

THE VALUATION TRIBUNAL FOR ENGLAND



Council Tax Liability Appeal; Second home unavailable to owner; Class G of the Council Tax (Exempt Dwellings) Order 1992; Occupation prohibited by law; The Health Protection (Coronavirus Restrictions) (England) Regulations 2020; appeal allowed.

Re: Chalet 118, Winterton Valley Estate, Edward Road, Winterton on Sea,
Great Yarmouth NR29 4BX

APPEAL NUMBER: VT00003541

BETWEEN: Anthony Moore (Appellant)
and
Great Yarmouth Borough Council (Respondent)
(Billing Authority)

PANEL; Gary Garland (President) and Christopher Stott (senior member)

CLERK: David Slater (Deputy Registrar)

REMOTE HEARING

PARTIES PRESENT; Mr Anthony Moore

Mr Alan Thompson (Billing Authority's representative)

Summary of decision

1. The appeal was allowed as the appeal property qualified for exemption under Class G during the period in dispute 26 March 2020 to 3 July 2020 inclusive.

Introduction

2. This was a council tax liability appeal made in accordance with section 16 of the Local Government Finance Act 1992. Mr Moore was aggrieved by the billing authority's refusal to treat his second home as an exempt dwelling under Class G of the Council Tax (Exempt Dwellings) Order 1992. His appeal was made on the grounds that the exemption should apply whilst the Health

Protection (Coronavirus Restrictions) (England) Regulations 2020 remained in force.

3. The agreed facts were as follows;
 - a. Throughout the period in dispute which was 26 March 2020 to 3 July 2020 the appeal dwelling was unoccupied.
 - b. The appeal dwelling was the appellant's second home, as his main residence was in Norwich.
 - c. Mr Moore was the owner and the only person who was entitled to occupy the dwelling. No other person could legally occupy it without his permission.
 - d. The chalet was situated on a holiday site which was closed during the period in dispute.
 - e. The Winterton Valley site was closed during the period in dispute by the owner in accordance with regulation 5 (3) of the Health Protection (Coronavirus Restrictions) (England) Regulations 2020.
4. This appeal was heard as complex under Practice Statement 3 as the issue in dispute involves a novel, important and contentious point of law which has national implications. The tribunal has received a number of similar appeals which have been stayed, pending the hearing of this appeal.
5. The tribunal has categorised the Class G related Covid 19 restrictions appeals into three categories as follows;

Category One

This relates 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.

Category Two

This relates to appeals where the dwelling was not the appellant's main residence and was situated on a holiday site which was closed.

Category Three

This relates to unoccupied dwellings which the appellant landlord has been unable to re-let whilst coronavirus restrictions were in place.

6. This appeal falls into both categories one and two as not only does the appellant contend that the holiday site was closed but that he was also prevented in law from travelling to the site and, for a period, also staying overnight. As it covers both it is being treated as a test case. A category 3 appeal is due to be heard by the tribunal on 8 March 2021. The Tribunal

invited all those with appeals outstanding, which fall into one of the first two categories, to observe proceedings and a copy of this decision will be provided to them. They were advised that this decision was not binding on panels but it was a persuasive authority that should be followed, given the President's involvement, unless new argument on different points is raised and of course the particular facts of each case.

7. Ordinarily, the tribunal would have considered and determined this appeal, following a public face to face hearing. However, in view of the Covid 19 pandemic and to avoid justice being further delayed, a remote hearing was held.
8. 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.
9. 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.
10. 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 before it came to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Evidence and submissions

11. Both parties had put forward their skeleton arguments and factual evidence which was subsumed into the combined hearing bundle which was of great assistance to the panel as were the concise and focused arguments of both parties.

Issues in dispute

12. Did the travel restrictions, and later restrictions on overnight stay put in place by Regulation 6 of The Health Protection (Coronavirus Restrictions) (England) Regulations 2020 justify the appellant's claim for a Class G exemption?
13. Without prejudice to the above, as the Winterton Valley Estate was closed by the site owner under Regulation 5 (3) of the above regulations, did the appeal dwelling qualify for Class G exemption on that basis?

The relevant law

14. The relevant law that was applicable to the appeal was as follows;

Local Government Finance Act 1992

2 Liability to tax determined on a daily basis.

(1) Liability to pay council tax shall be determined on a daily basis.

