

(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.

3. 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.
4. In accordance with that Practice Statement, the hearing was conducted remotely via a Microsoft Teams conference call using an audio/video-link. For the avoidance of any doubt, the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.
5. This was an appeal made under section 16 of the Local Government Finance Act 1992 (the '1992 Act'). It had been brought by Professor Lennard in response to a reconsidered decision of the billing authority dated 17 February 2021 which confirmed that a Class G exemption was not applicable to the appeal property. Professor Lennard's appeal against the decision was received by this Tribunal on 23 February 2021.
6. A substantial amount of evidence was provided in this appeal. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue

7. The issue in dispute related to whether the appeal property was exempt from council tax under the provisions of Class G for the period from 14 April 2020 to 7 August 2020 (the disputed period).

Evidence and submissions

8. A bundle of evidence was provided containing the parties' respective cases. This included: the billing authority's reasons for resisting the appeal; the appellants' appeal documentation and supporting information; correspondence between the parties; a copy of The Council Tax (Exempt Dwellings) Order 1992; copies of The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020/The Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No.2) Regulations 2020; government guidance on moving house during the COVID-19 outbreak; copies of council tax bills; a solicitor's letter in relation to the sale of the appellants' property in Ponteland and the billing authority's rebuttal statement.
9. The following VTE decisions were also referred to:
 - VT00003541, *Moore v Great Yarmouth Borough Council*
 - VT00002670, *Brookes v Northumberland County Council*
 - VT00004392, *Pratt v Rochdale Borough Council* (provided by the clerk prior to the hearing).
10. Very briefly, this case can be summarised as follows:

- i. The appellants owned the appeal property and the property in which they resided in Ponteland.
- ii. The appellants intended to sell the Ponteland property and move to the appeal property following its completion. Although a buyer had been found for the Ponteland property, the move was delayed because the buyer's mortgage company required a survey, which could not be completed due to the emergency legislation imposed due to COVID-19. Employing the services of a removal firm had been held up by the same emergency legislation.
- iii. When restrictions eased, the move was further delayed by the backlog of work accrued by the surveyor and removal company during the lockdown period. Due to circumstances beyond the control of the appellants, the sale of the Ponteland property did not complete until 7 August 2020.
- iv. The appellant considered it was unjust to hold him liable for payment of council tax for two dwellings for the same period when legislation prevented him disposing of one property and moving to the other.
- v. As the move to the appeal property had been prevented as a direct result of government legislation, the appellants considered a Class G exemption was reasonable and morally correct.
- vi. The billing authority had not awarded a Class G exemption as it considered that it could only be awarded to a dwelling that was prohibited from occupation by law and there was no law in existence during the disputed period that prevented occupancy of the appeal property.

Decision and reasons

11. The panel understood that Northumberland County Council had determined that no discounts would be given to empty and substantially unfurnished properties, these were still charged 100% council tax. The billing authority had also confirmed that there had been no direct instructions from central government to offer any specific discounts covering circumstances caused by the pandemic, such as those outlined by the appellants, or an option to allow taxpayers to defer payments.
12. Some of the correspondence included in the evidence bundle related to the date on which the appeal property was entered into the valuation list for council tax purposes. The appellants had sought an adjustment to this date from 14 April 2020 to 1 July 2020, due to their inability to occupy the property due to the pandemic. It appeared that the appellants had submitted a proposal to the Valuation Office Agency in this respect. The panel wished to point out that it had no jurisdiction to amend the appeal property's entry date in the valuation list on the subject appeal.
13. The panel therefore addressed whether the appeal property was chargeable for, or exempt from, council tax during the disputed period when there were legal restrictions in place due to the COVID-19 pandemic.
14. Section 4(1) of the Local Government Finance Act 1992 provided the following:

“Council tax shall be payable in respect of any dwelling which is not an exempt dwelling.”

15. Section 4 further enabled the Secretary of State to prescribe classes of exempt dwellings. This appeal involved a consideration of Class G of the Council Tax (Exempt Dwellings) Order 1992 (as amended).

16. So far as is relevant to these proceedings, it provides –

“A dwelling is an exempt dwelling for the purposes of section 4 of the Act on a particular day if on that day it falls within one of the following classes—

Class G 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;

17. If the panel determined that the appeal property was prohibited from occupation under Class G, it would be treated as an exempt dwelling and no council tax would be payable. If it decided the contrary, council tax would be due for the disputed period.

18. Firstly, the panel had regard to the VTE decisions, as outlined above, as it found these provided authoritative guidance; given the issue considered was the application of Class G exemptions during the start of the pandemic. Within the *Moore* decision, it was reiterated that a Class G exemption would only be applicable if the unoccupied dwelling could not be occupied by any person by law. In the *Pratt* decision, in so far as it was relevant to the subject appeal, it was found that COVID-19 related restrictions did not prohibit occupation of a dwelling because no specific prohibition existed in respect of that dwelling.

19. The panel also observed the relevant part of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. Section 6(1) set out that during the emergency period, no person may leave the place where they are living without reasonable excuse. 6(2)(l) set out that a reasonable excuse was the need to move house where reasonably necessary.

20. In consideration of the evidence, the panel found that the COVID-19 Regulations did not prohibit a person from moving house. Government guidance had also been issued on moving and purchasing a home whilst COVID-19 measures were in place. This did not set out that moving home was prohibited, rather it gave guidance on carrying out this process in a safe manner.

21. Having regard to the evidence, the panel concluded that whilst restrictions had been in force, there was no legal restriction in place that prevented the appellants from moving their main residence to the appeal property, should they have decided to do

so, or in theory, allow someone else to occupy the property for the disputed period. The panel found that the delay in the sale of their previous property and the availability of a removal company, were not relevant factors when determining whether occupation of the appeal property was specifically prohibited.

22. Whilst empathising with the appellants' frustration with the circumstances that had prevailed, the panel was required to determine this appeal having regard to the relevant legislation and it was important to recognise that it had no discretion to apply a Class G exemption if the provisions contained therein had not been properly fulfilled. In this appeal, the panel was satisfied that the appeal property had not been unoccupied because its occupation was prevented or prohibited by any of the criterion outlined within Class G.

23. Having regard to the above, the panel upheld the billing authority's decision to refuse a Class G exemption. The subject appeal was therefore dismissed.

Date: 8 December 2021

Appeal number: VT00006033