil this requirement were wide and various. Since the appeal Accommodation (the flats) fulfilled the qualifying relationship with the Educational Institution via the Appellant, each flat could be a hall of residence by relationship with all the other flats. The appeal Accommodation was not just 'predominantly for' but rather *exclusively* for the occupation by students of the relevant institutions, albeit it could be used for conferences and so forth outside of term-time. He reminded the Panel that it should not take too narrow an approach to interpretation or put too great an emphasis on single words (*Harrow Borough of London v Ayiku* [2012] All ER (D) 105).

The Respondent's case

17. The Respondent relied on the witness statement of Steven King and the separate entry in the valuation list for the appeal Accommodation flats as the correct basis for the demands made.

18. Ms Wigley submitted that, in order for a dwelling to fall within the class M exemption, it had to satisfy one preliminary point and then three conditions: the preliminary point was that it had to be entered on the valuation list; thereafter the three conditions were that (1) the dwelling must comprise a hall of residence; (2) it must be provided predominantly for the accommodation of students, and; (3) paragraphs M(a) or (b) must be satisfied.

19. Ms Wigley conceded that condition (3) was satisfied and there was no dispute. She also conceded that condition (2) was satisfied as the appeal Accommodation was plainly predominantly for the accommodation of students, whether that be spatially or temporally.

20. However condition (1) required the appeal Accommodation to be a hall of residence. What the Appellant sought to do was render those words irrelevant. This was not an approach that was open to the Panel: *Attorney General's Reference (no 1 of 1975)* [1975] 1 QB 773 at 779 E-F).

21. In Ms Wigley's submission, the term 'hall of residence' was not defined. Class M had remained un-amended since introduced by Parliament in 1992. She did not have any evidence of what a hall of residence was in 1992, or indeed whether accommodation of the type subject to the appeals existed at that time. She also acknowledged that there had been a progression of changes in student accommodation since that date, so that the traditional understanding of what comprised a hall of residence might now have changed. However, the condition that the accommodation had to 'comprise a hall of residence' still had to be met (*Stowe School Ltd v Aylesbury Vale District Council* 0405M64150/165C 2 February 2012).

22. Administrative convenience, policy considerations and so forth were, in Ms Wigley's submission, marginal considerations. Where the words were clear, it was not for the Tribunal to reinterpret the law, but rather it was the Panel's role to give effect to them.

23. Ms Wigley argued that despite the fact that the term had not been defined, 'hall of residence' connoted a particular type of specialised residential accommodation, for the accommodation of more than a single student. Within its ordinary meaning, there was a requirement for a significant degree of communal living and sharing of facilities. Thus, a self-contained flat could not satisfy the requirement.

24. Ms Wigley relied on a number of definitions from other legislative regimes, in which the term hall of residence meant something more than just accommodation for a student (Schedule 3 paragraph 11 Immigration Act 2014; section 59(3)(b) and 59(4)(b) Land and Building Transaction Tax (Scotland) Act 2013; Article 6 Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014/2359; Schedule 29A paragraph 8 Finance Act 2004). From these she asserted that the common thread was that a hall of residence was different from a dwelling that was merely occupied by a student or merely institutionally managed student accommodation.

25. In the present appeals, the term must add something more, otherwise it would not be added to the other requirements. The Appellant's contention that simply fulfilling M(a) or (b) was enough to fulfil this separate condition was unsustainable. In Ms Wigley's submission, the difference was the element of communal living. That is the reason that the Respondent had conceded that the cluster flats represented halls of residence – they had shared kitchen and living facilities. The cluster flats were also each a single entry in the valuation list.

26. The appeal Accommodation was each a separate flat, with a separate entrance, and a separate entry on the valuation list as a separate hereditament. Each separate dwelling – each flat - therefore could not meet the definition of a hall of residence. Each had its own essential day-to-day living facilities. The communal facilities were not contingent upon accommodation within the appeal Accommodation – they were open to all students in all of the accommodation provided. They were not connected to the appeal Accommodation. They did not form any property rights in the tenancy agreements for the appeal Accommodation.

27. The appeal Accommodation fell outside of the class M definition for that reason. That did not deprive the Appellant of the benefit of an exemption from council tax for the Accommodation. It merely meant that that exemption fell within class N. The very existence of class N supported the proposition that condition (1) in class M - that the dwelling comprised a hall of residence - must mean something more than simply satisfying condition (3).

