

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 6 November 2013

Subjects

Reference Number

Tigh Lar, 110 Drumbuie,
Kyle of Lochalsh, Ross-shire, IV40 8BD

The Appellant

For the Respondent

**Miss Fiona Malcolm, Solicitor,
The Highland Council**

This was an Appeal under the Local Government (Scotland) Act 1992 and Regulations made thereunder against a decision of the Respondents to refuse the Appellant's application for 25% single occupancy discount in his liability for Council Tax. The Appeal related to his occupancy of two properties – Tigh Ard, 110 Drumbuie, Kyle of Lochalsh (Tigh Ard) for the period 19 February 2012 to 31 July 2012; and Tigh Lar, 110 Drumbuie, Kyle of Lochalsh (Tigh Lar) for the period 1 August 2012 to 1 February 2013.

The facts of the case were essentially agreed.

Prior to 19 February 2012 the Appellant lived with his wife in what was then the family home at 35 Aveling Drive, Banks, Southport, West Lancashire (35 Aveling Drive). They had lived there since 1991.

On 19 February 2012 the Appellant took entry to the flat known as Tigh Ard. He moved there in connection with his employment with SERCO at Kyle of Lochalsh. The Appellant's wife remained resident at 35 Aveling Drive. That property was put up for sale. From time to time the Appellant visited his wife at 35 Aveling Drive and she visited him from time to time at Tigh Ard.

The Appellant's mail was delivered to him at Tigh Ard. His pay slips were addressed to him there. He registered to vote based on his residence there and he changed the address on his driving licence and vehicle registration documents accordingly.

On 1 August 2012 he moved from Tigh Ard to a lower flat in the same building, Tigh Lar. At that time his wife continued to be resident at 35 Aveling Drive.

On 1 February 2013 the Appellant's wife moved to Tigh Lar and began living with him there.

At an unspecified date, which the Committee presumed was between 19 February 2012 and 1 February 2013, and in response to an application by the Appellant's wife for single occupancy discount in respect of her residence at 35 Aveling Drive, the relevant local authority, West Lancashire Borough Council, determined that the property was the sole or main residence of the Appellant. That decision has, so far, not been appealed.

The Respondents have previously offered the Appellant a 10% second home discount on his Council Tax liability.

The submission for the Appellant was that the facts of the case pointed to, firstly, Tigh Ard, and then, Tigh Lar, being his sole or main residence. Since he lived there essentially alone from 19 February 2012 to 1 February 2013 he was entitled to a single occupancy discount of 25% for that period.

In her submission for the Respondents, Miss Malcolm conceded that on the merits of his application the Appellant would have qualified for single occupancy discount on the two properties for the whole of the period covered by the application. Her position, however, was that standing the previous decision of West Lancashire Borough Council, the Respondents could not grant the application for single occupancy discount since to do so would be to recognise the Appellant as having his sole or main residence in, firstly, Tigh Ard and, then, Tigh Lar. Such a decision would be contradictory to the determination of West Lancashire Borough Council and would have the illogical result of conferring upon the Appellant two different sole or main residences concurrently, one in West Lancashire and one in the Highland Council area. She submitted the Respondents were effectively bound by the earlier decision of West Lancashire Borough Council and had no option but to refuse his application.

Miss Malcolm could not cite authority in statute or in case law for her proposition. Instead she referred the Committee to a “protocol” under which such matters were considered by the Respondents.

The Committee took the view that the relevant legislation obliged the Respondents to consider applications for single occupancy discount on their own merits, according to the statutory criteria. The Committee could find no reference there to the need for account to be taken of what might be considered relevant decisions of other local authorities regarding the same applicant. Therefore, the Committee determined that the Respondents had misdirected themselves in regarding the decision of West Lancashire Borough Council as a precedent they were bound to follow. Instead, they ought to have determined the Appellant's application according to the statutory criteria.

Consequently, since the Respondents conceded the Appellant would qualify for single occupancy discount on the merits of his application, the decision to refuse his application was wrong. Therefore, the Committee decided unanimously to grant the Appeal and ordered that the Appellant's application for single occupancy discount of 25% be granted with the following effect:-

- (a) In respect of his occupation of Tigh Ard, for the period 19 February 2012 to 31 July 2012;
- (b) In respect of his occupation of Tigh Lar, for the period 1 August 2012 to 1 February 2013.

In his submission, the Appellant made passing reference to the possibility of entitlement to a 50% Work Related Discount in his Council Tax liability. He conceded, in cross-examination, that he had not applied to the Respondents for such a discount. This Committee's function in these matters is to consider Appeals against decisions of the local authority for Council Tax discounts. Since the Appellant had

not applied to the Respondents for work Related Discount, the Committee determined it was not open to it to consider the matter of the Appellant's eligibility for such since there was no relevant decision of the Respondents against which the Appellant could have appealed.