



[2022] UKFTT 00013 (TC)

TC 08366

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/01381

CAPITAL GAINS TAX – main residence relief – whether property was main residence – no – appeal dismissed

BETWEEN

MUMTAZ HUSSAIN

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE ANNE FAIRPO
MRS M HANDS**

Sitting in public at Nottingham Justice Centre on 31 August 2021.

The Appellant appeared in person

Ms Truelove, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

Introduction

1. This is an appeal by the Appellant ('Mr Hussain') against a closure notice and amendment made by the Respondents ('HMRC') under s28A Taxes Management Act 1970. An associated penalty was not specifically appealed by Mr Hussain, although his notice of appeal asks that the penalty be suspended.

Background

2. The outline facts in this case are not disputed; it is the interpretation of those facts that is the root of the disagreement between the parties.

3. The property involved is the former Mansfield General Hospital (referred to as the Old Hospital in this decision). The hospital had been in use from the 1890s to 1992, growing from a small five-bed hospital to one accommodating over 160 beds, with wards and annexes being added over time. The various parts of the hospital extended over four floors in some places, and there were some physically separate buildings housing boilers and other functions. The total interior space amounted to approximately 150,000 sq ft. and the overall site amounted to 2.8 acres. In 1992, the hospital functions were moved to a new site and the property was put up for sale.

4. Mr Hussain purchased the Old Hospital in July 1994 and sold it at a gain in July 2013. He claimed main residence relief under s222 TCGA 1992 for a period of four years, on the basis of one year's occupation and the last three years of ownership.

5. Throughout Mr Hussain's period of ownership of the Old Hospital he also owned a number of other properties, particularly a property known as the White House, which was Mr Hussain's main residence before and after the period in which Mr Hussain states that he occupied the Old Hospital. Mr Hussain stated that he had personal possessions at the White House throughout the relevant period; the property was not rented out and it remained available to Mr Hussain.

6. Mr Hussain made no election under s22(1)(5)(a) TCGA 1992 to define which property was his main residence. The question for us is therefore whether the Old Hospital was his main residence. Given Mr Hussain's ownership of the White House, the Old Hospital could not be his only residence during this period.

Legislation

7. Section 222 of TCGA 1992 provides (as relevant):

(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in-

(a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or

(b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.

(2) In this section "the permitted area" means, subject to subsections (3) and (4) below, an area (inclusive of the site of the dwelling-house) of 0.5 of a hectare.

(3) Where the area required for the reasonable enjoyment of the dwelling-house (or of the part in question) as a residence, having regard to the size and character of the dwelling-house, is larger than 0.5 of a hectare, that larger area shall be the permitted area.

(4) Where part of the land occupied with a residence is and part is not within subsection (1) above, then (up to the permitted area) that part shall be taken to be within subsection (1) above which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

(5) So far as it is necessary for the purposes of this section to determine which of 2 or more residences is an individual's main residence for any period-

(a) the individual may conclude that question by notice to an officer of the Board given within 2 years from the beginning of that period but subject to a right to vary that notice by a further notice to an officer of the Board as respects any period beginning not earlier than 2 years before the giving of the further notice.

...

(6) In the case of an individual living with his spouse or civil partner-

(a) there can only be one residence or main residence for both, so long as living together and, where a notice under subsection (5)(a) above affects both the individual and his spouse or civil partner, it must be given by both.

8. Section 223 of TCGA 1992 says, in so far as it is relevant (for the 2013/14 tax year in which the gain arose):

(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 36 months of that period.

Mr Hussain's evidence

9. Mr Hussain is a pharmacist, with a pharmacy in the Nottingham area. He explained that he decided to buy the Old Hospital because he had long wanted to create a family seat for various generations of his family to live in. He was substantially influenced by English stately homes, such as Chatsworth and Blenheim Palace, and wanted to emulate those. He could not, however, afford to employ live-in staff and so considered that the Old Hospital was the best way to achieve this goal as it was in an urban setting and daily staff would be available.

10. Mr Hussain considered that he would be able to renovate the Old Hospital himself over time; he had renovated houses in which the family had lived and considered that his scientific background as a pharmacist meant that he had the knowledge to carry out any necessary work. He had very limited funds for the renovation and so would have to do the work himself, and it would have to be done piecemeal. He considered that his children, who were adults, could move in with their families. He had planned to give them each 20-30,000 sq ft of space and they could then modernise their parts of the property from their salaries as they thought appropriate. Mr Hussain has two sons: one lives near to him; the other is a medical professional in London.

11. He had not told anyone of his plans and had used pseudonyms in relation to the property for anonymity and safety reasons as he considered that the Old Hospital site was in a rundown area "at the lower end of society" and was not generally safe. This description of the area is somewhat surprising given that Mr Hussain subsequently operated a school from the premises.

