

THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; Local Government Finance Act 1992; Council Tax (Exempt Dwellings) Order 1992 (as amended); Class V exemption; dwelling satisfied required criteria for exemption; appeal allowed.*

RE: Apartment 8, 50 Ewer Street, London SE1 0NR  
("the subject dwelling")

APPEAL NUMBER: VT00012702

BETWEEN: MA Appellant  
and  
London Borough of Southwark Respondent  
(Billing Authority)

SITTING: Remotely via Microsoft Teams Conference Call

ON: 11 August 2023

PANEL: Mrs S Nix (Presiding Senior Member)  
Ms A Verma (Senior Member)

CLERK: Mr S Fletcher IRRV (Hons)

APPEARANCES: MA (Appellant)  
Mr A McPherson (Respondent's representative)

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**DECISION and STATEMENT OF REASONS**

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**Summary of decision**

1. Appeal allowed. The panel found that the criteria to apply a Class V exemption to the subject dwelling was satisfied with effect from 22 November 2021.

## **Introduction**

2. The appellant was a tenant and resident with his son GA at the subject dwelling from 22 November 2021. The appellant provided the respondent with evidence that his son was a student for council tax purposes which the respondent duly updated its records. However, the respondent considered that the appellant's wife was also resident at the subject dwelling therefore it applied no discount to council tax. The appellant requested an exemption from council tax as he was a representative of the European Bank of Reconstruction and Development (EBRD) which was under the provisions of the International Organisations Act 1968.
3. The appellant was aggrieved by the final determinations of the billing authority that:
  - (1) no exemption from council tax was applicable as the required criteria was not satisfied; and
  - (2) the appellant's wife was resident at the subject dwelling.
4. On 29 August 2022, the Valuation Tribunal for England (VTE) received this appeal pursuant to section 16 of the Local Government Finance Act 1992 ("the Act"). Section 16 establishes a right of appeal to this Tribunal to a person aggrieved with any decision of a billing authority that a dwelling is a chargeable dwelling or that they are liable to pay council tax in respect of such a dwelling and any calculation made by a billing authority of an amount which he is liable to pay to the authority in respect of council tax.
5. This decision document is not and does not purport to be a verbatim record of proceedings.

## **Preliminary Issue**

6. Prior to giving his submission in open tribunal, the respondent's representative stated to the panel that he accepted that the appellant's wife had not been, and was not, a resident at the subject dwelling. Consequently, the respondent would apply a 25% discount to council tax with effect from 22 November 2021 as the appellant's son was a student for council tax purposes. The panel accepted the statement from the respondent's representative and proceeded to invite submissions from the parties in respect of the outstanding substantive issue of the appeal.

## **Issue**

7. The issue for the panel to ascertain was whether a Class V exemption from council tax was applicable to the subject dwelling with effect from 22 November 2021.

## Evidence and submissions

8. Arguments and factual evidence for both the appellant and the respondent were subsumed into a combined evidence bundle. This included extracts of legislation, documentation pertaining to the student status of the appellant's son, the tenancy agreement for the subject dwelling, information pertaining to the appellant's wife, a letter from the appellant's employer and various pieces of correspondence between the parties.

## Relevant law

9. Part I of 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.
10. Section 4 of the Act makes provision for certain dwellings to be exempt from 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.
11. ("The Order") referred to above is The Council Tax (Exempt Dwellings) Order 1992 (as amended) (SI No 1992/558), where Class V in Article 3 is relevant to this appeal:

Class V: (1) a dwelling in respect of which at least one person, who would be liable to pay council tax but for this class, satisfies the conditions set out in paragraphs (2) and (3);

(2) the condition referred to in paragraph (1) is that the person—

(a) is a person on whom privileges and immunities are conferred by the [Diplomatic Privileges Act 1964](#), or

(b) is a person on whom privileges and immunities are conferred under paragraph 5(1) of Part II of the Schedule to the Commonwealth Secretariat Act 1966,

(c) is a person on whom privileges and immunities are conferred by section 1 of the Consular Relations Act 1968, or

(d) is, in relation to any organisation specified in an Order in Council made under section 1(2) of the International Organisations Act 1968, within a class of persons mentioned in section 1(3) of that Act to which the relevant Order extended relief from rates as specified in paragraph 9 of Schedule 1 to that Act, or

(e) is a person on whom privileges and immunities are conferred by article 3 or 4 of the Commonwealth Countries and Republic of Ireland (Immunities and Privileges) Order 1985, or

(f) is the head of any office established as described in section 1(1) of the Hong Kong Economic Trade Act 1996,

and is not—

(i) a British citizen, a [British overseas territories citizen], a British National (Overseas) or a British Overseas citizen; or

(ii) a person who under the British Nationality Act 1981 is a British subject; or

(iii) a British protected person (within the meaning of that Act); or

(iv) a permanent resident of the United Kingdom;

(3) the condition referred to in paragraph (1) is that there is no other dwelling in the United Kingdom which is the main residence of that person, or is the main residence within the United Kingdom of that person.

