



## VALUATION TRIBUNAL FOR ENGLAND

*Council tax liability appeal: Public Health (Control of Disease) Act 1984; Local Government Finance Act 1992; Council Tax (Exempt Dwellings) Order 1992 [SI 1992 No. 558]; Health Protection (Coronavirus, Restrictions) (England) Regulations 2021 [SI 2021 No. 350]; Moore v Great Yarmouth Billing Authority [2021] VTE (VT00003541); Pratt v Rochdale Borough Council (BA) [2021] VTE (VT00004392); Class G – occupation prohibited by law; appeals allowed.*

APPEAL NUMBER: VT00009253 (PL); VT00009434 (DC); VT00009376 (KM);  
VT00009562 (JF)

RE: 25 Valencia, Selsey Country Club, Selsey, PO20 9DR (PL)  
13 Cordova, Selsey Country Club, Selsey, PO20 9DR (DC)  
5 Valencia, Selsey Country Club, Selsey, PO20 9DR (KM)  
77 Granada, Selsey Country Club, Selsey, PO20 9DR (JF)  
(the “subject dwellings”)

BETWEEN:	PL, DC, HM and JF	Appellants
	and	
	Chichester District Council (Billing Authority)	Respondent

SITTING: *remotely via Microsoft Teams*

ON: Monday 21 November 2022 at 10:00 hours

BEFORE: Mr G Garland (President)

CLERK: Mr W Hamilton IRRV(Dip) A.Inst.Pa

APPEARANCES: DC, the Appellant-in-person (by audio/visual link)  
KM, the Appellant-in-person (by audio/visual link)  
JF, the Appellant-in-person (by audio/visual link)  
Mr M Girdler, the representative for PL (by audio/visual link)  
Mr J Barnes, the Respondent’s representative (by audio/visual link)

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### DECISION, STATEMENT OF REASONS and ORDER

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## Summary of Decision

1. The appeals are allowed.
2. I am satisfied that, from 26 March 2020 to 3 July 2020 (the “disputed period”) that –
  - (1) occupation of the subject dwellings was prohibited by law or otherwise kept unoccupied by reason of other action taken under powers conferred by or under any Act of Parliament with a view to prohibiting occupation; and accordingly
  - (2) the subject dwellings are exempt dwellings.

## Introduction

3. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings.

### Background

4. These four appeals relate to dwellings located at the Selsey Country Club site (“the site”) and whether, during the initial coronavirus emergency period, the site was required to close in law, and consequently deemed a dwelling situated on the site exempt from the payment of council tax.
5. There are, in addition to these four appeals, a further 113 appeals made to the Tribunal in respect of dwellings located at the site and on this same point. Those 113 appeals have been stayed pending the outcome of these four appeals.
6. On 23 September 2022, the Tribunal notified the parties that these four appeals would be heard remotely at today’s hearing. This included a copy of the Tribunal’s standard directions governing disclosure between the parties ahead of the hearing.
7. On 3 November 2022, the Respondent’s representative served upon the Tribunal four consolidated hearing bundles (one for each appeal) in accordance with those standard directions. Each bundle consists of pre-appeal correspondence between the parties, the respective Appellant’s appeal, the Respondent’s submission, the respective Appellant’s further evidence and submissions, and the Respondent’s rebuttal.

### Prior proceedings before the Tribunal

8. Prior to the listing of these appeals, the Tribunal heard two test cases relating to the interaction between the coronavirus restrictions and Class G of the Exempt Dwellings Order. The Tribunal categorised these appeals into three categories–

#### *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 under the coronavirus restrictions.

### *Category Three*

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

9. These test cases were before a tribunal panel consisting of myself and another legally qualified Senior Member of the Tribunal.
10. On 4 February 2021, my decision in *Moore v Great Yarmouth Billing Authority* [2021] VTE (VT00003541) was issued. In summary, I held that dwellings falling into Category One were not Class G exempt dwellings. However, I held that Category Two dwellings were Class G exempt dwellings.
11. On 25 March 2021, my decision in *Pratt v Rochdale Borough Council (Billing Authority)* [2021] VTE (VT00004392) was issued. In summary, I held that dwellings falling into Category Three were not Class G exempt dwellings.
12. On 21 June 2021 and 3 August 2021, the Tribunal heard appeals relating to dwellings located on the Selsey Country Club site. The first Tribunal Panel found that as there were 15 residents on site, for the reasons set out in its decision of 20 July 2021, that the dwellings were not Class G exempt dwellings. Conversely, the second Tribunal Panel found, for the reasons set out in its decision of 26 August 2021, that the dwellings were Class G exempt dwellings.
13. In view of the conflicting decisions, I directed that any appeals relating to dwellings at the site regarding the Class G exemption were designated as complex under PS3 of the Tribunal's Consolidated Practice Statement. I also directed that I would personally hear lead cases to provide authoritative guidance to Tribunal Panels regarding such appeals.

### Modified hearing procedure

14. Upon my own motion, and with there being no objection from the parties, I modified the standard model hearing procedure to the extent that I heard from the representative of the Respondent Billing Authority first, followed by questions of him, then each of the Appellants in turn.

### **Relevant law**

#### Council tax

15. Part I of the Local Government Finance Act 1992 (the "Act") makes provision for billing authorities in England and Wales to levy a tax, known as council tax, in respect of domestic hereditaments ("dwellings") within their area.