28. In so far as administrative inconvenience was concerned, it was Ms Wigley's submission that this was simply irrelevant to the interpretation of statute (*Stowe School*), and that it had been overplayed by the Appellant – it was entirely within its gift to make it simple for itself. It had merely complicated things by the use of tenancy agreements that granted a right of occupation for less than 52 weeks. The tenancy itself could not be described as a 52 week tenancy. The Appellant should simplify things for itself. This was not within the purview of the Respondent. The Appellant's own particular policies were causing the 'administrative nightmare', not the legislation. Moreover, the Appellant was

commercially benefitting from its own policies. Individual flats were more attractive to let out for conferences and short stays. The Appellant made revenue as a consequence. The Appellant could not have it both ways.

Decision

29. The sole issue in these appeals is the interpretation of the class M exemption in Council Tax (Exempt Dwellings) Order 1992 as amended (set out above).

30. The Panel agrees with Ms Wigley's submission that the exemption cannot be read as if the words 'a dwelling comprising a hall of residence' do not exist, and rejects Mr Murdie's contention that fulfilment of M(a) or (b), i.e. control or management of the accommodation, is sufficient in itself to satisfy the exemption in circumstances where the accommodation is provided predominantly for student accommodation.

31. This conclusion is supported by the fact that the class N exemption provides a further avenue for student exemption from council tax. It is clear, in the Panel's view, that Parliament anticipated more than one way in which a student would be exempt from council tax. Had Parliament intended that *any* student accommodation would qualify for exemption under class M if it was owned or managed as anticipated in M(a) or (b), the words 'a dwelling comprising a hall of residence' would not appear in the provision at all; they would be otiose. The words must therefore be given effect as one of the conditions to be fulfilled for the exemption to apply (*Attorney General's Reference (No. 1 of 1975)* [1975] 1 QB 773). To read the provision in any other way would be unnatural.

32. Mr Murdie conceded that in applying the section each of the appeal Accommodation units, i.e. each of the flats, fell to be considered as the 'dwelling' for the purposes of the exemption. In the alternative to his first submission above, his position was that each of the flats, being a disaggregated hereditament entered on the list, was a dwelling, and each satisfied individually the requirement of a hall of residence. In the Panel's view this was a properly made concession. Unless and until a successful application for aggregation is made, the valuation list is determinative of the dwellings being separate hereditaments and therefore separate dwellings (section 3 of the Act, s115(1) General Rate Act 1967 and *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862).

33. Further, Ms Wigley having made proper concessions that the Appellant satisfies M(a) and that the accommodation is predominantly for the accommodation of students, the question is narrowed further: we need only determine whether, for the purposes of class M, the appeal Accommodation can be described as a 'a dwelling comprising a hall of residence'. If that condition is satisfied, then the appeals succeed. If it is not, then the appeals must fail. In either case, there are consequences for the other appeals.

34. Neither party was able to define what is meant by a 'hall of residence'. This is not surprising; there is no definition in the Order. It may be that the draftsman thought the concept so obvious that it needed no definition. It may well have been obvious in 1992. There was no evidence of a notional hall of residence in 1992, nor whether flats of the type represented by the appeal Accommodation existed at that date. It is without question that student accommodation has changed significantly since that date.

35. The Appellant argues that a single unit of accommodation, for the occupation of a single student, as in each of the appeals can satisfy the definition of a hall of residence. In his submission, the co-location of the appeal Accommodation with facilities shared with

other students in a 'campus' style set up is enough to satisfy the requirement. There is no need for shared or communal 'living', but rather the Panel should direct itself to the broader use of the site. The exemption itself makes no provision for shared or communal facilities, and Parliament intends that student accommodation should not be the subject of tax. He effectively also argues that the use of the word 'comprising' can be interpreted as 'Comprised within'.

36. With respect to Mr Murdie, the two positions he advanced for the Appellant are irreconcilable. Either the single dwelling comprises the hall of residence, which is the crux of the Appellant's case, or each single flat is comprised within a hall of residence. For this circumstance to apply, the hall of residence must *be* the dwelling. Coming back to the point of aggregation on the council tax list, and the number of hereditaments there recorded, in the Panel's view in its current form the entries on the list cannot support the latter interpretation. 'Comprising', by its natural meaning, means consisting of, or made up of. Thus, the dwelling must consist of the hall of residence, not simply be included within some theoretical it. We prefer his original concession; each of the flats representing the appeal Accommodation must itself be a hall of residence to satisfy the exemption.

