

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax liability appeal; Local Government Finance Act 1992; section 4; Council Tax (Exempt Dwellings) Order 1992 (as amended); Class N exemption; dwelling satisfied required criteria for exemption as occupied by a student; appeal allowed.*

RE: 1 Glebeland, Hatfield AL10 8AA ("the subject dwelling")

APPEAL NUMBER: VT00017280

BETWEEN:	IAL	Appellant
	and	
	Welwyn Hatfield Borough Council (Billing Authority)	Respondent

SITTING: Remotely via Microsoft Teams Conference Call

ON: 20 February 2024

BEFORE: Mrs N Crawshaw (Senior Member)

CLERK: Mr S Fletcher IRRV (Hons)

APPEARANCES: IAL (Appellant)  
Mr D Robinson (Respondent's representative)

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## DECISION and STATEMENT OF REASONS

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### Summary of decision

1. Appeal allowed. I determined that a Class N exemption of council tax was applicable at the subject dwelling with effect from 1 December 2020 as the property was occupied by a student.

### Introduction

2. The appellant was the sole resident at the subject dwelling with effect from 1 December 2020. She applied for an exemption of council tax as she was a PhD student of Swiss Management Center. The respondent determined that

the educational establishment was located in Switzerland, and therefore the criteria was not met to apply a Class N exemption.

3. The appellant was aggrieved by the final determination of the billing authority made on 15 May 2023 that a Class N exemption was not applicable at the subject dwelling.
4. On 24 May 2023, 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.
5. In order to assist the appellant, who expressed a wish to present her evidence second, I varied the tribunal's model procedure and invited the billing authority's representative to begin.
6. This decision document is not and does not purport to be a verbatim record of proceedings.

### **Preliminary issue**

7. Before I commenced hearing the submissions from the parties, I was informed of potential breaches of the standard directions pertaining to disclosure of evidence made by both the appellant and respondent. The appellant and tribunal did not receive an evidence bundle from the respondent. The respondent's representative stated that the respondent did not receive any evidence from the appellant until forwarded by the tribunal.
8. The panel was directed to paragraphs A1, B1 and B3 of the standard directions applicable to this type of appeal, which provided –

*A. For the Appellant (ratepayer or council taxpayer), the Tribunal directs that:*

*1. Any further information you wish the Tribunal to consider, must be sent to the respondent at least four weeks before the hearing. This may include case law or references to the legislation, and you must set out what change you are seeking in your appeal and the date(s) it would apply to.*

...

*B. For the Respondent (billing authority or listing officer), the Tribunal directs that:*

*1. At least six weeks before the hearing date, you must provide the appellant with your full case in response to the appeal, including arguments, evidence, legislation, case law and documents (including those covered by regulation 17) that you wish to rely on at the hearing. This will constitute your full case, and the Tribunal will not consider anything submitted after that date*

*unless you can demonstrate good reasons why the evidence was not available at the time, or it forms part of your rebuttal at paragraph 3 below. You do not need to serve evidence again that you submitted in your decision notice but must make it clear to the appellant.*

...

*3. At least two weeks before the hearing you must submit electronically to the Tribunal and by either email or post to the appellant, a bundle of documents including any documents provided to you by the appellant (at least two weeks before the hearing), your case as submitted to the appellant under this Direction and, provided you complied with the Direction, any rebuttal statement you may wish to make in light of the appellant's case. In respect of council tax liability appeals you must also provide the relevant section of your Scheme where appropriate. If you failed to provide your full case in accordance with paragraph 1 above and the evidence is excluded, you will only be able to include in the bundle any documents provided by the appellant and the evidence provided within your decision notice.*

9. I had regard to *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460. In this case, the Upper Tribunal's guidance to Tribunal panels in the instance of a breach of standard directions was that the three-stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction. The test reads as follows:

*Stage 1 – if panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).*

*Stage 2 – the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the Tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).*

