

# VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal, entitlement to Class F exemption, Council Tax (Exempt Dwellings) Order 1992 as amended, sections 4 and 6 of the Local Government Finance Act 1992; Long term empty property; unoccupied and substantially unfurnished; Section 11B of The Local Government Finance Act 1992; Appeal dismissed*

APPEAL NUMBER: M0214594

BETWEEN:	Mr P Saywell	Appellant
and	Medway Council Billing Authority (BA)	Respondent

RE: 14 Nutfield Close, Chatham, Kent ME5 0AT

PANEL: Miss L Moses (Senior Member)  
Ms J Barnes

Clerk Mr G Wayman

SITTING AT: St George Hotel, Chatham, Kent

ON: 26 February 2020

APPEARANCES: Mr P Saywell (Appellant)

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## Summary of Decision

1. Appeal Dismissed.

## Introduction:

2. This was an appeal under section 16 of the Local Government Finance Act 1992. The appellant was aggrieved by the Billing Authority's (BA) decision not to exempt the appeal dwelling from council tax for the period, 26 May 2014 to 31 March 2018. This was the period in dispute under this appeal to the Valuation Tribunal for England received on 24 August 2017.

3. The appellant attended in person and made oral submissions in support of his appeal. The BA did not attend the hearing but requested the appeal to be considered on the basis of its written submission. In the interests of justice the panel determined to proceed on this basis.
4. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

## **Issue**

5. The issue before the panel was whether any council tax discounts or exemptions should be applied to the appeal property during the period in dispute. The panel also needed to decide if the appeal property attracted a long term empty premium.

## **Background**

6. The panel was informed that Mrs Jeffery, the appellant's mother in law, occupied the appeal property until she passed away on 30 August 2013. The appellant was the executor of the estate.
7. As the appeal property was unoccupied the BA decided an exemption should be applied to the account from 30 August 2013. The BA applied a Class F exemption from 30 August 2013. A grant of probate was granted on 26 November 2013 so in line with the relevant legislation, the BA removed the Class F exemption from a date six months after the granting of probate, namely 25 May 2014. The revised bill was issued to Mr Saywell as the executor of the late Mrs Jeffery.
8. After the Class F exemption ceased the appeal property remained unoccupied. It was the BA's submission that there were no circumstances arising to justify any other discounts or exemptions for the appeal property after cessation of the Class F exemption.
9. Under changes to The Local Government Finance Act 1992 (The Act) with effect from 1 April 2013, Local Authorities have been given greater flexibility over certain discounts and exemptions for empty properties. Medway Council (BA) decided to charge a 50% additional premium on long term empty properties that have been empty for more than two years, the additional charge taking effect from 1 April 2015.
10. As from the 26 May 2016 the appeal property had been empty for more than two years a 50% premium was applied to the council tax account for the period 26 May 2016 to 31 March 2018.
11. The BA claimed the correct discounts and exemptions had been applied to the council tax account for the appeal property and, therefore, the appeal should be dismissed.

12. The appellant informed the panel that although he is executor to Mrs Jeffery's estate he is not a beneficiary in respect of the appeal property. There are 3 other people who are beneficiaries who were named in the will but to date no agreement has been reached on what will be done with the appeal property.
13. The appellant claimed that the property was unoccupied, but on the odd occasion he did spend a night in the property. He also pointed out that the appeal property had become uninhabitable for long periods due to a major flood. During this period there was no kitchen, no bathroom, no ceilings, no gas and no electrics. It was the appellant's opinion that as the property was unoccupied and was uninhabitable for a long period it should be exempt from council tax.

### **Decision and Reasons:**

14. After due consideration of all of the evidence submitted before it by both parties, the panel decided to dismiss the appeal for the following reasons:
15. Under Section 4 of the Local Government Finance Act 1992, council tax was payable in respect of any dwelling which was not an exempt dwelling. Liability to the tax was determined by reference to Section 6 of the 1992 Act, where the hierarchy of liability was given in Section 6 (2).
16. Section 4 further enables the Secretary of State to prescribe classes of exempt dwellings. The initial issue in dispute involves Class F of the Council Tax (Exempt Dwellings) Order 1992 (SI 1992 No. 558). The original wording of Class F was substituted by new wording contained in an amendment order in 1994 (SI 1994 No 539, article 4(d)). The 1992 Order had been further amended over the years but not in relation to Class F.
17. Article 3 of the Order provides:
- Class F
- (1) an unoccupied dwelling –
- (a) which has been unoccupied since the date of death of a person ("the deceased") and
  - (b) in relation to which one of the conditions set out in paragraph (2) below is satisfied;
- (2) the conditions referred to in paragraph (1) above are, subject to paragraph (3) below, that
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- (a) the deceased had, at the date of his death, a freehold interest in the dwelling, or a leasehold interest in the dwelling which was granted for a term of six months or more, and
    - (i) no person is a qualifying person in respect of the dwelling; or
    - (ii) a person is a qualifying person in respect of the dwelling acting in his capacity as executor or administrator, and no person is a qualifying person in any other capacity
- Or

(b) the deceased was a tenant of the dwelling at the date of their death and an executor or administrator acting in his capacity as such is liable for rent or, as the case may be, a licence fee for the day;

(3) sub-paragraphs (a) (ii) and (b) of paragraph (2) above shall only apply, in a case where a grant of probate or letters of administration has been made, if less than six months have elapsed since the date of the grant;

