



- 3 The President of the Valuation Tribunal for England has authorised the hearing of this appeal in London as a result of an application from the Appellant's representative on the grounds of his inability to travel to Newcastle for health reasons.
- 4 The absence in this decision text of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

### **Preliminary Issue**

- 5 The appeal had initially been listed to a hearing in Newcastle on 6 March 2018, and the Respondent issued its full case to the Appellant on 19 January 2018.
- 6 No evidence had been received from the Appellant in response to the Respondent's case by the deadline of 6 February 2018, and the Respondent served the final hearing bundle on the Tribunal on 9 February 2018. The appeal was postponed from the hearing on 6 March 2018 as there was insufficient time to hear it. On Friday 2 November 2018, the Appellant sent by email to the Respondent and the Tribunal a copy of a letter from the trust's accountant, and a link to a 'You Tube' video which he wished the panel to consider in support of his case at the hearing on 5 November 2018.
- 7 The panel needed to identify the areas of non-compliance against the Direction in accordance with the Denton test as reaffirmed by the Upper Tribunal (Lands Chamber) in SIMPSONS MALT LIMITED & Others v. MR CRAIG JONES & Others (VOs) [2017] UKUT 0460 (LC)UTLC Case Nos: RA/7-10/2017, RA/15/2017, RA/21/2017, RA/22/2017, RA/28/2017.

Stage 1 – The panel found that the breach was serious.

Stage 2 – The Appellant explained that his failure to send his additional evidence to the Respondent was due to him being unaware that the timescale of the directions for the original hearing still applied.

The panel found that this was not a good reason. Even if the Appellant's representative was unaware that the evidence submitted in respect of the 6 March 2018 was 'locked in', his additional evidence had been sent to the Respondent three days before the hearing and not four weeks, as would have been required had the timetable for submitting evidence been restarted.

Stage 3 - The panel then considered all the circumstances of the case. The Respondent's representative was given the opportunity by the panel to view all of the additional evidence and stated that he had not been disadvantaged by the late submission of the Appellant's evidence and he did not object to its inclusion.

The panel found that in light of the above, although the Appellant's breach of the direction was serious, it was in the interest of justice to allow the inclusion of the Appellant's additional evidence and decided to proceed with the hearing.

## Issue

- 8 The issue concerned whether the subject property was eligible for a class B exemption (property owned by a charity and unoccupied for less than 6 months) from 2 March 2017 when it became unoccupied.

## Evidence and Submissions

- 9 The Appellant's representative stated that the previous occupier of the subject property, was an army veteran who was about to be made homeless and in poor health. He argued that the previous occupier had been housed at the subject property by the Appellant in furtherance of the objects of the charity, which are listed as follows:
- the advancement of Orthodox Jewish religious education,
  - the advancement of the Orthodox Jewish faith,
  - the relief of the poor, sick and feeble amongst members of the Jewish Faith in any part of the world, and
  - such other purposes as are charitable according to the laws of England and Wales as the Trustees may from time to time decide.
- 10 He referred the panel to a video showing an interview with the previous tenant and a representative of a veteran's charity, which took place in the subject property. He also referenced a letter from the Appellant's accountant, stating that the money raised from the rental of the subject property to the previous tenant was used to fund the objects of the Trust.
- 11 Mr Bebb, on behalf of the BA, argued that the letting of the subject property to the previous tenant was not in furtherance of the objects of the Appellant's charitable objectives. He provided a copy of the tenancy agreement issued to the previous tenant by the Appellant's agents, which he stated was a straightforward commercial agreement between landlord and tenant and made no reference to there being any charitable purpose to his occupancy.
- 12 In support of this, Mr Bebb had also provided a copy of a statement provided by a Community Outreach Worker for The Gateshead Housing Company who had been involved with providing support to the previous tenant in respect of his housing. The Outreach Worker stated in his statement that the tenancy agreement issued by the Appellant's agents and their subsequent commencement of eviction proceedings did not bear the hallmarks of a charitable letting.
- 13 Mr Bebb argued that none of the charitable aims of the Appellant related to the provision of housing and, as the previous tenant was not of the Jewish faith, he could see no link between his occupation and the fulfilment of the first three objects of the charity. He argued that the fourth objective was not a 'cover all' which would include the provision of social housing and therefore none of the Appellant's objects were being furthered by the letting of the subject property to the previous tenant.

