

**COUNCIL TAX ON EMPTY PROPERTIES**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 On 27 June 2013 Council approved a policy for charging double Council Tax on long-term empty dwellings under regulation 4 The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013. This allows the Council to increase the council tax charge on unoccupied properties which are not being actively marketed for sale or for let under appropriate conditions and which have been unoccupied for over 12 months by 100% across the whole of the council area with effect from 1 April 2014, and to increase the council tax charge on unoccupied properties which are being actively marketed for sale or for let under appropriate conditions and which have been unoccupied for over 24 months by 100% across the whole of the council area with effect from 1 April 2014.
- 1.2 On 23 January 2014 the Council agreed not to increase the council tax charge on unoccupied properties in the following circumstances as a transitional measure:
- For a 6 month period from 1 April 2014 to 30 September 2014 where a council tax payer has an unoccupied property where a grant of confirmation has been obtained but the title has not yet passed to a named beneficiary and the property is being actively marketed for sale or let;
  - For a 6 month period from 1 April 2014 to 30 September 2014 where a disabled council tax payer has an unoccupied property which they have previously vacated in order to move to a more suitable property;
  - For a single 6 month period commencing on or after 1 April 2014 and finishing before 31 March 2016 whilst major repair works are under way to the property.

In these circumstances the property would benefit from a 10% long term empty discount for the relevant 6 month period.

- 1.3 An appeal was heard by the Argyll and Bute Valuation Appeal Committee (VAC) in December 2014. The appellant was aggrieved that the Council applied a double charge 18 months after they had purchased a property. This included both the minimum 12 months empty period plus the additional transitional 6 months period for buildings undergoing major repairs. They felt the policy was unfair as they intended to carry out major renovations and had to apply for planning permission which was at least in part dependent on the council's timescales. The VAC found in favour of the appellant and recommended that the council should provide exceptions to its policy to cover unoccupied properties which are in course of active renovation in terms of Planning Permission/Building Warrant.
- 1.4 The committee is asked to amend the existing policy in line with this decision.

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**2.0 INTRODUCTION**

- 2.1 On 27 June 2013 the Council approved a policy for charging double Council Tax on long-term empty dwellings under regulation 4 The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 which came into effect from 1 April 2014. On 23 January 2014 Council agreed not to increase the council tax charge on unoccupied properties in certain circumstances as a transitional measure which included postponing the double charge for a single 6 month period commencing on or after 1 April 2014 and finishing before 31 March 2016 whilst major repair works are under way to the property.
- 2.2 An appeal was heard by the Valuation Appeal Committee (VAC) in December 2014. The appellant was aggrieved that the Council applied a double charge 18 months after they had purchased a property. This included both the minimum 12 months empty period plus the additional transitional 6 months period for buildings undergoing major repairs. They felt the policy was unfair as they intended to carry out major renovations and had to apply for planning permission which was at least in part dependent on the council's timescales. The VAC found in favour of the appellant and recommended that the council should provide exceptions to its policy to cover unoccupied properties which are in course of active renovation in terms of Planning Permission/Building Warrant.
- 2.3 This paper asks the committee to consider an amendment to the policy on charging double council tax on long-term empty properties which would give effect to the VAC's recommendations and replace the 6 month transitional period approved in January 2014.

**3.0 RECOMMENDATIONS**

- 3.1 Policy & Resources Committee notes the decision by the VAC on 10 December 2014 attached at Appendix 1.
- 3.2 The committee approves an amendment to the policy for charging double council tax on long term empty properties so that where major repairs are underway which require planning permission and/or building warrant, the double charge is only applied after a property has been empty for 2 years. The revised policy which would give effect to this is attached at Appendix 2 for approval.

**4.0 DETAIL**

- 4.1 On 27 June 2013 Council approved a policy for charging double Council Tax on long-term empty dwellings under regulation 4 The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013. This allows the Council to increase the council tax charge on unoccupied properties which are not being actively marketed for sale or for let under appropriate conditions and which have been unoccupied for over 12 months by 100% across the whole of the council area

with effect from 1 April 2014, and to increase the council tax charge on unoccupied properties which are being actively marketed for sale or for let under appropriate conditions and which have been unoccupied for over 24 months by 100% across the whole of the council area with effect from 1 April 2014.

4.2 On 23 January 2014 Council agreed not to increase the council tax charge on unoccupied properties in the following circumstances as a transitional measure:

- For a 6 month period from 1 April 2014 to 30 September 2014 where a council tax payer has an unoccupied property where a grant of confirmation has been obtained but the title has not yet passed to a named beneficiary and the property is being actively marketed for sale or let;
- For a 6 month period from 1 April 2014 to 30 September 2014 where a disabled council tax payer has an unoccupied property which they have previously vacated in order to move to a more suitable property;
- For a single 6 month period commencing on or after 1 April 2014 and finishing before 31 March 2016 whilst major repair works are under way to the property.

In these circumstances the property would benefit from a 10% long term empty discount for the relevant 6 month period.

4.3 An appeal was heard by the Valuation Appeal Committee (VAC) on 10 December 2014. The appellant was aggrieved that the Council applied a double charge 18 months after they had purchased a property. This included both the minimum 12 months empty period plus the additional transitional 6 months period for buildings undergoing major repairs. They felt the policy was unfair as they intended to carry out major renovations and had to apply for planning permission which was at least in part dependent on the council's timescales. The VAC found in favour of the appellant and recommended that the council should provide exceptions to its policy to cover unoccupied properties which are in course of active renovation in terms of Planning Permission/Building Warrant.

