



## VALUATION TRIBUNAL FOR ENGLAND

*Council Tax Liability appeal: Local Government Finance Act 1992; premium for long-term empty properties under section 11B; discounts under section 11A; local determination; appeal allowed in part.*

APPEAL NUMBER: VT00025947

RE: 24 Police Station Road, West Malling, Kent ME19 6LL  
(the "subject property")

BETWEEN: S H Appellant  
and  
Tonbridge and Malling Borough Council Respondent  
(Billing Authority)

SITTING: *remotely using Microsoft Teams*

ON: 6 March 2025

BEFORE: Ms C Edwards, Presiding Senior Member  
Mrs X Holt, Senior Member

CLERK: Mrs A Sloan

APPEARANCES: S H (Appellant)

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### DECISION AND STATEMENT OF REASONS

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#### Decision

1. The appeal is allowed-in-part.
2. The panel found that the discount for a property undergoing major works should apply for the full twelve months but the premium was correctly charged from 25 July 2024.

#### Introduction

3. On 23 September 2024, 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 for a person aggrieved with any calculation

made by a Billing Authority (BA) of an amount which they are liable to pay to the authority in respect of council tax. The appeal was against the BA's decision letter of 20 September 2024, in response to her grievance lodged on 5 August 2024. The appellant had set out in her grievance that she disputed the application of the premium and felt her circumstances should be taken into account as to why the planned works at the property had taken longer than expected. The BA's response on 20 September stated the subject property is not occupied and the discounts and premium applied are correct. Appeal rights to this Tribunal were provided.

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

### **Preliminary issue**

5. On the morning of the hearing, the BA's representative contacted the Tribunal to advise she was unwell and would be unable to attend. She confirmed that there was nobody else from the BA that could attend in her place. The clerk asked for clarification of whether the officer was seeking an adjournment or asking the Tribunal to proceed in her absence. The reply confirmed she was content for the appeal to be heard in the absence of a representative from the BA but had no objection to an adjournment if the Tribunal saw fit.
6. The panel had regard to Regulation 32 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations"). This provides –

*“32 Hearing in a party's absence.*

*If a party fails to attend a hearing the VTE panel may proceed with the hearing if–*

- (a) it is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and*
- (b) it considers it is in the interests of justice to proceed with the hearing.”*

7. Regulation 3 of the Tribunal Procedure Regulations also provides –

*“3 Discharge of VTE's functions: general.*

*In giving effect to these Regulations and in exercising any of its functions under these Regulations, the VTE must have regard to–*

- (a) dealing with appeals in ways which are proportionate to the importance of the appeal, the complexity of the issues, the anticipated costs and the resources of the parties;*
- ...*
- (e) avoiding delay, so far as compatible with proper consideration of the issues.”*

8. The panel was satisfied that the BA was aware of the hearing and had served the evidence on which it planned to rely. The issue was not complex, and the appellant was present and

ready to proceed. It therefore decided it was in the interests of justice to hear the appeal in the absence of a representative from the BA.

## Issue and Relevant Law

9. The appellant raised two issues in her documentation. Firstly, that the BA had granted a 100% discount from 24 July 2023, the date she purchased the subject property, and she was told this would apply for twelve months. However, the BA ceased the discount from 1 April 2024 with no warning. The second issue was the application of a premium from 25 July 2024. The period in dispute in this appeal was 1 April 2024 until 31 December 2024 inclusive, as the appellant confirmed she has a tenant living at the property from 1 January 2025.
10. Part I of the Act makes provision for BAs in England and Wales to levy a tax, known as council tax, in respect of domestic hereditaments (“dwellings”) within their area.
11. Section 11A of the Act provides that BAs may by determination in any financial year alter the level of discount for dwellings falling within defined conditions set out in varying classes:

*“(1) The Secretary of State may for any financial year by regulations prescribe one of more classes of dwelling in England for the purposes of subsection ... (4A) below.*

*(2) A class of dwellings may be prescribed under subsection (1) above by reference to such factors as the Secretary of State sees fit and may, in particular, be prescribed by reference to –*

*(a) the physical characteristics of dwellings, or*

*(b) the fact that dwellings are unoccupied*

...