(2) For the purposes of determining for any day—

(a) whether any property is a chargeable dwelling;

(b) which valuation band is shown in the billing authority's valuation list as applicable to any chargeable dwelling;

(c) the person liable to pay council tax in respect of any such dwelling;
or

(d) whether any amount of council tax is subject to a discount and (if so) the amount of the discount,

it shall be assumed that any state of affairs subsisting at the end of the day had subsisted throughout the day.

3 Meaning of "dwelling".

(1) This section has effect for determining what is a dwelling for the purposes of this Part.

(2) Subject to the following provisions of this section, a dwelling is any property which—

(a) by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act if that Act remained in force; and

(b) is not for the time being shown or required to be shown in a local or a central non-domestic rating list in force at that time; and

(c) is not for the time being exempt from local non-domestic rating for the purposes of Part III of the Local Government Finance Act 1988 ("the 1988 Act");

and in applying paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption.

(3) A hereditament which—

(a) is a composite hereditament for the purposes of Part III of the 1988 Act; and

(b) would still be such a hereditament if paragraphs (b) to (d) of section 66(1) of that Act (domestic property) were omitted,

is also, subject to subsection (6) below, a dwelling for the purposes of this Part.

(4) Subject to subsection (6) below, none of the following property, namely—

(a) a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property used wholly for the purposes of living accommodation; or

(b) a private garage which either has a floor area of not more than 25 square metres or is used wholly or mainly for the accommodation of a private motor vehicle; or

(c) private storage premises used wholly or mainly for the storage of articles of domestic use,

is a dwelling except in so far as it forms part of a larger property which is itself a dwelling by virtue of subsection (2) above.

(4A) Subject to subsection (6) below, domestic property falling within section 66(1A) of the 1988 Act is not a dwelling except in so far as it forms part of a larger property which is itself a dwelling by virtue of subsection (2) above.

(5) The Secretary of State may by order provide that in such cases as may be prescribed by or determined under the order—

(a) anything which would (apart from the order) be one dwelling shall be treated as two or more dwellings; and

(b) anything which would (apart from the order) be two or more dwellings shall be treated as one dwelling.

(6) The Secretary of State may by order amend any definition of "dwelling" which is for the time being effective for the purposes of this Part.

4 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.

6 Persons liable to pay council tax.

(1) The person who is liable to pay council tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of subsection (2) below to apply, taking paragraph (a) of that subsection first, paragraph (b) next, and so on.

(2) A person falls within this subsection in relation to any chargeable dwelling and any day if, on that day—

(a) he is a resident of the dwelling and has a freehold interest in the whole or any part of it;

(b) he is such a resident and has a leasehold interest in the whole or any part of the dwelling which is not inferior to another such interest held by another such resident;

(c) he is both such a resident and a statutory, secure or introductory tenant of the whole or any part of the dwelling;

(d) he is such a resident and has a contractual licence to occupy the whole or any part of the dwelling;

(e) he is such a resident; or

(f) he is the owner of the dwelling.

(3) Where, in relation to any chargeable dwelling and any day, two or more persons fall within the first paragraph of subsection (2) above to apply, they shall each be jointly and severally liable to pay the council tax in respect of the dwelling and that day.

(4) Subsection (3) above shall not apply as respects any day on which one or more of the persons there mentioned fall to be disregarded for the purposes of discount by virtue of paragraph 2 (severely mentally impaired) or 4 (students etc.) of Schedule 1 to this Act and one or more of them do not; and liability to pay the council tax in respect of the dwelling and that day shall be determined as follows—

(a) if only one of those persons does not fall to be so disregarded, he shall be solely liable;

(b) if two or more of those persons do not fall to be so disregarded, they shall each be jointly and severally liable.

(5) In this Part, unless the context otherwise requires—

“owner”, in relation to any dwelling, means the person as regards whom the following conditions are fulfilled—

(a) he has a material interest in the whole or any part of the dwelling;
and

(b) at least part of the dwelling or, as the case may be, of the part concerned is not subject to a material interest inferior to his interest;

“resident”, in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling.

