

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

28 April 2021

Subjects

ROSE COTTAGE, 39 HIGH STREET, CROMARTY, IV11 8YR

INTRODUCTION:-

This appeal turned on the correct application of the Council Tax (Exempt Dwellings) (Scotland) Order 1997 (hereinafter referred to as “the 1997 Order”) and associated legislative and regulatory provisions to the Council Tax liability attaching to a property in Cromarty (hereinafter referred to as “the Appeal Subjects”).

The Appellant is the executor of the Estate of her late mother. The Appellant’s mother, until her death on 29 September 2016, and then the deceased’s Estate, owned the Appeal Subjects.

In July 2017 the deceased’s son, the Appellant’s brother, moved into the Appeal Subjects. He lived there until 24 September 2019, the day before he passed away. The property then became empty, but remained furnished, until 14 December 2019. The Appeal Subjects were sold on 22 October 2020.

The Appellant sought to have the benefit of the 1997 Order applied to the Appeal Subjects for 6 months from 14 December 2019.

In response, the Finance Department of the Highland Council maintained that the 6 month period ran from 24 September 2019 and that the Appellant was eligible for the benefit of the Order from 14 December 2019 until 23 March 2020.

It had previously been agreed that this appeal could be dealt with by way of written representations by the parties. Both parties made initial submissions and, in due course, each responded to the submissions of the other. All of these submissions and the documentary productions referred to therein, were considered by the Committee.

APPELLANT’S CASE:-

The essence of the Appellant’s case is as set out above. It was that the Appeal Subjects were entitled to the benefit of the provisions in the 1997 Order for a full 6 month period and that that should be deemed to start on 14 December 2019. In support of her appeal she produced copies of her correspondence with the Finance Department. In her initial letter of appeal to the Finance Department she stated “I have studied your website and your guidelines relating to unoccupied and unfurnished exemption entitlement, and I cannot see why you are terminating the exemption after only 3 months and 10 days. I applied for the exemption, which you granted, from 14 December 2019. Your guidelines state “This exemption is based on the length of time the property has been empty. So if the property has been empty and unfurnished prior to your claim it may be we are unable to award you the full 6 months exemption”.

In response to that, an unnamed member of the Operations Team of the Finance Department wrote to the Appellant on 18 March 2020. In that letter it was stated “The 6 months exemption can only be awarded for up to 6 months from the date that

it became unoccupied and unfurnished (sic). The Council Tax exemption has been awarded from 14 December 2019 which is the date of your letter confirming the property was now unfurnished. The property was last occupied on 25 September 2019 therefore 6 months will end on 24 March 2020 but as the property became unfurnished on 14 December this is the date the exemption will start.”

The Appellant challenged that decision by email to the Operations Team of the Finance Department dated 27 March 2020. In response to that, by email of 19 May 2020, John Chesham, Senior Revenues Officer in the Operations Team, stated in an email “Schedule 1, Section 4 of the Council Tax (Exempt Dwellings) (Scotland) Order 1997 (As Amended by the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012) states that an unfurnished and unoccupied property can be awarded a Council Tax exemption for up to 6 months from the date it was last occupied.

As the property was last occupied on 24 September 2019 you have therefore been correctly informed that the exemption, though only awarded from 14 December 2019, has indeed ended on 24 March 2020.

Following the end of the Council Tax exemption as the property was still unoccupied from 25 March 2020 10% discount has been awarded. There are no additional discounts/exemptions that can be awarded due to the COVID19 crisis but the Council has currently suspended all action to recover the unpaid sums.”

The Appellant replied to Mr Chesham's email by email of 21 March 2020 thanking him for his reply and setting out his interpretation of the discount guidelines. However, she continued to challenge that interpretation on the basis that it was "neither fair nor just."

The Appellant then embarked on the next stage of the review/appeal process by appealing to Mrs Sheila McKandie, Acting Head of Revenues & Customer Services at the Respondents. She did so by letter of 16 June 2020. Mrs McKandie replied some 4 months later on 21 October 2020. Refusing the appeal Mrs McKandie stated "A maximum of 6 months exemption only can be applied from the point the property became unoccupied and unfurnished: in this case 14 December 2019. However, the exemption can only apply for up to 6 months from the date the property was last occupied. Once again this is noted as 24 September 2019, therefore the exemption must cease as at 23 March. I can confirm that the relative period per the legislation for this exemption to apply is 14 December 2019 to the 23rd March 2020."