12. He said that he had, at an unspecified time, drawn up plans for the property, based on research into the floor plans of stately homes which he had undertaken at the local university library. The plans produced to the Tribunal were outline floor plans apparently produced when the property was sold to Mr Hussain on which he had written the intended use of various rooms,

including a ballroom, the great dining room, cinema, maids' hall, master's laboratory, and others.

13. When asked how he intended to deal with problems such as the quantity of asbestos on the site, Mr Hussain explained there was no need to disturb the asbestos as no structural work was needed because the rooms could be repurposed as they were. The wards would, for example, become bedrooms. We note, however, that the plans do indicate that some structural work would be needed (for example, the area shown as the banquet room appears to contain a significant number of walls).

14. Mr Hussain contended that he was hindered in his ability to renovate the property and move his family there by the local council. He believed that they wanted the site demolished and new build residential property constructed in its place. He considered that his plan was more environmentally appropriate as it was reusing the existing property.

15. Shortly after he had acquired the property, the council had introduced the neighbouring college as a potential purchaser. They wanted to expand their campus onto the Old Hospital site; he had offered to sell the site in exchange for a similar property that he could use in a central urban location anywhere between Mansfield and London, but the college had declined as they could not afford a similar site that was in habitable condition.

16. After this, and before the period for which relief was claimed, a developer had offered him £5,000,000 for the site, which he would have accepted but the deal fell through when the developer had difficulties with planning. No exact dates as to this were provided.

17. Part of the Old Hospital was then used for a school. This was in approximately 2001. A local independent school was being closed as the buildings were to be sold; Mr Hussain considered that it should be saved as it was doing well academically and so he agreed to buy it. Unfortunately, most of the pupils had already moved to other schools and so only a handful of children attended. The project was therefore economically unviable and the school closed after a year.

18. Once the school closed, sometime in 2002, Mr Hussain's evidence was that he started to occupy the school, sleeping there each night. No clear reason as to why he started to do this at this time was given; Mr Hussain had told HMRC in a meeting that he had started to sleep on site after a developer pulled out of the deal to sell the site.

19. He had moved some furniture from his home, the White House, and his son had given him a television with a video cassette player so that he could watch films. He had run a water pipe through the building, using plastic push-fit piping from a DIY store, from the area previously used as a school and had moved a portable heater from room to room as required. Mr Hussain submitted that this meant that the site was his main and only residence at the time.

20. He said that he moved out some time in 2003, and his evidence was that this was when another developer expressed interest in the site.

21. In 2005, Mr Hussain applied for planning permission to convert the site from use as a hospital to 133 apartments. His explanation for this was that he was trying to deflect the council from forcing him to sell to developers. He never intended to undertake the development and did not intend to sell the site.

22. Another developer offered him £7,000,000 for the site and, again, the exact dates were unclear. The developer paid a non-refundable deposit which Mr Hussain had negotiated in order to be able to refurbish the property if the deal fell through. The deal did fall through, and Mr Hussain kept the deposit. He did not use any of the funds for refurbishment of the Old

Hospital because he considered that there was no point in refurbishing the property whilst the council was continuing to pressure for the site to be demolished and redeveloped.

23. Mr Hussain eventually sold the Old Hospital to the council in 2013 because he believed they would force the sale via a compulsory purchase order if he did not accept their offer. He had used the funds to buy another property in central Nottingham and a country property which he said was now used as the family seat and a hotel. Mr Hussain considered that he had made a loss as he had had to accept the “miniscule” £1,800,000 from the Council, compared to the £7,000,000 which he had previously been offered by a developer. He did accept, however, that capital gains tax (subject to the claimed relief) would be due as he sold the property for more than he had paid for it.

HMRC’s submissions

24. HMRC submitted that Mr Hussain had not occupied the Old Hospital as his main residence at any time. They submitted that he had purchased the Old Hospital as an investment and had other properties which he had purchased as investments. In a meeting with them in 2013 he had stated that he had purchased the site instead of investing money in a pension. Mr Hussain’s response was that he considered that everything a person does is an investment.

25. HMRC contended that Mr Hussain’s discussions with developers and application for planning permission were consistent with his purchase of the site as an investment. He had not made any attempt to refurbish or renovate the site during his 19 years of ownership. The site was unfit for use as a dwelling; it had not been built with that purpose in mind and was not in a fit state for occupation. No work had been done to make any part of it fit for habitation.

26. HMRC submitted that Mr Hussain owned at least two other houses at the same time and that it was inherently unlikely that he would have opted to live in a derelict building in contrast to those houses.