12. The relevant sections and paragraphs of the International Organizations Act 1968 as referred to in Class V above are as follows:

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(2) Subject to subsection (6) of this section, Her Majesty may by Order in Council made under this subsection specify an organisation to which this section applies and make any one or more of the following provisions in respect of the organisation so specified (in the following provisions of this section referred to as “the organisation”), that is to say—

(a) confer on the organisation the legal capacities of a body corporate;

(b) provide that the organisation shall, to such extent as may be specified in the Order, have the privileges and immunities set out in Part I of Schedule 1 to this Act;

(c) confer the privileges and immunities set out in Part II of Schedule 1 to this Act, to such extent as may be specified in the Order, on persons of any such class as is mentioned in the next following subsection;

(d) confer the privileges and immunities set out in Part III of Schedule 1 to this Act, to such extent as may be specified in the Order, on such classes of officers and servants of the organisation (not being classes mentioned in the next following subsection) as may be so specified.

(3) The classes of persons referred to in subsection (2)(c) of this section are—

(a) persons who (whether they represent Governments or not) are representatives to the organisation or representatives on, or members of, any organ, committee or other subordinate body of the organisation (including any sub-committee or other subordinate body of a subordinate body of the organisation);

(b) such number of officers of the organisation as may be specified in the Order, being the holders (whether permanent, temporary or acting) of such high offices in the organisation as may be so specified; and

(c) persons employed by or serving under the organisation as experts or as persons engaged on missions for the organisation.

...

## Schedule 1

### Part II

Privileges and immunities of representatives, members of subordinate bodies, high officers, experts, and persons on missions

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The like immunity from suit and legal process, the like inviolability of residence, and the like exemption or relief from taxes and rates, other than [duties (whether of customs or excise)] and taxes on the importation of goods, as are accorded to or in respect of the head of a diplomatic mission.

### **Decision and reasons**

13. The appellant sought exemption from council tax at the subject dwelling and provided the respondent with a letter from his employer, the European Bank for Reconstruction and Development (EBRD). It stated his position was the Alternate Director for Spain/Mexico with effect from 1 October 2021 and that the organisation fell under the provisions of the International Organisations Act 1968.
14. The respondent considered that the appellant was seeking to be recognised as a foreign diplomat and cited the Council Tax (Additional Provisions for Discount Disregards) 1992. It did not consider that sufficient evidence had been provided to treat the appellant as a diplomat for the purposes of council tax.
15. The panel held that prior to the consideration of any discounts to council tax or determination of disregarded persons, it must first be ascertained whether the subject dwelling itself was exempt from council tax. Dwellings which are exempt from council tax are not chargeable dwellings. The panel found that Class V in Article 3 of the Order was the most appropriate class to consider eligibility for given the appellant's circumstances.
16. The panel was satisfied that the letter provided by the appellant's employer confirmed that the EBRD was specified in an Order in Council made under section 1(2) of the International Organisations Act 1968. The panel was satisfied that the appellant was within the class of persons mentioned in section 1(3) of the International Organisations Act 1968 in his capacity as an employee of the EBRD as Alternate Director for Mexico/Spain. The appellant confirmed he was not a British National, or a permanent resident of the United Kingdom, and he had no other dwelling in the United Kingdom which was his main residence. Consequently, the panel determined that the criteria for a Class V exemption at the subject dwelling was satisfied.

17. In view of the foregoing, the appeal was allowed.

**Order**

18. Under the provisions of regulation 38(1) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders that –

- (1) the subject dwelling is exempt from council tax with effect from 22 November 2021 as the criteria for Class V was satisfied; and
- (2) the respondent shall comply with this order within two weeks.

**Date:** 22 August 2023

**Appeal number:** VT00012702

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**Right of 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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