Class G of the Council Tax (Exempt Dwellings) Order 1992, as amended,
states:

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;

The Health Protection (Coronavirus Restrictions) (England) Regulations 2020

Further restrictions and closures during the emergency period

5.— (1) A person responsible for carrying on a business, not listed in Part 3 of Schedule 2, of offering goods for sale or for hire in a shop, or providing library services must, during the emergency period—

(a) cease to carry on that business or provide that service except by making deliveries or otherwise providing services in response to orders received—

(i) through a website, or otherwise by on-line communication,

(ii) by telephone, including orders by text message, or

(iii) by post;

(b) close any premises which are not required to carry out its business or provide its services as permitted by sub-paragraph (a);

(c) cease to admit any person to its premises who is not required to carry on its business or provide its service as permitted by sub-paragraph (a).

(2) Paragraph (1) does not apply to any business which provides hot or cold food for consumption off the premises.

(3) Subject to paragraph (4), a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on that business during the emergency period.

(4) A person referred to in paragraph (3) may continue to carry on their business and keep any premises used in that business open—

(a) to provide accommodation for any person, who—

(i) is unable to return to their main residence;

- (ii)uses that accommodation as their main residence;
- (iii)needs accommodation while moving house;
- (iv)needs accommodation to attend a funeral;
- (b)to provide accommodation or support services for the homeless,
- (c)to host blood donation sessions, or
- (d)for any purpose requested by the Secretary of State, or a local authority.

(5) A person who is responsible for a place of worship must ensure that, during the emergency period, the place of worship is closed, except for uses permitted in paragraph (6).

(6) A place of worship may be used—

- (a)for funerals,
- (b)to broadcast an act of worship, whether over the internet or as part of a radio or television broadcast, or
- (c)to provide essential voluntary services or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency).

(7) A person who is responsible for a community centre must ensure that, during the emergency period, the community centre is closed except where it is used to provide essential voluntary activities or urgent public support services (including the provision of food banks or other support for the homeless or vulnerable people, blood donation sessions or support in an emergency).

(8) A person who is responsible for a crematorium or burial ground must ensure that, during the emergency period, the crematorium is closed to members of the public, except for funerals or burials.

(9) If a business referred to in paragraph (1) or (3) (“business A”) forms part of a larger business (“business B”), the person responsible for carrying on business B complies with the requirement in paragraph (1) or (3) to cease to carry on its business if it ceases to carry on business A.

Restrictions on movement

6.— (1) During the emergency period, no person may leave the place where they are living without reasonable excuse.

(2) For the purposes of paragraph (1), a reasonable excuse includes the need—

(a) to obtain basic necessities, including food and medical supplies for those in the same household (including any pets or animals in the household) or for vulnerable persons and supplies for the essential upkeep, maintenance and functioning of the household, or the household of a vulnerable person, or to obtain money, including from any business listed in Part 3 of Schedule 2;

(b) to take exercise either alone or with other members of their household;

(c) to seek medical assistance, including to access any of the services referred to in paragraph 37 or 38 of Schedule 2;

(d) to provide care or assistance, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006([1](#)), to a vulnerable person, or to provide emergency assistance;

(e) to donate blood;

(f) to travel for the purposes of work or to provide voluntary or charitable services, where it is not reasonably possible for that person to work, or to provide those services, from the place where they are living;

(g) to attend a funeral of—

(i) a member of the person's household,

(ii) a close family member, or

(iii) if no-one within sub-paragraphs (i) or (ii) are attending, a friend;

(h) to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings;

(i) to access critical public services, including—

(i) childcare or educational facilities (where these are still available to a child in relation to whom that person is the parent, or has parental responsibility for, or care of the child);

(ii) social services;

- (iii) services provided by the Department of Work and Pensions;
- (iv) services provided to victims (such as victims of crime);
- (j) in relation to children who do not live in the same household as their parents, or one of their parents, to continue existing arrangements for access to, and contact between, parents and children, and for the purposes of this paragraph, “parent” includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child;
- (k) in the case of a minister of religion or worship leader, to go to their place of worship;
- (l) to move house where reasonably necessary;
- (m) to avoid injury or illness or to escape a risk of harm.

(3) For the purposes of paragraph (1), the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises.

(4) Paragraph (1) does not apply to any person who is homeless

There was a minor amendment to the regulations that came into force on 22 April 2020. Travel restrictions remained in place until the Health Protection (Coronavirus Restrictions) (England) (Amendment) (No 3) Regulations 2020 introduced a new regulation 6 with effect from 1 June 2020 which is below.

6.— (1) No person may, without reasonable excuse, stay overnight at any place other than the place where they are living.