Discussion

27. The Court of Appeal case of *Goodwin v Curtis* (70 TC 478) and later cases have established that to determine whether a property qualifies as a main residence, the following factors must be considered:

- (1) Whether the property was actually occupied as a residence.
- (2) The nature, quality, length and circumstances of a taxpayer's occupation of the property.
- (3) Whether the occupation was intended to be permanent or merely temporary.
- (4) Whether there was a degree of continuity or some expectation of continuity to turn mere occupation into residence. The need for permanence or continuity should not be overstated as it is only one of the factors to be taken into account in weighing up all of the evidence.

28. We note in particular that periods of occupation during, or in readiness for renovation are distinguishable from periods of living in a property, as the former would lack the necessary quality to turn mere occupation into residence, in the absence of a lack of a firm and settled intention to do so.

29. The question of when occupation becomes residence is one of fact and degree for the Tribunal to decide and the word ‘reside’ and ‘residence’ are ordinary words of the English language to be interpreted as such. Residence is usually defined as ‘the dwelling in which a person habitually lives; in other words, his or her home.’ The test of residence is considered to be one of quality rather than quantity. Mr Hussain appears to have believed that all that was

required was that he slept at the property more than his other properties, having read that this was the test used for an MP's primary residence. Even if that is the test for an MP's primary residence, it is not the basis on which a person's main residence is determined for tax purposes.

30. We find that the Old Hospital was not habitable as a dwelling; the fact that it provided some basic shelter was not enough to make it a dwelling. Although Mr Hussain stated that a new combi boiler had been installed, and the electricity reconnected, it became clear in evidence that this basic reconnection had been undertaken when the property was to be used as a school, and only in the area where the school was, rather than more generally throughout the site or in connection with any intention to live in the property.

31. Mr Hussain's evidence with regard to repairs was only that he had patched some holes in the roof. Newspaper articles provided to us show that, by 2008, local residents had been complaining of the property being derelict for some years. In 2009, Mansfield Council had required Mr Hussain to make basic repairs to the fencing and boundary walls, board up broken windows, and clean rubbish from the site. Although this was some time after the period for which relief is claimed, it is clear that there had been no earlier substantive repair or refurbishment work.

32. It is also clear from internal photographs of the Old Hospital taken in 2011 that were included in the bundle that no work had been done to convert the property to residential use; old medical equipment remained in place, for example, and the property was clearly derelict. Although this was again some years after the period for which relief was claimed, there was no evidence that anything had been done to make the place habitable at any time since it had ceased to be a hospital.

33. In reviewing the photographs, Mr Hussain remarked that a bed and sofa shown in two of the photographs were those which he had used. His evidence was that he had moved furniture from the White House to the Old Hospital. As such, we conclude that he did not make any substantial move from the White House as he did not need to move the furniture back to the White House, which Mr Hussain agreed had been his main residence after his occupation of the Old Hospital.

34. We do not consider that Mr Hussain has shown that any occupation by him of the Old Hospital was undertaken in any expectation that the Old Hospital would turn into a residence: he undertook no meaningful work to make the site suitable as a residence during the period in which he says that he slept there (nor before or after). Mr Hussain acknowledged that the Old Hospital was not at any time suitable for his wife to live in. It appears from Mr Hussain's evidence that it was not even suitable for her to be told of his plans for her to live in it.

35. There must also be sufficient documentary or other evidence to support a claim that the property was occupied as the taxpayer's only or main residence. Mr Hussain has been unable to give any specific dates of occupation other than "from sometime in 2002 for about a year".

36. A Powergen letter supplied by him does not contain any dates of supply: the letter is dated 26 March 2003 and relates to a bill for £115.33 dated 11 March 2003. The letter advises that the bill remains unpaid, although it is unclear why Powergen were chasing payment for a bill only two weeks after it was issued. The letter is addressed to the Old Hospital but does not state that the bill relates to that property.

37. Mr Hussain also supplied a council tax bill addressed to "Flat, Mansfield General Hospital" for the period 19 December 2002 to 31 March 2002, issued on 20 June 2003, for council tax in band H. Mr Hussain contended that, as this was the highest band, for properties worth over £320,000 in 1991, it must relate to the entire property and that it showed that it was his residence. Further, as council tax is paid on residential property the band information on

the reverse refers to “house value”, this shows that the Old Hospital was a residential property. We do not accept this shows that Mr Hussain occupied the Old Hospital as his main residence for a number of reasons:

- (1) The reference to “house value” is clearly a pro forma and not intended to be specifically descriptive.
- (2) The fact that council tax is assessed does not mean that a property is habitable as residential property.
- (3) When HMRC sought to confirm this bill with the council, the council responded to say that no dates of occupation were ever confirmed with the occupant. The account reference in the information supplied with this letter is different to that on the bill provided by Mr Hussain, and the reference period is 19 December 2002 to 19 December 2002. The property was stated to have been removed from the list as derelict in 2008.
- (4) In a meeting with HMRC on 28 January 2016, Mr Hussain stated that he had not paid any council tax as the council had not issued a bill; in a meeting with HMRC on 20 January 2017 he stated that the valuation officer had not been able to give a valuation for the Old Hospital because it was in a state of disrepair, which was why no bill had been issued.

