



## THE VALUATION TRIBUNAL FOR ENGLAND

**Appeal Numbers:**  
1. 5390M121673/084C  
2. 5600M123333/084C  
3. 5270M125073/084C

**27 May 2014**

Council tax – dwellings owned by charities and rented – void periods – Class B exemption – Council Tax (Exempt Dwellings) Order 1992, SI 1992 No 558 - whether “last occupied in furtherance of the objects of the charity” – role of billing authority in assessing statutory requirements – intensity of review

### **APPELLANTS**

**1. A2Dominion Housing Group Ltd v.**  
**Re:** 198 Cheeseman Terrace, London W14 9XT

**2. Notting Hill Housing Trust v.**  
**Re:** Flat 25, 16 Nevern Place, London SW5 9PR

**3. Notting Hill Housing Trust v.**  
**Re:** 184 Haymill Close, London UB6 8EL

### **RESPONDENTS (Billing Authorities)**

**London Borough of  
Hammersmith and  
Fulham**

**Royal Borough of  
Kensington & Chelsea**

**London Borough of Ealing**

**Before:** The President (Professor Graham Zellick QC)

**At:** Black Lion House, London

**On:** 31 March 2014

### **Appearances:**

Mr Andrew Lane, of Counsel, instructed by Glazer Delmar on behalf of NHHT and Devonshires Solicitors on behalf of A2Dominion Housing Group Ltd, for the Appellants.

Mr Jon Holbrook, of Counsel, instructed by Ms Janette Mullins, Hammersmith and Fulham LBC Legal Services for the first and second respondents and Mr Phil Ambrose, Ealing LBC Legal Services, for the third respondent.

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## Introduction

1. These three appeals have been heard together: VTE Procedure Regulations 2009, SI 2009 No. 2269, reg. 6(3)(b). They arise from the abolition of Class A and Class C exemptions from council tax by the Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012 (SI 2012, No. 2965), art. 2(3).
2. As a result of this change in law with effect from 1 April 2013, charities which wish to secure relief from the payment of council tax during any period when their property is unoccupied must now apply for a Class B exemption, which is worded as follows:

“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 and was last occupied in furtherance of the objects of the charity” (Council Tax (Exempt Dwellings) Order 1992, SI 1992 No. 558, art. 3, as amended by SI 1994 No. 539, art. 4(a)).
3. It will be seen that this is made up of several conditions or requirements. It is chiefly the final condition that is relevant in these appeals.
4. The appellants are all charitable bodies. They are social landlords and provide affordable housing for the poor, aged, disabled or sick.
5. As is evident from para. 2 above, the conditions or requirements specified in Class B are as follows:
  - (i) the dwelling must be owned by the body in question;
  - (ii) that body must be established for charitable purposes only;
  - (iii) the dwelling must have been unoccupied for less than six months; and
  - (iv) the last occupation must have been in furtherance of the objects of the charity.
6. The billing authorities here have explained that a Land Registry search will cover (i); that a review of the organisation’s Articles of Association or other constitutional instrument will reveal whether (ii) is satisfied; (iii) is straightforward; and (iv) will involve a review of the tenancy agreement issued or possibly the level of rent. The respondents accept that the appellants satisfy (i) to (iii).
7. It is unnecessary to describe in detail the facts relating to each of these appeals.

## The arguments

8. Mr Holbrook for the billing authorities says that in every case it is for the applicant charitable owner to satisfy the authority by the provision of evidence that all the conditions, especially the final condition, are satisfied. In relation to that condition, the evidence would need to take the form of particulars relating to the last occupation to show that the letting was indeed charitable at the time the occupant vacated the premises.
9. Mr Holbrook places considerable reliance on the Court of Appeal’s decision in *Helena Partnerships Ltd v HMRC* [2012] EWCA Civ 569; [2012] 4 All ER 111, which held that the provision of residential accommodation was not *per se* charitable. That decision is obviously binding and I do not gainsay it, but its relevance is open to question.
10. Essentially, the issue here is one of statutory interpretation. The ingredients of Class B are relatively straightforward in themselves, but there is nothing in the wording of the legislation that makes explicit what either the authority or the applicant must or may do.
11. Mr Holbrook argues that the wording implies that the authority must be satisfied in every case of all the elements and therefore it is for each applicant to supply the necessary information or evidence so that the authority may reach its decision.