18. The panel noted that the BA had granted a Class F exemption with effect from 30 August 2013, the date when the sole occupant of the property had passed away. This date was not in dispute and it was accepted that the Class F exemption was applicable from that date.
19. Neither was it disputed that probate had been granted on 26 November 2013 and, in accordance with the above regulations, the effect of this was that the exemption could only be awarded for a further six months, which expired on 26 May 2014. It was noted that the BA had awarded the Class F exemption for the entirety of this period and the panel was therefore satisfied that this exemption had been awarded correctly.
20. Section 6 of the LGFA 1992 sets out the hierarchy of liability and, where there is no resident in the property, liability falls on the owner. The owner is the person who has the inferior “material interest” in the dwelling. A material interest is a freehold interest or a leasehold interest for a term of six months or more. The freehold interest will be the superior interest in the dwelling and liability will rest with the freeholder only if there is no leasehold interest in the dwelling which has been granted for six months or more.
21. In this case, the appeal property is a freehold property, it is unoccupied and remains in the ownership of the late Mrs Jeffery’s Estate until the property is either sold or the land registry entry changed into the names of the beneficiaries. In accordance with the definition contained in subsection (5) of Section 2 of the LGFA 1992 the Estate of the late Mrs Jeffery remained the owner for the purposes of sub subsection (2)(f) of this Section. As a consequence, once the appeal property became a chargeable dwelling from the 26 May 2014, liability to pay the council tax rested with the Estate.
22. In respect of the long term empty premium, the panel referred to regulation 12 of the Local Government Finance Act 2012 which empowered local authorities to set higher amounts for long term empty properties as follows:-

### **11B Higher amount for long-term empty dwellings: England**

(1) For any financial year, a billing authority in England may by determination provide in relation to its area, or such part of its area as it may specify in the determination, that if on any day a dwelling is a long-term empty dwelling—

- (a) the discount under section 11(2)(a) shall not apply, and  
(b) the amount of council tax payable in respect of that dwelling and that day shall be increased by such percentage of not more than 50 as it may so specify

23. The BA had made a determination, by a full Council meeting on 16 October 2014, to charge the 50% premium, effective from 1 April 2015, on empty dwellings which had been empty for a period in excess of 2 years in accordance with the powers granted to it.
24. The panel referred to section 11b (8) of The Act which states.

For the purposes of this section, a dwelling is a "long-term empty dwelling" on any day if for a continuous period of at least 2 years ending with that day—

- (a) it has been unoccupied, and
- (b) it has been substantially unfurnished.

25. The Council Tax (Exempt Dwellings) Order 1992 SI 1992/558 (as amended) defines unoccupied as follows:-

"an unoccupied dwelling" means a dwelling in which no one lives and "occupied" shall be construed accordingly;

26. The panel noted that the subject property had been unoccupied since 26 May 2014 and therefore fulfilled the criteria to become liable to the 150% charge from the 26 May 2016. The panel was satisfied that the BA have applied the long term empty premium correctly. The panel does not have the jurisdiction to alter the BA's discretionary powers to apply a long term empty premium.

27. In its submissions the BA also pointed out that it was empowered to determine what if any relief to offer, and for how long, under the Local Government Finance Act 1992, s. 11A(4A), inserted by the Local Government Finance Act 2012, s. 11(1) and the Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012, SI 2012 No 2964.

28. In a full Council meeting held on 24 January 2013 it was held that for properties that were empty and unfurnished a discount of 100% would be granted for 3 months. In this particular case it was pointed out that the appeal property had been empty more than 3 months on 26 May 2014, the date that council tax become payable after Class F. Consequently, the appellant was not entitled to this discount.

29. The appellant argued that for a long period the appeal property was uninhabitable and had been badly damaged by a flood. It was not clear to the panel the date the flood occurred and no substantive evidence was provided to show the extent of the damage.

30. Under the above legislation the BA had determined, by a full council meeting, that properties that are empty, unfurnished and undergoing major or structural repair to make them habitable were entitled to a 100% discount for a period up to 12 months. This discount had not been considered by the BA as further information had been requested from the appellant on this issue, which had not been forthcoming.

31. The panel found that this argument did not form part of the original appeal made to the Valuation Tribunal, so it did not consider if this discount was applicable. However, it was aware if the appellant provided the necessary information to the BA the BA would consider if this discount was applicable. If the discount was declined the appellant would have the right to make a further appeal to this Tribunal on this issue.

32. The appellant stated that he was aggrieved because he had been provided with misinformation from the BA concerning the liability for council tax on the appeal property. He also pointed out that there was a disagreement when the copy of the probate was provided.

33. Whilst understanding the appellant's argument on these points the panel could not, in making its decision, have regard to questions regarding the administration by the Council of this matter. Any questions regarding that part of the process need firstly to be addressed to the Authority themselves and, should the taxpayer still not be satisfied with their response, can then be taken to the Local Government Commissioner for Administration (the 'Ombudsman') who can adjudicate on issues regarding possible maladministration by Local Authorities.
34. In conclusion having noted the period in dispute and the evidence presented the panel was satisfied that the correct discounts and exemptions had been applied to the appeal property. The panel was also satisfied that the BA had the discretionary powers to apply a long term empty premium to the appeal property. Consequently, the appeal is dismissed.

Appeal No: M0214594

Dated: 17 March 2020