(2) For the purposes of paragraph (1), the circumstances in which a person (“P”) has a reasonable excuse include cases where—

(a) P needs to stay elsewhere to attend a funeral, as—

(i) a member of the deceased person’s household,

(ii) a close family member of the deceased person, or

(iii) if no-one within paragraph (i) or (ii) is attending, a friend of the deceased person;

(b) P is an elite athlete, a coach of an elite athlete, or (in the case of an elite athlete who is under the age of 18), a parent of the elite athlete, and needs to stay elsewhere for the purposes of training or competition;

(c) P needs to stay elsewhere while moving house;

- (d) it is reasonably necessary for P to stay elsewhere—
 - (i) for work purposes, or for the provision of voluntary or charitable services;
 - (ii) to provide care or assistance to a vulnerable person, including relevant personal care within the meaning of paragraph 7(3B) of Schedule 4 to the Safeguarding of Vulnerable Groups Act 2006(3);
 - (iii) to provide emergency assistance;
 - (iv) to avoid injury or illness, or to escape a risk of harm;
 - (v) to obtain medical assistance;
- (e) P needs to stay elsewhere to fulfil a legal obligation or participate in legal proceedings;
 - (f) P is a child that does not live in the same household as their parents, or one of their parents, and the overnight stay is necessary to continue existing arrangements for access to, and contact between, parents and children;
- (g) P is unable to return to the place where P lives, because—
 - (i) it is not safe for P to live there,
 - (ii) P may not lawfully travel there, or is required by law to stay in another place, or
 - (iii) the place where P is living is not available to P for any other reason.
- (3) Paragraph (1) does not apply to any person who is homeless.
- (4) For the purposes of paragraph (1), the place where a person is living includes the premises where they live together with any garden, yard, passage, stair, garage, outhouse or other appurtenance of such premises.”

15. The Health Protection (Coronavirus Restrictions) (England) Regulations 2020 were revoked by The Health Protection (Coronavirus Restrictions) (No 2) (England) Regulations 2020 which came into force at 6am on 4 July 2020.

Decision and reasons

16. Under section 2 of the Local Government Finance Act 1992, liability for the council tax was determined on a daily basis. Section 3 defined the meaning of a dwelling. Under section 4, all chargeable dwellings were subject to council tax. The appeal dwelling was a chargeable dwelling, unless it qualified for exemption under Class G of the Council Tax (Exempt Dwellings) Order 1992. If the appeal dwelling was found to remain chargeable throughout the period in dispute, it was accepted that Mr Moore was the liable person under section 6 (2) (f) of the 1992 Act as the non-resident owner.
17. This liability for council tax arises whether the owner lives at the property or stays at the property or not. Liability subsists by the very fact of ownership

unless, in the hierarchy of liability under section 6 (2) another individual is liable, or there is an exception in law.

18. The panel decided to look at the two issues raised in this appeal separately in order to provide guidance for lay panels in future, in determining similar appeals. In order to provide guidance for how to deal with category one appeals, the panel initially concentrated on the impact of regulation 6 of the coronavirus regulations. Did the restrictions on travel and later, on overnight stays, qualify for exemption under Class G? The panel therefore parked for one side the fact that the holiday park on which the chalet was situated was closed. The question of whether the closure of the holiday park meant that the appeal dwelling qualified for Class G exemption is addressed later in the decision.
19. It was accepted that the appeal dwelling was not the appellant's main residence. He argued that the travel restrictions that were in place between 26 March 2020 and 31 May 2020 meant that he was not permitted to travel. Regulation 6 of the Health Protection (Coronavirus Restrictions) (England) Regulations 2020 outlined the exceptions to the rule against travel or the reasonable excuses that a person could use to undertake travel. The appellant argued that none of the circumstances, where travel could be justified, were applicable to him so he was unable to occupy the property. On 1 June 2020, the travel restrictions were lifted by the amendment no 3 regulations. However, he was still not able to reside in the appeal property because overnight stays were prohibited unless you had a reasonable excuse, but he said none of the exceptions would apply to him. So again, he argued that he was denied the use of the property until the restrictions were revoked and set aside by the Health Protection (Coronavirus Restrictions) (No. 2) (England) Regulations 2020 with effect from 4 July 2020.
20. Mr Moore's argument that the travel restrictions and latterly the overnight stay restrictions that the government had put in place, in order to try to prevent the spread of the coronavirus, justified a council tax class G exemption were found by the panel to be misconceived. Looking at the relevant council tax legislation in the order it appeared in the 1992 Act, liability was determined on a daily basis under section 2. Section 3 defined the meaning of a dwelling. Under section 4, council tax was payable on a dwelling unless it was exempt. The classes of exemption that were prescribed by Order were those contained in Article 3 of the Council Tax (Exempt Dwellings) Order 1992 as amended. Mr Moore was reliant on Class G. The statutory language merely referred to the dwelling and the circumstances that needed to be fulfilled in order to qualify for exemption. The full definition was as follows;