16. Section 4 of the Act makes provisions for which dwellings attract council tax. It provides –

***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.*

17. The Council Tax (Exempt Dwellings) Order 1992 [SI 1992 No. 558] (the “Exempt Dwellings Order”) makes provision for classes of dwelling which are “exempt dwellings” for the purposes of section 4 of the Act. So far as is relevant to these proceedings, it provides –

- 3** *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;*

...

### Coronavirus restrictions

18. In response to the coronavirus pandemic, the Secretary of State for Health made multiple sets of regulations pursuant to powers conferred upon him under the Public Health (Control of Disease) Act 1984. During the period in dispute, the operative regulations were the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 [SI 2020 No. 350] (the “Coronavirus Regulations”), which came into force at 13:00 hours on 26 March 2020 and were revoked at 00:01 hours on 4 July 2020.

19. Regulation 5 of the Coronavirus Regulations provided for a general closure of holiday accommodation. In summary so far as is relevant, it provided –

#### **5 Further restrictions and closures during the emergency period**

...

*(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;*

...

20. There were various amendments to the text of Regulation 5 of the Coronavirus Regulations during the disputed period, however, none of them have any material effect in the present proceedings.

### Appeal to this Tribunal

21. Section 16 of the Act establishes a right of appeal to this Tribunal. So far as is relevant to this statement of reasons, it provides –

#### ***“16 Appeals: general***

*(1) A person may appeal to [the Valuation Tribunal for England] if he is aggrieved by–*

- (a) any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; ...”*

### **Discussion**

22. There is no significant factual dispute between the parties in respect of these appeals. Selsey Country Club Limited, the operators of the site, had put in place significant measures to stop people going to their chalets at the site. This included substantial additional security measures to prevent unauthorised access. It is also clear from the evidence that, whether or not in keeping with their chalet leases (which is not a matter with which I am concerned on these appeals), there were between 15 and 25 residents at the site during the coronavirus emergency period. Those residents were unable to leave the site either because they had no other main residence or because doing so would have been an offence under the Coronavirus Regulations. It is also set out that there was a regular police presence at the site seeking to enforce the various restrictions contained within the Coronavirus Regulations.
23. Subsequent to the two previous decisions of this Tribunal regarding dwellings at the site, the parties have helpfully focused their dispute. I am grateful to the Respondent’s representative and the four Appellants (and Mr Girdler, representing one of the Appellants) for their succinct submissions on the issue.
24. In short, the issue turns on the correct statutory interpretation of Regulation 5 of the Coronavirus Regulations and, in particular, the interaction between the restriction at paragraph (3) and its exceptions at paragraph (4).
25. Paragraph (3) of Regulation 5 of the Coronavirus Regulations requires that the carrying on of a business of holiday accommodation must cease during the emergency period. No doubt in following my decision in *Moore*, it is conceded by the Respondent Billing Authority that this would amount to a prohibition of the occupation of the dwellings on the site.
26. However, the Respondent Billing Authority contends that the presence of between 15 to 25 residents on site, engaged the exception to the prohibition found at paragraph (4)(a)(i) or (ii) of Regulation 5 of the Coronavirus Regulations. In short, the argument is that, irrespective of what factually happened on the ground to close the site, the presence of those residents meant the legal prohibition did not bite and the business

did not need to cease its activity. Indeed, this was the basis of the reasons adopted by the Tribunal Panel which heard the appeal on 21 June 2021. With the greatest respect to that Tribunal Panel, I do not agree with that interpretation as it fails to take account of the reality persisting at the time.

27. The Respondent Billing Authority takes an “all or nothing” interpretation to the application of the exceptions to the restriction: that the presence of some residents on the site means that the whole of the site must not be required to close. However, as set out at paragraph 18, above, paragraph (4)(a) provided that a *business may continue to carry on its business and keep premises open to provide accommodation* (my emphasis) in one of the specified exceptions. I consider that the exception to the restriction was only as wide as it needed to be for the purposes of the specified exception. Considering that the intention of the Coronavirus Regulations was to prevent the spread of coronavirus through limiting the movement of people and the operation of certain businesses, this must be the correct interpretation. The alternative would lead to the perversity that, despite the serious nature of the ongoing coronavirus pandemic, the site was able to open and able to operate normally. That cannot be right.
28. So, whilst the exception permitted Selsey Country Club Limited to continue operating the site in providing accommodation for the 15 to 25 residents unable to leave, it was not permitted to operate the site to allow any other persons to join the site: the parts of the site that were unoccupied were required to close under the Coronavirus Regulations and were in fact closed. In fact, given the other changes to the law brought about by the emergency there was even a ban on evictions of any sort and therefore the site owner even if they wanted to would not have been able to force the residents who were of a limited number off the site. Indeed, the site owners could in reality do nothing. However, in respect of the rest of the site they had effectively closed it down and went to great lengths to make sure that no one could enter or use the facilities, thus in my view they were closed for all practical purposes.
29. Consequently, I am satisfied that the subject dwellings met the conditions of the Class G exemption at Article 3 of the Exempt Dwellings Order for the disputed period.
30. The appeals are allowed.

## Order

31. In view of the above decision, the Tribunal orders –

(1) the Respondent Billing Authority’s decisions in these four appeals are reversed and the calculation of the respective Appellants’ council tax liabilities for the disputed period are quashed; and

(2) the Respondent Billing Authority must comply with this order within two weeks of its making.

**Appeal Number:** VT00009253;  
VT00009434;  
VT00009376;  
VT00009562

**Issued:** 29 November 2022

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### **Right of further appeal**

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.

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