*Stage 3 - The panel must consider all the circumstances of the case including:*

- (i) the need for litigation to be conducted efficiently and at proportionate cost;*
- (ii) a failure to grant a sanction may leave an inaccuracy being uncorrected;*
- (iii) the need to enforce compliance with rules, directions and orders (para. 55).*

10. The appellant stated that she sent her evidence to the respondent at the four-week stage as required by post. Although not required, she also sent the evidence to the tribunal at the same time by email. It was confirmed that the appellant's evidence was received by the tribunal in an email which stated she had posted it to the respondent. The respondent's representative stated that it was not received by the respondent. He stated that the reason no bundle had

been provided by the tribunal was because it had not received the notice of hearing. It was confirmed that the notice of hearing was sent to the respondent electronically on 12 December 2023. The appellant's evidence was forwarded to the respondent at the start of the week of the hearing.

11. I was satisfied that the appellant had served her evidence to the respondent in accordance with the directions for evidence disclosure. Therefore, no breach had occurred on her part. Furthermore, the respondent had been forwarded the evidence prior to the hearing, and it was in its possession. I considered that the breach by the respondent due to a failure to provide the evidence to both the appellant and tribunal was both serious and significant. However, I decided that any sanction to the respondent would be inconsequential to the outcome of the case. The appeal would be determined by applying the relevant law, and the respondent's representative was present to justify the respondent's decision. I determined that it was in the interests of justice and pursuant to the overriding objective of the tribunal to proceed to hear the appeal using the evidence that was available to me.

## **Issue**

12. The issue I was required to ascertain was whether a Class N student exemption was applicable at the subject dwelling.

## **Relevant law**

13. 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.

14. 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.

15. The Order referred to above is the Council Tax (Exempt Dwellings) Order 1992 (as amended) (SI No 1992/558), where Class N in Article 3 is relevant to this appeal:

Class N: 1. A dwelling which is occupied –

(a) by one or more residents all of whom are relevant persons;

(b) occupied by one or relevant persons as term time accommodation

2. For the purposes of paragraph 1

“(a) “relevant person” means —

(i) a student;

(ii) a student's spouse or dependant being in either case a person who is not a British citizen and who is prevented, by the terms of his leave to enter or remain in the United Kingdom, from taking paid employment or from claiming benefits; or

(iii) a person to whom Class C (school and college leavers) of regulation 3(1) of the Council Tax (Additional Provision for Discount Disregards) Regulations 1992 (6) applies;”

...

16. Paragraph 4 of Schedule 1 to the 1992 Act provides that a student shall be disregarded for the purpose of discount where such conditions as prescribed by order made by the Secretary of State are fulfilled. Those conditions are stipulated in the Council Tax (Discount Disregards) Order 1992 (SI No 1992/548). Section 4 of that Order states:

4 Students, etc

For the purposes of paragraph 4 of Schedule 1 to the Act —

...

“student” means a person, . . . , who is to be regarded as—

...

(b) a person undertaking a full time course of education, by paragraphs 3 and 4 of that Schedule...

17. Paragraphs 3 and 4(1) of Schedule 1 to the Council Tax (Discount Disregards) Order 1992 describe the required conditions for a person to fulfil undertaking a full time course of education as follows:

3

A person is to be regarded as undertaking a full time course of education on a particular day if—

(a) on the day he is enrolled for the purpose of [undertaking] such a course with a prescribed educational establishment within Part I of Schedule 2 to this Order, and

(b) the day falls within the period beginning with the day on which he begins the course and ending with the day on which he ceases to undertake it, and a person is to be regarded as ceasing to undertake a course of education for the purpose of this paragraph if he has completed it, abandoned it or is no longer permitted by the educational establishment to undertake it.