An 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;

21. The panel accepted that because of Mr Moore's underlying health conditions, once the lockdown came into force, he had to shield himself away from other people. Consequently, he remained in Norwich at his main home and did not use his holiday home. It was also accepted that even if he was not required to shield Mr Moore would be in breach of the coronavirus restrictions, if he had decided to travel. Whilst it was accepted that Mr Moore did not occupy the appeal dwelling at any point because he had no reasonable excuse to justify going there, that did not support his claim for exemption. The Class G exemption referred to the dwelling and not the personal circumstances of the owner. In fact, it must be the case that where a person has, as in this case, a main residence and a second property, that person cannot be in both at the same time and therefore personal circumstances cannot trigger the Class G exemption.
22. Had Mr Moore been staying at his chalet before the lockdown, it would have been open to him to remain and shield himself there and be temporarily absent from his main residence in Norwich. Alternatively, had his circumstances changed and he was required to travel for medical reasons or another reasonable excuse, he could have used his holiday home.
23. There may be many reasons why a person could not gain access to a property. They may be stranded abroad for instance, because of flight cancellations or delays, but this did not mean that the dwelling could not be occupied. It just meant that the dwelling was unable to be occupied by that person. However, it remained available for occupation by someone else. Whether the owner would give permission for someone else to occupy his property, when he was not in a position to occupy it himself, was a matter for the owner; and as mentioned above the owner can only be in one place at a time and in normal circumstances this is the position and no exemption arises.
24. There is nothing in law that prevents a person owning more than one dwelling but on any given day a person can only be resident in one. If there are competing residences available to a person, one is normally identified as their main residence or principal place of abode/home.
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 the right 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.

27. Council tax was a hybrid tax based on ownership and occupation of a dwelling. Generally speaking, council tax was 50% property based and 50% occupancy based. The occupancy-based portion was based on two adults residing there as their main residence. When one adult resides alone or the second adult was disregarded for the purposes of discount, a single person discount of 25% was applicable. For an unoccupied furnished dwelling, which was not a person's main home a discount of 50% was available under section 11 of the 1992 Act. However, billing authorities have a discretionary power to reduce the level of discount under section 11A to a figure lower than 50% or to remove the discount altogether.
28. Accordingly, liability for council tax on a second or additional dwelling cannot simply be avoided by personal circumstances, unless the statutory criteria regarding exemption apply (in this case Class G). Liability would continue to apply through ownership, even though the dwelling could not be accessed by the owner. Ultimately, it was a matter of personal choice, how many dwellings a person possesses. Whether a person owns two or more dwellings, only one property can be that person's main residence at any one time. Council Tax will still, however, continue to accrue on any unoccupied dwellings which are not the owner's main home.
29. To use an analogy, a person may own two cars but following conviction and disqualification from driving, he may be unable to drive either. The fact that he is denied use of either car would not absolve him from liability to road tax and insurance. The disqualification (the prohibition by law) does not affect the other associated liabilities, it merely stops a person from driving and whilst that might be unfortunate for the individual the prohibition does not go to the use of vehicles or property.
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.