Under current legislation this is the maximum exemption available and as such cannot be extended as pointed out by the Operations Team."

After further correspondence with Mrs McKandie, the Appellant intimated a wish to have her appeal considered by a Committee of this Panel.

RESPONDENTS' CASE:-

Ms Underdown, solicitor for the Respondents, rehearsed much of the same factual background as had been put before the Committee by the Appellant. She referred the

Committee also to the relevant statutory and regulatory provisions. She acknowledged that the Appellant was challenging the fairness of the Respondents' application of the guidelines and the statutory and regulatory provisions. It was only when the property became empty and unfurnished on 14 December 2019 that the "empty" exemption under the 1997 Order became applicable and it could only be applied from that date until 23 March 2020, the last date falling within 6 months after the property was last occupied.

DISCUSSION & DECISION:-

The relevant facts and chronology were essentially agreed by the parties. The issue was how the relevant statutory and regulatory provisions should be applied to those facts and chronology.

Council Tax is payable on any dwelling which is not exempt in terms of Sections 70 and 72 of the Local Government Finance Act 1992.

The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 1997, as Amended by the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012, sets out the various exempt classes of property.

Schedule 1 of the 1997 Order defines 24 types of exempt dwellings. One of those, and the one with which the Committee is concerned here, is paragraph 4 which states, in its amended form:-

"Empty Dwellings

4. A dwelling -

- (a) which is both unoccupied and unfurnished; and
- (b) in respect of which less than 6 months have elapsed since the end of the last period of 3 months or more throughout which it was continually occupied.”

Therefore, in order to be regarded as an empty dwelling, and so be entitled to certain exemptions, a property has to simultaneously satisfy criteria (a) **and** (b) of paragraph 4.

This means the property qualifies during any period where it is both unoccupied and unfurnished which falls within 6 months of it becoming unoccupied.

The Appeal Subjects were unoccupied from 25 September 2019 until 14 December 2019 but they were not unfurnished during that period. From 24 March 2020 they were both unoccupied and unfurnished but that period was more than 6 months after the property became unoccupied.

On the Committee’s interpretation of the statutory and regulatory provisions, the Finance Department came to the correct conclusion as to the outcome of the application of those provisions to the facts of this case. For that reason, the appeal requires to be refused.

In passing, the Committee noted that the fairness or otherwise of the decision of the Respondents, referred to by the Appellant, is not a matter which could weigh in the balance when the Committee is considering appeals such as this.

However, in reaching its decision, the Committee wishes to record its concern about the errors, lack of clarity and contradictions contained in the explanations tendered to the Appellant in the earlier stages of this review/appeal process.

An example of this is the different interpretation within the Finance Department of the date when the entitlement to exemption ended. The letters and email to the Appellant of, respectively, 18 March and 19 May 2020 had the entitlement ending on 24 March 2020. The author of the email, Mr Chesham, changed the end date to 23 March 2020 in his email to the Appellant of 10 June 2020. 23 March was the end date adopted subsequently by the Acting Head of Revenues and Business Support in her correspondence with the Appellant and then by Ms Underdown in her submissions to the Committee. In the view of the Committee, 23 March 2020 was the correct end date. However, the lack of clarity, precision and consistency, and absence of an acknowledgement, explanation and, perhaps, apology for the inconsistency, were matters of concern to the Committee.

Of greater moment, however, are the references by an unnamed member of the Respondents' Operations Team in the letter to the Appellant of 18 March 2020 that "The 6 months exemption can only be awarded for up to 6 months from the date that it became unoccupied and unfurnished." That is incorrect and misleading. The 6 month time limit runs from the date the property became unoccupied. This incorrect interpretation of the provisions clearly, from the correspondence, informed the line which the Appellant subsequently took in her correspondence with other members of the Finance Department.

Those terms referred to in the letter of 18 March 2020 were contradicted in the email sent to the Appellant on 19 May 2020 by Mr Chesham. However, there was no acknowledgement in that email, or in subsequent correspondence from the Respondents, that the letter of 18 March 2020 had contained an error. Had that error been acknowledged, and if the effect of the provisions had been explained more clearly, the Appellant may have better understood the reasons for the decision and so been spared the additional inconvenience in her role as executor of her late mother's estate, of bringing this appeal to a Committee.