12. Mr Lane for the appellants maintains that an applicant will satisfy test (ii) simply by disclosing its registered charity number or exempt charity status and that is conclusive (Charity Act 2011, s. 37). It is not for the authority to go behind this and scrutinise the charity's objects. The final and critical requirement must be read and applied in the context of these particular charities whose object is to provide housing in a charitable context.
13. In such a case, he argues, it is unreasonable for the billing authority to require the applicant charity to demonstrate that a particular letting to a specific person was of a charitable nature by reference to his or her personal circumstances. Mr Lane says that this would place an unreasonable burden on applicants which cannot have been Parliament's intention; and moreover, a resident's personal circumstances may have changed in the period between taking up residence and leaving the accommodation, over which the landlord can have no control and of which it is likely to have no knowledge. In short, as the charities are in the business of providing charitable housing, it will only be in exceptional cases that a billing authority will be entitled to question a claim and seek further information to assess it.
14. The appellants concede that such circumstances may theoretically arise. For example, an arrangement might be made to rent accommodation in a building in circumstances that were purely commercial, which would therefore take it outside Class B. But in the general run of cases, there will be no basis for any such suspicion and the billing authority should accept, absent reasonable grounds for believing otherwise, that any letting fell within the charity's objects. All the charity should be required to do is state that it was a normal letting. Mr Lane says Parliament cannot have intended that officers of a billing authority would in effect review every application on its specific personal facts in order to determine whether it amounted to a charitable purpose. Such officers lack the expertise to engage in any such exercise and Parliament cannot have envisaged it.
15. Mr Holbrook retorts that if this argument were correct, it would deny any significance to requirement (iv). It is therefore necessary to ask why the final element was included.

## **Conclusions**

16. In my judgment, the respondent billing authorities have approached these cases incorrectly and have overreached themselves. They have construed the legislation as if it stated: the billing authority shall satisfy itself that in every case each of the conditions specified has been fulfilled. Although there needs to be some basis for concluding that the applicant charity owns the dwelling in question (i) and that it has been unoccupied (iii), the authority's role in relation to (ii) and (iv) is limited.
17. It is, to my mind, inconceivable that Parliament could have intended to turn billing authorities into charity regulators, sitting in judgment on charities applying for a Class B exemption by scrutinising their objects and evaluating a particular letting or other activity. So far as (ii) is concerned, the applicant's charitable status, on whatever basis, is conclusive and it is impermissible for the billing authority to presume to review the body's objects and activities to confirm that it is in fact "established for charitable purposes only".
18. As for (iv), Mr Holbrook asks why it was included if it is not for the billing authority to assess the nature of the letting. In my view, that is easy to answer. It is to deal with the Oxfam or charity shop situation, i.e. it is to limit the application of the exemption to an activity of the charity that is directly related to its objects and is therefore charitable in

law. Not every lawful activity of a charity is charitable. That is well illustrated by the case of *Oxfam v. Birmingham City District Council* [1976] AC 126, cited in argument, where the running of fund-raising shops by Oxfam was held not to be charitable for the purpose of relief from business rates (a conclusion subsequently reversed by legislation).

19. If the appellants here had engaged in a manifestly non-charitable activity outwith their charitable objects, Class B would not be available to them, but housing individuals raises a presumption that they are operating within their objects and the Class B exemption applies. That is as far as a billing authority may go in impugning an applicant's claim.
20. Even if this were not the case, the appellants would still succeed. If the billing authorities have the power to assess the nature of the particular occupancy, then it must not only make clear what information it requires from the applicant charity in order to reach its decision, but that information must be such as to support a reasonable decision. Here, all that was asked for was a typical or standard tenancy agreement and because the agreement supplied failed to recite the charitable nature of the letting in accordance with the objects, the authorities concluded that they failed the condition.
21. This is wholly unsupportable. Due process has not been observed. The authority has failed to ask for, let alone consider, the relevant evidence and it has based its decision on a single factor that at best is marginal and in all probability is entirely irrelevant. There is no justification of which I am aware for the view that the tenancy agreement should recite the charitable nature or grounds of the tenancy.
22. There is also correspondence to the effect that condition (iv) cannot be met if the rent charged is the normal or market rent for the property, regardless of other factors or whether the tenant's rent is being reimbursed or paid from another source. An application cannot in my view be rejected on the sole or principal ground that the rent charged is the market rent.
23. In my judgment, the appellants fulfilled all the requirements for Class B exemption and they were wrongly denied the exemption. The appeals are allowed. The terms of the Order below have been agreed by the parties.

## **ORDER**

The decisions of the Respondents dated 20 November 2013 (re Flat 25, 16 Nevern Place), 18 November 2013 (re 198 Cheeseman Terrace) and 19 December 2013 (re 184 Haymill Close) be quashed and Council Tax Class B exemptions be allowed (the Respondents to repay any monies paid in respect of the relevant properties in council tax by the Appellants).



**President**



**Registrar**  
**27 May 2014**