

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Classes G and J of The Council Tax (Exempt Dwellings) Order 1992 (as amended) SI No 1992/558; Second home unavailable to owner; Occupation prohibited by law; The Health Protection (Coronavirus Restrictions) (England) Regulations 2020; appeal dismissed.

RE: 2 Marron Terrace, Branthwaite, Workington CA14 4TA

APPEAL NUMBER: VT00004293

BETWEEN:	Mr J Edwards	Appellant
	and	
	Allerdale Borough Council (Billing Authority)	Respondent

PANEL: Dr H M Freeman (Senior Member) and Mr M Nwosu

CLERK: Mrs Rachel James IRRV (Hons)

REMOTE HEARING 1: Thursday 8 April 2021

PARTICIPENTS: Mr D Farrar (Respondent's Representative)

Summary of decision

1. Appeal dismissed. The panel determined that exemption in accordance with Class G and Class J of The Council Tax (Exempt Dwellings) Order 1992 (as amended) SI No 1992/558 was not applicable.

Introduction

2. This appeal has been brought by the appellant, Mr Edwards, against a decision issued by Allerdale Borough Council dated 15 May 2020, which was reconsidered on 5 June 2020. Allerdale Borough Council had rejected Mr Edwards' application for exemption in accordance with Classes G and J in relation to 2 Marron Terrace, Branthwaite, Workington (the appeal property), which was his second home. The

appellant appealed against the billing authority's (BA's) decision under Section 16(1) of the Local Government Finance Act 1992 and the appeal was received by the Valuation Tribunal on 24 June 2020.

3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
4. Therefore, in pursuance of regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.
5. In accordance with Practice Statement 11, the appellant had requested the appeal be heard in his absence, having regard to the papers already provided.
6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the information provided was fully considered. The absence of a reference to any statement, or evidence, should not be construed as it having been overlooked by the panel.

Issue

7. Had the BA been correct in its refusal of exemption under Classes G and J of The Council Tax (Exempt Dwellings) Order 1992?

Evidence and submissions

8. Mr Farrar had provided a bundle of evidence, which comprised copies of previous correspondence that had passed between the parties. The BA had not served its bundle of evidence in accordance with the timeframe set out in the Standard Directions. However, as it only comprised previous correspondence, Mr Edwards raised no objections. Accordingly, the panel proceeded to hear the appeal having regard to all the evidence presented.
9. In his appeal documentation, Mr Edwards had requested Class G exemption during the period of dispute as he had been prohibited to travel to the appeal property because of the travel restrictions in place due to the Covid-19 pandemic. He stated that his main home was hundreds of miles away in Finedon, Northamptonshire. He also requested Class J exemption on the grounds that the appeal property had been left empty as he had been required to care for a vulnerable person on the NHS shielding list. As such, he had not been using any of the facilities provided by Allerdale Borough Council.
10. Having regard to the evidence he had presented, Mr Farrar asked the panel to uphold the BA's decision that exemption under Class G or J was not applicable to the appeal property during the disputed period.

Decision and reasons

11. Section 4 of the Local Government Finance Act 1992 makes provision for certain dwellings to be exempt from council tax:

Dwellings chargeable to council tax

(1) Council tax shall be payable in respect of any dwelling which is not an exempt dwelling.

(2) In this Chapter –

“chargeable dwelling” means any dwelling in respect of which council tax is payable;

“exempt dwelling” means any dwelling of a class prescribed by an order made by the Secretary of State.

(3) For the purposes of subsection (2) above, a class of dwellings may be prescribed by reference to such factors as the Secretary of State sees fit.

(4) Without prejudice to the generality of subsection (3) above, a class of dwellings may be prescribed by reference to one or more of the following factors—

- (a) the physical characteristics of dwellings;
- (b) the fact that dwellings are unoccupied or are occupied for prescribed purposes or are occupied or owned by persons of prescribed descriptions.

12. The Order referred to above is The Council Tax (Exempt Dwellings) Order 1992 (as amended) (SI No 1992/558), where Classes G and J are relevant to this appeal.

‘Class G

unoccupied dwelling -

- (a) the occupation of which is restricted by a condition which—
 - (i) prevents occupancy, and
 - (ii) is imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990; or
- (b) the occupation of which is otherwise prohibited by law; or
- (c) which is kept unoccupied by reason of other action taken under powers conferred by or under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it;

Class J

an unoccupied dwelling which was previously the sole or main residence of a qualifying person who—

- (a) has his sole or main residence in another place for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder; and

- (b) has been a relevant absentee for the whole of the period since the dwelling last ceased to be his residence;'

13. The agreed facts were as follows:

- i) The appeal property was unoccupied.
- ii) The appeal property was regarded as the appellant's second home and had been awarded second home discount since 2008.
- iii) Mr Edwards' main residence was in Finedon, Northamptonshire.
- iv) Mr Edwards was the owner of the appeal property and the person legally entitled to occupy it.

14. Mr Edwards had highlighted the periods in dispute to be as follows:

- i) 23 March 2020 to July 2020 (lockdown)
- ii) 12 October 2020 (tiering system in place);
- iii) 5 November 2020 to 2 December 2020 (lockdown)
- iv) 2 December 2020 to 4 January 2021 (tiering system in place); and
- v) 4 January 2021 onwards (lockdown).

15. Mr Edwards had requested exemption from council tax under Classes G and J. Firstly, he sought Class G exemption on the grounds that he had been prohibited by law from visiting the appeal property due to the travel restrictions in place because of the Covid-19 pandemic. Secondly, he sought Class J exemption on the grounds that the appeal property had been left empty by someone who had been required to provide care elsewhere. Mr Edwards had been providing care for a vulnerable person on the NHS shielding list.