*(4A) For any financial year for which a class of dwellings is prescribed for the purposes of this subsection, a billing authority in England may by determination provide –*

*(a) in relation to all dwellings of that class in its area, or*

*(b) in relation to such description for dwellings of that class as it may specify in the determination that the discount under section 11(2)(1) shall not apply or shall be such percentage (which may be 100) as it may so specify.”*

12. The classes referred to above are prescribed in the Council Tax (Prescribed Class of Dwellings) (England) (Amendment) Regulations 2012, where Class D is relevant to this appeal:

*“Class D*

*The class of dwellings described in this regulation (“Class D”) comprises every chargeable dwelling in England—*

*(a) which satisfies the requirement set out in paragraph (b) unless it has been such a dwelling for a continuous period of twelve months or more ending immediately before the day in question*

*(b) the requirement referred to in paragraph (a) is that the dwelling is vacant and—*

*(i) requires or is undergoing major repair work to render it habitable, or*

*(ii) is undergoing structural alteration; or*

*(iii) has undergone major repair work to render it habitable, if less than six months have elapsed since the date on which the alteration was substantially completed and the dwelling has continuously remained vacant since that date;*

*(c) for the purposes of paragraph (b) above “major repair work” includes structural repair work.”*

13. Section 11B of the Act permits BAs to charge a premium on long-term empty dwellings as follows:

*“11B. Higher amount for long-term empty dwellings: England*

*(1) For any financial year, a billing authority in England may by determination provide in relation to its area, or such part of its area as it may specify in the determination, that if on any day a dwelling is a long-term empty dwelling—*

*(a) the discount under section 11(2)(a) shall not apply, and*

*(b) the amount of council tax payable in respect of that dwelling and that day (“the relevant day”) shall be increased by such percentage of not more than [the relevant maximum] as it may so specify.*

*.....*

*(1C) For financial years beginning on or after 1 April 2021 the “relevant maximum” is—*

*(a) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is less than 5 years, 100;*

*(b) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is at least 5 years but less than 10 years, 200;*

*(c) in respect of any dwelling where the period mentioned in subsection (8) ending on the relevant day is at least 10 years, 300.*

*(1D) In exercising its functions under this section a billing authority must have regard to any guidance issued by the Secretary of State.*

*(2) The Secretary of State may by regulations prescribe one or more classes of dwelling in relation to which a billing authority may not make a determination under this section.*

*(3) A class of dwellings may be prescribed under subsection (2) by reference to such factors as the Secretary of State thinks fit and may, in particular, be prescribed by reference to—*

*(a) the physical characteristics of, or other matters relating to, dwellings;*

*(b) the circumstances of, or other matters relating to, any person who is liable to the amount of council tax concerned.*

*(4) Where a determination under this section has effect in relation to a class of dwellings—*

*(a) the billing authority may not make a determination under section 11A(3), (4) or (4A) in relation to that class, and*

*(b) any determination that has been made under section 11A(3), (4) or (4A) ceases to have effect in relation to that class.*

*(5) A billing authority may make a determination varying or revoking a determination under this section for a financial year, but only before the beginning of the year.*

*(6) A billing authority which makes a determination under this section must publish a notice of it in at least one newspaper circulating in its area and do so before the end of the period of 21 days beginning with the date of the determination.*

*(7) Failure to comply with subsection (6) does not affect the validity of a determination.*

*(8) For the purposes of this section, a dwelling is a “long-term empty dwelling” on any day if for a continuous period of at least 1 year ending with that day—*

*(a) it has been unoccupied, and*

*(b) it has been substantially unfurnished.*

*(9) In determining whether a dwelling is a long-term empty dwelling, no account is to be taken of any one or more periods of not more than 6 weeks during which either of the conditions in subsection (8)(a) and (b) is not met (or neither of them is met).*