37. The Respondent argues that a self-contained unit of accommodation for the occupation of a single student (or, as the case may be, an intimate couple) is simply incapable of fulfilling the concept of a hall of residence. There must be some element of communal living for a dwelling, in the traditional sense, and in the sense anticipated by the exemption, to qualify as a hall of residence.

38. The Panel has directed itself to the dictionary definition of a hall of residence, as anticipated in *Stowe School.* The Complete Oxford English Dictionary does not contain a definition of a 'hall of residence' as a separate definition, but in its definition of hall it states as follows:

> "*A term applied, especially in the English universities, to a building or buildings set apart for the residence or instruction of students, and, by transference, to the body of students occupying it... [*After an explanation of the historical evolution of the word*] c. In recent times, applied to buildings in University towns, established, whether by the University or not, for the use of students in the higher learning, sometimes enjoying the privileges of the University and sometimes not: eg. at Oxford, private halls for the residence of undergraduate members of the University, under the charge of a member of Convocation; theological halls (eg. Wycliffe Hall); halls for women students (eg Somerville Hall)."*

39. The shorter OED makes no mention of 'hall of residence' as a separate definition, but states that a hall can be "*A building, administered by a university, polytechnic, etc., in which students live (also* ***hall of residence****); an establishment of higher education in certain university towns, sometimes with (usually restricted) affiliation to the university*."

40. Shorter still, the Cambridge dictionary defines a hall of residence as '*a college building where students live*.'

41. These definitions, it may be said, are somewhat unedifying. On the one hand, they make no mention of shared facilities. On the other, each of the definitions anticipates that there is a building comprising the hall, in which is accommodated (whether for residential or educational purposes) a body of students.

42. None of the definitions, perforce, takes into account the considerations that we must take in to account regarding the meaning of 'dwelling' or 'hereditament' by virtue of section 3 of the Act, s115(1) General Rate Act 1967 and *Woolway v Mazars*.

43. In our view, the balance in the present appeals falls on the side of the Respondent. By its ordinary and natural meaning the phrase 'a dwelling comprising a hall of residence' implies something greater than a single self-contained flat, which is the reason the use of the word 'students' does not lend itself to interpretation in the singular per the provisions of section 6 of the Interpretation Act 1978 and *Annicola*, as Mr Murdie contended. The use of the plural in this provision is, in our view, no mistake but rather a deliberate choice by Parliament, which must be given effect as such. Neither can 'comprising' be interpreted in the way for which the Appellant argues, and since each of the flats in this case is a separate hereditament, and therefore a separate dwelling, it could not help the Appellant in any event. We are content that in so finding, we have not too narrow an approach as was criticised in *Ayiku*. We are confined to interpret the dwelling in this case as each separate, self-contained flat, and in our view a separate flat for the accommodation of a single student (or, as may be, a couple sharing an intimate relationship) has no feature of a hall of residence. By natural extension, were this to be stretched to its limits, it would allow any university to enter into a nomination agreement as anticipated in M(b) with any private individual in respect of property in the private sector, and call it a hall of residence for the purposes of the class M exemption, regardless of any educational or indeed basic co-location or other connection to the institution. This, in our view, cannot have been Parliament's intention. It seems to us that this is the very reason for the class N exemption to exist. Whilst we have a great deal of sympathy with the difficulties that the Appellant faces in administering the scheme that they have chosen, this cannot change the meaning of the Order.

44. Were the 'dwelling' in question the *building*, however, we would take the opposite view. Were the units aggregated, the appeal Accommodation would be contained *within* a single hereditament (the dwelling), which dwelling would *comprise* a hall of residence. Were that the case, it would be our view that the lack of communal or shared living would be immaterial; the building in that case would fall squarely within the definition. Common areas for the use of all students would be sufficient to cast the accommodation in the light of the class M exemption, and the site itself bears the features of campus living. This acknowledges the reality of improvements made to student accommodation, and indeed the changes in students' expectations, since the exemption was drafted.

45. It is therefore the Panel's decision that the appeals must be dismissed with the consequent dismissal of the appeals they lead.

M.F. Young
N. Carr