31. Mr Moore's secondary argument was that even if he was able to travel to the Winterton Valley Estate, the site was closed. There was no public right of access to it, the car park was closed, all utilities turned off and no refuse or recycling bins were collected and emptied. The panel found there was significant substance to this argument.
32. On behalf of the billing authority, Mr Thompson argued that as 90% of the holiday park was classed as domestic and therefore subject to council tax, the site owner had no right to close the site. Mr Thompson also contended that, the site owner could not lawfully prevent Mr Moore from using his chalet if he had a reasonable excuse to travel to the site.
33. Having regard to the wording of regulation 5 (3) of the Coronavirus Regulations the panel did not uphold Mr Thompson's argument. Paragraph 3 stated that subject to paragraph (4) a person responsible for carrying on a business consisting of the provision of holiday accommodation, whether in a hotel, hostel, bed and breakfast accommodation, holiday apartment, home, cottage or bungalow, campsite, caravan park or boarding house, must cease to carry on the business during the emergency period.
34. The panel was required to interpret the above regulations applying the purposive approach and common sense, given that the manifest intention of parliament is that these regulations are to be applied rigorously. Therefore, the site owner was obliged to close the site unless one of the exception criteria in paragraph 4 applied. Paragraph 4 allowed the business and the site to remain open if a person was unable to return to their main residence, had their main residence on the site or needed accommodation to facilitate a house move, attend a funeral, to provide support for the homeless or to host blood donation sessions plus any purpose requested by the Secretary of State or the local authority.
35. Looking at the factual circumstances at Winterton Valley Estate, there was no suggestion that any of the exceptions under paragraph 4 were applicable to the site when it was closed. Mr Thompson confirmed that no person had their sole or main residence there. Therefore, on a true construction of the statutory wording, it appeared to the panel that the owner was obliged by the regulations to close the site and it remained closed until the coronavirus restrictions were lifted.
36. As a result, neither Mr Moore nor anyone else, unless they met one or more of the exception criteria in paragraph 4 was entitled to occupy the appeal dwelling. Therefore, an exemption under Class G was applicable for the period in dispute as it was an unoccupied dwelling the occupation of which was restricted/prohibited by a condition which prevents occupancy and 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.

37. In the panel's opinion, there was a simple answer to Mr Thompson's argument that if circumstances dictated Mr Moore could have occupied the appeal dwelling, for instance if he needed to use it as his main residence or had to attend a funeral, it would have become a chargeable dwelling on the day when his circumstances changed. Liability for council tax being determined on a daily basis. However, by the time when this appeal was heard, the panel did not have to speculate as the facts were known. The site was closed by the site owner under regulation 5 (3) and no set of circumstances arose which would have legitimately permitted Mr Moore or any other person to legitimately occupy his dwelling or gain access to it. Moreover, the panel felt that such an interpretation was not one that would reflect the spirit of the regulations and it would throw up minor arguments which would be undesirable in any event. In short, the panel were persuaded that there was no reasonable interpretation of the regulations that would leave Mr Moore with the liability for this period. He was by the operation of the site owner of the prohibitions imposed by the regulations undoubtedly affected and the net effect of this was he was prevented by law of occupying claim the chalet.
38. On behalf of the billing authority, Mr Thompson argued that the House of Lords' judgment in *Hailbury Investments Ltd v Westminster City Council* [1986] RA 187 supported his authority's decision to refuse the exemption. The appeal hereditaments in that case were shown in the valuation list as offices. The planned works involved the conversion of some of the office space into residential accommodation. Before those conversion works could commence, any unauthorised office use had to cease and any planned future office use could not commence until certain planning conditions were met. The appellants therefore argued that they were exempt from rate liability under paragraph 2 (a) and (b) of Schedule 1 to the General Rate Act 1967 because the owner was prohibited by law from occupying or from allowing the hereditaments to be occupied. However, the appellants' argument for exemption was rejected as the planning restriction was not decisive when it was permissible to occupy the properties for an alternative mode or category of use.
39. The panel did not find the above authority of assistance in their determination as the facts were different and was decided having regard to different legislation. Moreover, Mr Moore's chalet was shown within the valuation list as it was a dwelling and therefore it's only use was one of living accommodation. If it was used for a different mode or category of occupation, in other words for commercial or non-domestic use, the property would then be subject to non-domestic rates not council tax. Therefore, this authority did not support the respondent's argument.
40. In view of the foregoing, Mr Moore's appeal on the secondary ground succeeds as we are more than satisfied that because of the operation of law his claim that he qualifies for the Class G exemption is sound.

Order

41. In accordance with Regulation 38(1) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the tribunal ordered the billing authority to reverse its decision and treat the appeal dwelling as exempt from council tax for the period 26 March 2020 to 3 July 2020 inclusive.
42. In accordance with Regulation 38 (9) the billing authority is expected to comply with this Order within two weeks of the date below.

A handwritten signature in black ink, appearing to read 'Sam Fildes', with a long horizontal stroke extending to the right.

President

Date: 4 February 2021

Appeal number: VT00003541