*(10) The Secretary of State may by regulations substitute a different period, of not less than 6 weeks, for the period which is for the time being specified in subsection (9).”*

14. The Tribunal’s jurisdiction is limited in appeals of this nature to deciding whether the criteria for the discount or premium is met. It cannot interfere with a local determination of the BA’s elected members to apply such discounts or premiums to qualifying properties. This is confirmed by section 66 of the Act as follows (emphasis added):

*“66. Judicial review*

*(1) The matters mentioned in subsection (2) below shall not be questioned except by an application for judicial review.*

*(2) The matters are—*

*.....*

*(b) a determination made under section 8(2), **11A, 11B**, 11C or 12, 12 11F, 12A or 12B above;”*

## **Discussion**

15. The panel was aware from the appellant’s submissions that she had purchased the subject property in July 2023 with the intention of renovating it and then letting it out to provide an income. However, her father was taken seriously ill shortly after her purchase, and this affected her ability to work on the property and impacted the duration of the renovation. She

had applied for the 100% discount to reflect that the property was undergoing major works to make it habitable, and this was granted by the BA from 25 July 2023. However, she was aggrieved that the BA then ceased the discount with no warning from 1 April 2024.

16. It was clear from the appellant's submissions that she was frustrated with the BA's handling of her council tax account, and she felt she had been misadvised on multiple occasions. However, the Tribunal has no jurisdiction to deal with complaints about the conduct of the BA's staff, advice given, or the administration of the account. Such matters must be addressed through the BA's complaints procedure and cannot have a bearing on a council tax liability appeal, which must be decided on the relevant legislation.
17. The panel was aware that a discount under Class D of the Council Tax (Prescribed Class of Dwellings) (England) (Amendment) Regulations 2012 may be awarded for up to twelve months. In this appeal, the BA had not addressed the issue of the discount at all in its submissions, which were brief and entirely focused on the dispute over the premium. No copy of the local determination had been provided regarding the Class D discount, but the panel was satisfied that such a determination had been made, as the appellant provided a copy of her council tax demand dated 7 March 2024 detailing 100% 'uninhabitable discount' from 25 July 2023 to 31 March 2024.
18. Although the panel could not address the appellant's concerns about the advice given by the BA in respect of the discount, it found that she had a reasonable expectation that the discount would continue for the maximum twelve months. The BA may revoke a determination on discounts under Class D, but it had provided no proof of such a local determination in its evidence for this appeal. The appellant submitted that the property remained uninhabitable beyond 1 April 2024, and the panel found that the BA had not provided evidence to support its calculation from 1 April 2024 to award no discount from that date until 25 July 2024. It therefore found that the appeal should be allowed in respect of the Class D discount, and the 100% reduction should be applied from 1 April 2024 to 24 July 2024 inclusive.
19. The second, and primary, issue in this appeal concerned the application of a premium that classed the subject property as a long-term empty dwelling. The only submission from the BA in respect of this issue was to supply a copy of its 'Empty Homes and Second Homes Premium Policy 2024-25'. The accompanying email stated, "*you are not able to appeal against a premium charge.*" The panel found this statement to be inaccurate. The local determination to charge a premium may not be challenged other than by judicial review at the High Court, as confirmed by section 66 of the Act. However, a taxpayer may dispute the application of a premium if they consider their property does not meet the criteria.
20. The definition of a long-term empty property is provided at section 11B (8):
 

*"(8) For the purposes of this section, a dwelling is a "long-term empty dwelling" on any day if for a continuous period of at least 1 year ending with that day—*

  - (a) it has been unoccupied, and*
  - (b) it has been substantially unfurnished."*
21. The appellant submitted in her appeal form that she had been sleeping at the subject property most nights from 1 September 2024 as one bedroom was habitable, and the kitchen and bathroom were useable. Her email to the BA on 5 August 2024, setting out her

grievance, stated she stays at the subject property some nights, but her main residence continued to be 190a Butchers Lane, where she cares for her elderly father.