38. Mr Hussain stated that he had no other documentary evidence because he had not notified any change of address for his banks, insurance or similar. His practice had always been to have all of his correspondence sent to the pharmacy and he collected his post there. He had not notified his car insurers that the car was kept at the Old Hospital overnight during the period for which relief was claimed. His registered address with HMRC remained that of the pharmacy throughout.

39. Without such evidence it cannot therefore be said that the Old Hospital was Mr Hussain’s “only or main residence” within the meaning of s 222(1)(a) TCGA 1992. As noted, the question of whether occupation amounts to residence is a question of fact and degree.

40. Taking into account the nature, quality, length and circumstances of Mr Hussain’s occupation of the Old Hospital, we do not consider that such occupation was sufficient to amount to ‘living in’ the Old Hospital and as such find that the Old Hospital was not Mr Hussain’s main residence at any time.

41. We make no particular findings as to Mr Hussain’s intentions at the time that he purchased the Old Hospital; we considered that, in giving evidence, Mr Hussain clearly believed that he wanted to create a family seat to pass on to his children and grandchildren, modelled on the family home of the English aristocracy whom he also clearly admires. It was not clear, however, whether this was something which Mr Hussain came to believe or whether it was his belief from the outset. Given our conclusions above, it was unnecessary to come to any conclusion on Mr Hussain’s intentions in 1994.

42. Finally, we note that Mr Hussain’s evidence is that he was married throughout the relevant period. His wife lived at one of his other properties during the relevant period and they generally lived in separate houses, but his evidence was that they were not separated. She did not live at or even visit the Old Hospital during the period that Mr Hussain says that he slept at the property. Mr Hussain variously said that she had never visited the Old Hospital, but also that he took her to see the property shortly after he acquired it. His evidence was that she did not get out of the car, as the area was “too hairy”. This description of the area is again somewhat surprising given that Mr Hussain subsequently operated a school from the premises. Mr Hussain stated that he had never disclosed his plans for the Old Hospital to be the ‘family seat’ to his wife as it would distress her.

43. This is important because a married couple may only have one residence between them for the purposes of main residence relief (s222(6) TCGA 1992). We do not consider that it is possible that Mrs Hussain could be regarded as being resident in a property in a period in which she did not once visit the property and was unaware then, or indeed afterwards, that her husband had any plans for it to eventually be a residence for the family.

Penalties

44. Although there is no specific appeal against the penalties, Mr Hussain said that he disagreed with the penalties.

45. We agree with HMRC that Mr Hussain acted carelessly when he claimed main residence relief. We accept that it was an error, arising out of his mistaken belief that mere occupation of the property was sufficient. That belief was not based on considered reasoning, and Mr Hussain did not properly read the requirements for the relief because he believed he was right to claim. That, in our view amounted to carelessness.

46. In his notice of appeal, Mr Hussain had asked that the penalty be suspended. He did not elaborate upon this in the hearing.

47. Considering the correspondence in the bundle, on 6 March 2019 Mr Hussain asked for the penalties (and the tax) to be suspended “until the Tribunal has concluded”. This was accepted by HMRC on 8 March 2019. Mr Hussain did not request that HMRC suspend the penalties generally.

48. As this matter was not argued further and, in particular, there was no indication that any appropriate conditions for suspension existed, we conclude that:

- (1) there was no decision refusing or setting conditions for suspension of the penalty which we can review under paragraphs 15(3) or 15(4) of Schedule 24, Finance Act 2007;
- (2) even if paragraph 17 Schedule 24 Finance Act 2007 could be interpreted so as to permit the Tribunal to order suspension where HMRC have not been asked to suspend the penalty, we do not consider that the appellant has shown that there is any reason to suspend the penalty.

Conclusion

49. For the reasons set out above, we find that the Old Hospital was not at any time Mr Hussain’s ‘only or main residence’ as required for relief to be given under s222 TCGA 1992.

50. The parties made submissions as to the area occupied in respect of alternate arguments as to the proportion of the gain to which relief might apply. As we have found that no relief is appropriate, we have not considered these submissions further.

51. HMRC submitted that there had been a small calculation error in the assessment with regard to capital gains tax. The assessment had been for £96,899.04, whereas the correct amount was £96,423.04. HMRC submitted that this lower amount should be upheld.

52. We agreed with HMRC’s calculations and submission and so uphold the assessment in the revised amount of £96,423.04.

53. The appeal is therefore dismissed.

Right to apply for permission to appeal

54. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent

to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**ANNE FAIRPO
TRIBUNAL JUDGE**

Release date: 23 DECEMBER 2021