16. In response, Mr Farrar contended that Class G was not applicable as this class related to the property itself and not the personal circumstances of the taxpayer. Whilst Mr Edwards had been unable to travel to the appeal property, the property could have been occupied by another household. Furthermore, Mr Farrar contended that Class J was not warranted in Mr Edwards' case, as the appeal property had not been his main home.

17. During the hearing, the clerk referred the panel and Mr Farrar to a recent decision of the Valuation Tribunal in relation to *Mr A Moore v Great Yarmouth Borough Council* (Appeal number VT00003541, dated 4 February 2021). As the issue in dispute involved a novel, important and contentious point of law which had national implications, the appeal had been heard by Mr G Garland, the President of the Valuation Tribunal, as a complex case under Practice Statement 3. The appeal related to the issue of whether Class G exemption was warranted to certain categories of dwellings following restrictions in place due to the Covid-19 pandemic. The Tribunal Office had placed the related appeals into the following three categories:

- i) Category One related to appeals where the dwelling was not the appellant's main residence, but they were unable to occupy it during the period when the restrictions were in force.
- ii) Category Two related to appeals where the dwelling was not the appellant's main residence and was situated on a holiday site which was closed.
- iii) Category Three related to unoccupied dwellings which the appellant landlord had been unable to re-let whilst the coronavirus restrictions were in place.

18. The panel in the current appeal placed great weight on this decision as it had been treated as a test case for Categories One and Two. Whilst the decision was not binding on the current panel, it gave persuasive authority that should be followed unless new argument on different points were raised. Mr Edwards' case fell into Category One, in which the appeal property was a dwelling that was not his main residence but he was unable to occupy it during the period of dispute when the restrictions were in force.
19. In the case of *Moore v Great Yarmouth*, the appellant, Mr Moore's main residence was in Norwich and the appeal property was located in Great Yarmouth. Mr Moore argued that the travel restrictions in place between 26 March 2020 and 31 May 2020 meant that he was not permitted to travel. As none of the circumstances where travel could be justified were applicable to him, he had been unable to occupy the appeal property. On 1 June 2020, the travel restrictions were lifted. However, he was still unable to reside in the appeal property because overnight stays were prohibited unless you had a reasonable excuse.
20. The President had determined that Class G exemption was not applicable to dwellings that fall into 'Category One'. Having carefully read the decision in full, the panel found the wording of paragraphs 25, 26 and 30 to be most helpful:
25. An exemption under Class G would only be applicable if the unoccupied dwelling could not be occupied by any person by law. In Mr Moore's case, he could have made his chalet available to be occupied by another person, when he was unable to access it. The fact that in reality he had not granted to another person permission to occupy it or made arrangements for someone else to do so was academic.
26. With effect from 1 June 2020, following the Health Protection (Coronavirus Restrictions) (England) (Amendment) (No. 3) Regulations 2020, the travel restrictions were lifted and replaced by restrictions on overnight stays. Putting his shielding restrictions to one side, Mr Moore could have travelled to his holiday home and used it during the daytime but he was prevented, without a reasonable excuse, from staying overnight. Had circumstances dictated that he had a reasonable excuse, he could have stayed there overnight.
30. In view of the foregoing, the panel determined that the travel restrictions and the overnight stay restrictions under Regulation 6 of the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 did not justify a claim for exemption under Class G. Had Mr Moore's chalet been situated outside a holiday park his appeal would have been dismissed. The panel determined that any argument for a Class G founded on Regulation 6 was ill-conceived because exemption ran with the property not the owner's personal circumstances which prevented him from travelling or staying overnight. The property could have still been occupied but just not by Mr Moore. In addition, even if Mr Moore never visited the chalet or could not for other reasons his liability would still remain. Indeed, if he left the property empty the liability these days for council tax could not be avoided as the charge still applies to varying degrees dependent on the local authority approach. However, there was another aspect to this appeal that the panel needed to consider and that was whether the appeal dwelling qualified for council tax exemption when having regard to Regulation 5 (3) of the Coronavirus Regulations.'
21. Having regard to the above paragraphs, together with the circumstances of Mr Edwards' appeal, the panel concluded that Class G exemption was not applicable. The panel concluded that whilst the travel restrictions in place prevented Mr Edwards from travelling to

the appeal property, the property could have been occupied by others. Occupation of the appeal property had not been prohibited. The panel could not have regard to Mr Edwards' personal circumstances that prevented him from traveling to and staying overnight at the appeal property. Accordingly, the classification of Class G had not been met.

22. In the case of *Moore v Great Yarmouth*, the panel noted that the appeal property also fell into 'Category Two', as it was a dwelling located on a holiday park. The panel noted that this was not the case for the appeal property.
23. The panel then went on to consider the application for Class J exemption. Mr Edwards sought Class J on the grounds that the appeal property had been left empty as he had been providing care for a vulnerable person on the NHS shielding list.
24. After having regard to the wording of Class J, the panel noted that this class related to an unoccupied dwelling that had previously been the sole or main residence of a qualifying person who had left the premises to provide care elsewhere.
25. The panel noted that the appeal property had not been Mr Edwards' sole or main residence. In fact, the appeal property had been in receipt of second home discount since 2008. Therefore, the panel held that the criteria had not been met and the application for Class J exemption was refused.
26. Having regard to the above findings, the panel determined that exemption in accordance with Classes G and J was not applicable in the case before it. Accordingly, the panel upheld the BA's decision and dismissed the appeal.

Date: 22 April 2021

Appeal Number: VT00004293