22. While the panel noted the appellant's submissions regarding the financial pressure and stress the situation has caused her, these were not factors it could consider in an appeal of this nature. It must examine the facts at the subject property on the evidence presented, to decide whether the test in section 11B (8) is met.
23. For the premium to apply, the criteria at both (a) and (b) of section 11B (8) must be met. Section 11B (9) prescribes that "*no account is to be taken of any one or more periods of not more than 6 weeks during which either of the conditions in subsection (8)(a) and (b) is not met (or neither of them is met)*". The panel concluded that any occupation or period when the property was furnished must exceed a continuous period of six weeks to be ineligible for the premium.
24. Although the appellant submitted that she had provided evidence to the BA as requested of her stays at the subject property, no such evidence was provided to the Tribunal for consideration. The panel noted that the appellant had confirmed her main residence had not changed and her stays at the property were to facilitate progression of the works. In the absence of any photographs or other supporting documents from during the disputed period, the panel had no evidence that the subject property was furnished or that it was occupied. It therefore had to conclude that the criteria for the premium was met.
25. With reference to the BA policy document submitted as evidence, the appellant contended that the premium was meant to encourage taxpayers to bring empty properties back into use and that she was attempting to do exactly that. She submitted that the delays in completing the works were due to extenuating circumstances and these should be taken into account. She referred to section 4 of the policy document titled 'Exceptions from the premiums (empty homes premiums and second homes premiums)' and highlighted the section relating to 'empty properties undergoing major repairs' being exempt from the premium for up to six months.
26. After examining the BA's policy document, the panel found that the sections referred to by the appellant related to changes to the legislation from 1 April 2025 and exceptions prescribed in the amended legislation. As that legislation comes into effect from 1 April 2025, it cannot apply retrospectively, and the panel therefore could have no regard to those sections of the policy. As the appellant had confirmed the subject property is occupied by a tenant from 1 January 2025, the new legislation for empty properties would not apply from 1 April 2025 in any case.
27. While the panel could appreciate the appellant's submissions about the circumstances that delayed the completion of the renovation works, and therefore the letting of the subject property, it had no discretion to interfere with the local determination to apply a premium to qualifying empty properties. The appellant had not satisfied the panel that the subject property was either furnished or occupied for a period in excess of six weeks after 25 July 2024 and it appeared that it had met the criteria for the premium to apply for more than twelve months by that date.
28. The BA's email of 7 November 2024, enclosing the policy document, invited the appellant to apply for discretionary relief under section 13A(1)(c) of the Act. She submitted at the hearing that she had not done so as, having read the BA's policy, she did not believe she would be eligible as the subject property is not her main residence. While the panel could not comment

on the likelihood of success, it was aware that appeals against an unfavourable decision on an application for discretionary relief would be within jurisdiction of this Tribunal. Therefore, it is open to the appellant to apply for such relief and the BA must consider each case on its merits.

29. In appeals of this nature, there is a factual burden of proof on both parties. If a party asserts something, they must prove it. The BA had not discharged the factual burden of proof by providing the documents or recorded minutes of the meeting to demonstrate that its elected members had made a local determination to revoke the 100% discount for Class D dwellings with effect from 1 April 2024. The appellant had provided no evidence to show that the subject property was occupied or furnished from 25 July 2024 for the premium to not apply and therefore had not discharged her burden of proof. On this basis, the panel was satisfied that the premium should apply from 25 July 2024, but the 100% discount should continue from 1 April 2024 to 24 July 2024 inclusive.

### **Disposal**

30. In view of the above findings and conclusions, the panel allowed the appeal in part.
31. Under the provisions of Regulation 38(1) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the BA to award 100% discount to the subject property from 1 April 2024 to 24 July 2024 inclusive. The BA must comply with this order within two weeks of the date of its making.

**Date issued to parties:** 25 March 2025

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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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