## Decision and Reasons

- 14 The appeal concerns the application of an exemption from council tax under class B of the Council Tax (Exempt Dwellings) Order 1992 SI 1992 no 558 (as amended). This provides:
- “Class B: a dwelling owned by a body established for charitable purposes only, which is unoccupied and has been so for a period of less than 6 months since the last occupation day, and was last occupied in furtherance of the objects of the charity.”
- 15 In determining the appeal, the panel had regard to the high court decision London Borough of Ealing v Notting Hill Housing Trust & Anor [2015] EWHC 161(Admin) which had been referred to by the Respondent. In this case, it was confirmed that eligibility for the above exemption required the following four conditions to be met:
- i) the dwelling must be owned by the body in question; and
  - ii) the body must be established for charitable purposes; and
  - iii) the dwelling must have been unoccupied for a period of less than six months
  - iv) the last occupation must have been in furtherance of the objects of the charity.
- 16 Having heard the submissions, the panel was satisfied that there was no dispute between the parties that conditions i) to iii) had been met. However, the BA had refused the application for an exemption as it did not agree that condition iv) had been met.
- 17 The panel were not persuaded by Mr Bebb’s argument that the fourth of the Trust’s objects could not be construed to include the provision of social housing. It agreed that the ‘*Ejusdem generis*’ rule cited by the BA would indicate that ‘such other purposes as are charitable according to the laws of England and Wales as the Trustees may from time to time decide’ would be of the same kind as three objects listed. The panel was of the opinion that the provision of social housing was not so far removed from the first three objects that it would be inconceivable for it to be considered ‘of the same kind’. In order to determine this appeal, the panel therefore needed to consider whether the previous letting of the subject property had been of a charitable nature.
- 18 In this appeal, the panel found no evidence to persuade it that the subject property had been let on a charitable basis to the previous tenant. The tenancy agreement issued was, in the panel’s opinion, purely a commercial agreement issued by a commercial letting agency. Although it accepted that no deposit was required, the requirement to pay two month’s rent up front was not in line with what the panel would expect where a landlord was letting a property on a charitable basis. It was of the opinion that the weekly rent of £90 per week constituted a market rent for the type and location of the subject property.
- 19 The Appellant’s representative had confirmed that there had been no ‘vetting’ of the tenant beforehand, to confirm whether or not his circumstances warranted assistance, and stated that the Appellant did not require that the property be let to a person who had been homeless or had any additional needs. The panel accepted that the Appellant may not have intended to evict the previous tenant

and that the proceedings may have been started in order to focus the tenant's mind on addressing his rent arrears. However it was clear that a notice of eviction proceedings was issued at the earliest opportunity and there was no evidence provided by the Appellant that any attempt was made to ascertain why the rent had fallen into arrears. The panel considered that these factors indicated that the letting of the subject property to the previous tenant had not been on a charitable basis.

20 The panel considered the Appellant's accountant's assertion that the letting of the subject property to the previous tenant had not been of a charitable nature. This statement contradicted the statements made by the Appellant's representative throughout the appeal – and supports the Respondent's case in that respect. The Appellant's accountant clearly stated that the Trust was charging full rent to the previous tenant, and the object of that rental was solely to make money to fund the Appellant's charitable objects. The panel did not agree that the fourth condition set out in paragraph 15 above was satisfied, however the property was let, provided the money it raised was used for the charity's objectives. It considered that there needed to be a direct link between the charitable nature of the letting and the furtherance of the charity's objectives and the Appellant had failed to provide sufficient evidence that this existed.

21 The appeal is therefore dismissed.

**Date:** 26 November 2018

**Appeal Number:** 4505M218075/254C