4

(1) A full-time course of education is, subject to subparagraphs (2) and (3), one—

(a) which subsists for at least one academic year of the educational establishment concerned or, in the case of an educational establishment which does not have academic years, for at least one calendar year;

[(b) which persons undertaking it are normally required by the educational establishment concerned to undertake periods of study, tuition or work experience (whether at premises of the establishment or otherwise)—

(i) of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists, and

(ii) which taken together amount in each such academic or calendar year to an average of at least 21 hours a week.

18. Part 1 of Schedule 2 to the Council Tax (Discount Disregards) Order 1992 stipulates what constitutes a prescribed educational establishment:

#### Establishments for Students

1

Subject to paragraph (3) below, an institution is a prescribed educational establishment within this Part if it is—

(a) situated in a relevant territory, and

(b) established solely or mainly for the purpose of providing further or higher education.

2

In this Part—

...

“relevant territory” means England, Wales, Scotland, Northern Ireland or a member State.

### **Evidence and submissions**

19. The decision of the respondent, the appellant’s appeal form, a student certificate from SMC Swiss Management Center and written submissions from the appellant were provided as evidence.
20. The respondent’s representative did not dispute that the appellant was a student undertaking a full-time course of education, however, he stated that the respondent refused to apply a student exemption as it determined the educational establishment was located in Switzerland, which was not a relevant territory.
21. The appellant stated she was the sole resident at the subject dwelling for the period of her liability from 1 December 2020 to 6 April 2023. She provided a student certificate from SMC Swiss Management Center which confirmed she was enrolled on a Doctor of Management program, and she was working on her dissertation, which she dedicated approximately 21 hours per week to. She stated that her studies commenced on 4 February 2020 and had been due to end on 16 January 2024, however, they were still ongoing.
22. The appellant stated that she studied and researched solely from the United Kingdom and the reality was that her study work constituted more hours on average than 21. She stated that the educational establishment was located in Vienna, Austria, and provided its address of SMC Swiss Management Center GmbH, Landstraßer Gürtel 3, 1030 Wien, Austria. A copy of its location on Google Maps was also provided.

23. The appellant explained that the establishment was an online University which had multiple centres all over the world. She stated that her studies were conducted online, and if she was required to contact her Professor, she would do using the telephone number of the Austrian base. She also contended that the establishment was accredited by the European Council of Business Education and had its European Union Trademarks filed in Europe.

### **Decision and reasons**

24. I was required to determine whether the appellant satisfied the criteria of a student in the relevant law to allow an exemption of council tax to be applied at the subject dwelling. It was not disputed by the respondent that the appellant was undertaking a full-time course of education. However, the respondent was not satisfied that it was a prescribed educational establishment.
25. I determined that the certificate provided by SMC Swiss Management Center and the verbal testimony of the appellant confirmed that the appellant was enrolled at the establishment on a full-time course of education with effect from 4 February 2020 prior to her moving into the subject dwelling. I was satisfied that she remained enrolled on the course when she did move in on 1 December 2020 and that the course was ongoing throughout her period of council tax liability. The student certificate also confirmed that her studies amounted to an average of 21 hours a week.
26. The appeal would therefore turn on whether the educational establishment met the criteria in the relevant law to be considered a prescribed educational establishment. The legislation required the establishment to be situated in a relevant territory, which meant England, Wales, Scotland, Northern Ireland or a member State of the European Union. The respondent had provided no evidence to substantiate its claim that the establishment was located in Switzerland. The appellant supplied evidence that the establishment was located in Austria, providing its address, its location on a map and confirmation that telephony contact was made between her and her Professor using an Austrian number. I deemed that evidence satisfactorily demonstrated that the educational establishment was located in Austria, which met the criteria of a member State.
27. Accordingly, I determined that the appellant met the criteria of a student, and a Class N exemption was applicable at the subject dwelling with effect from 1 December 2020.

### **Order**

28. 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 1 December 2020 as the criteria for Class N was satisfied; and



(2) the respondent shall comply with this order within two weeks.

**Date:** 18 March 2024

**Appeal number:** VT00017280

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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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