

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Subjects

Reference Number

82 Church Street, Inverness

This is an Appeal over liability for Council Tax in respect of a property at 82 Bow Court, Inverness. The Appellants and a co-owner each own a one-half *pro indiviso* share of the property. The relationship of the Appellants and the co-owner, insofar as concerns the property, is regulated by an Agreement between them registered in the Books of Council & Session in 2009. That Agreement is referred to as an “Exclusive Occupancy Agreement”. Included in the Exclusive Occupancy Agreement were terms providing the co-owner with the exclusive right to occupy the property in return for the payment of an occupancy payment. Occupancy payment is defined in the Agreement as “the payment made by the sharing owner to the Company in compensation for the loss of occupancy rights by the Company and is calculated as specified in Part 2 of the Schedule”.

The Exclusive Occupancy Agreement subsists. However, since in or around 2014 the co-owner has not been living at the property. Since at least that time he has not been paying the Occupancy Payment. Barclays Bank, holders of a Standard Security over the co-owner’s one-half *pro-indiviso* share have called up their security. A decree for

recovery of possession was granted to Barclays Bank by the Sheriff in Inverness in 2018.

Until on or around 25 April 2018 the revenue department of Highland Council had been issuing Council Tax bills for the property to the co-owner. At that time they became aware the co-owner had “abandoned” the property. On 29 May 2018 the Finance Department issued a Council Tax bill to the Appellants on the basis they were jointly and severally liable, with the co-owner for Council Tax from 1 April 2018. It is against that decision of the Finance Department this Appeal was taken.

The Local Government Finance Act 1992 makes provision as to Local Government Finance across the UK. Section 75 is the first section in Part II of the Act. Part II is entitled “Council Tax: Scotland”.

The relevant parts of Section 75 are:-

“75. Persons Liable to Pay Council Tax.

- (1) The person who is liable to pay Council Tax in respect of any chargeable dwelling and any day is the person who falls within the first paragraph of Section (2) below to apply, taking paragraph (a) of that sub-section first, paragraph (b) next, and so on.
- (2) A person falls within this sub-section in relation to any chargeable dwelling and any day if, on that day -
 - (a) He is the resident owner of the whole or any part of the dwelling;
 - (b) He is a resident tenant of the whole or any part of the dwelling;

- (c) He is a resident Statutory Tenant, resident Statutory Assured Tenant or resident Scottish Secure Tenant of the whole or any part of the dwelling;
- (d) He is a resident sub-tenant of the whole or any part of the dwelling;
- (e) He is a resident of the dwelling; or
- (f) He is any of the following -
 - (i) The sub-tenant of the whole or any part of the dwelling under a sub-lease granted for a term of 6 months or more;
 - (ii) The tenant, under a lease granted for a term of 6 months or more, of any part of the dwelling which is not subject to a sub-lease granted for a term of 6 months or more;
 - (iii) The owner of any part of the dwelling which is not subject to a lease granted for a term of 6 months or more.”

The parties were agreed that the only part of Section 75 which might cause the Appellants to attract liability for the payment of Council Tax in relation to this property was (2)(f)(iii). They were further agreed that the property or any part of it was not subject to a lease for a term of 6 months or more. The issue, therefore, was whether the Appellants fell to be regarded as an “owner” for the purposes of Section 75.

On behalf of the Appellants, their agent submitted that to determine whether they fell to be regarded as “owners” it was necessary to refer to Section 6 of the Local Government Finance Act 1992. Section 6 is within Part I of the Act. That part of the Act is entitled “Council Tax: England and Wales”. Section 6 defines those persons liable to pay Council Tax (i.e. in England and Wales).

Having regard to the 1992 Act as a whole it is plain that certain sections and schedules apply throughout England, Wales and Scotland. Other sections and schedules apply exclusively to one or the other of those two jurisdictions. Section 6 sets out to define those liable to pay Council Tax in England and Wales. Section 75 does likewise in Scotland. Parliament could have legislated in the original Act or by subsequent amendment to provide the same definitions across the two jurisdictions. It chose not to do so. The Committee therefore considered itself bound by the Scottish definition and that it was not entitled to “read across” the England and Wales definition into the provisions for Scotland.

There is no definition in the Statute of “owner” in the Scottish context. Therefore, the Committee considered it appropriate to ascribe to that term its ordinary meaning.

It is acknowledged by the Appellants that they and the co-owner each own a one-half *pro-indiviso* share in this property. That being so, in the opinion of the Committee, the Appellants fall to be regarded as “owners” in terms of Section 75(2)(f)(iii) of the Local Government Finance Act 1992. The Appeal is therefore dismissed.