4.4 The VAC is an independent panel made up of lay persons and supported by an assistant secretary who is a qualified solicitor. They provide a statutory appeal service to citizens who are aggrieved by decisions in relation to the Council Tax that they are charged.

4.5 The full VAC decision is attached at Appendix 1. The panel felt that the Council decision was intended to deal with the issue of long term empty/abandoned properties, but, in the particular circumstances applicable here, it was a blunt instrument with unintended consequences of a manifestly unjust nature. They concluded that it was perfectly within the ability and power of the Council to exclude from its decision of 27 June 2013 certain types of properties such as the Appeal Property which, in its view, fell within the definition of "unoccupied" but were not properties such as had been abandoned and had fallen into disrepair. Its failure to do so rendered its decision as partially flawed.

4.6 It appeared to the Panel to be wholly inappropriate, and indeed contrary to natural justice, for arbitrary time-limits to be imposed by a Council which, by itself, has direct control over the Appellants' ability to meet same. To complete this redevelopment, the Appellants required to (a) obtain Planning Permission from Argyll & Bute Council, the timing for which was wholly or at least partially within the Council's control; (b) Building Warrant from Argyll & Bute Council, the timing for which was wholly or at least partially within the Council's control; (c) a Bill of

Quantities and Tender, all of which were within the Appellants' control; and (d) a Completion Certificate (granted when the whole project was completed) or at least a Certificate of Occupancy (granted when the project is sufficiently completed to allow safe occupation of the majority of the building), both of which are issued by Argyll & Bute Council, the timing for which was wholly or at least partially within the Council's control. In short, to the extent that the Appeal Property is not being lived in or occupied by the Appellants, this is a direct result of the redevelopment project being incomplete and the Council prohibiting its occupation until a certain stage of the redevelopment has been completed. The Panel was clearly of the view that a period of 12 months from purchase to obtain both the above permissions, proceed to Bill of Quantities/Tender and complete the works themselves was quite unrealistic and simply unachievable. In the Panel's view however, a period of 24 months has merit and is achievable.

- 4.7 The Panel has accordingly ruled (a) that in general, Argyll & Bute Council should revisit its decision of 27th June 2013 and provide exceptions to its blanket policy to cover unoccupied properties which are in course of active renovation in terms of Planning Permission/Building Warrant; and (b) that in respect of this particular case, the extra 100% Council Tax Charge applied from 28th October, 2014 for the Studio Cottage and intended to be applied from 28th April, 2015 for the School House (as explained above) should be and is hereby revoked to be reapplied to both parts of the Appeal Property should the whole property continue not to be lived in as a main family home (or at least a second home as defined in and dealt with by separate legislation) by 28th October, 2015.
- 4.8 Council officers do not consider that the decision letter fully reflects the contentions made by the Council's representative at the hearing. It is noted that the VAC failed to take due account of the 6 months transitional relief agreed on 23 January 2014 despite this being pointed out to them. They also believe that the VAC has gone beyond its powers to determine whether council tax is correctly charged in terms of the legislation and made a finding which overturns agreed Council policy. However, no appeal has been lodged with the Court of Session within the 42 day time limit as it is not deemed to be economic to raise a challenge which affects a limited 6 month period for a single council taxpayer.
- 4.9 The more general finding is that the council should revisit its decision of 27 June 2013 to provide exceptions to its policy to cover unoccupied properties which are in course of active renovation in terms of Planning Permission/Building Warrant. This would be an alteration of the existing 6 month transitional exemption from the double charge for buildings under repair. Such a change would provide a 24 month period before the double charge would be applied.
- 4.10 The Committee is reminded that if a long term empty property is purchased by a new owner, they would be eligible for a 50% council tax discount for 6 months if the property is undergoing or requires major repair work to render it habitable beginning with the day on which it was purchased. Thereafter it would be immediately be subject to the double charge if the property had been empty at that point for 24 months or more. The change proposed by the VAC would therefore only benefit new owners who buy a property which has been in use within the last 18 months prior to the purchase. The property which was the subject of appeal had been occupied immediately prior to the appellant purchasing it. The appellant could easily have decided to occupy it immediately, or to rent it out whilst they applied for planning permission for a major renovation. In most cases, dwellings

continue to be used whilst planning permission is applied for, and whilst works are underway.

- 4.11 The change in the policy recommended by the VAC would therefore only benefit owners of empty properties which have been occupied relatively recently, and where they decide that major renovation is required which requires planning permission and/or building warrant, and such renovation commences. A revised policy to give effect to the VAC's recommendation is attached at Appendix 2. It is not proposed to backdate this change. This would also remove the transitional exemption not to charge double council tax for a single 6 month period commencing on or after 1 April 2014 and finishing before 31 March 2016 whilst major repair works are under way to the property. Most properties eligible for this transitional exemption will have already received it by 31 March 2015. It is expected that most others would benefit equally from this new provision.
- 4.12 It is not possible to accurately estimate the number of council tax payers who would be affected by this change in policy as the council tax system does not have any indicator as to whether planning permission has been applied for. In July 2014 we had awarded the 6 months transitional buildings under repair exemption to 47 properties. The number of properties affected is unlikely to be greater than this, which would therefore mean that the potential loss of income is unlikely to exceed £30,000 p.a..

## **5.0 CONCLUSIONS**

- 5.1 This paper asks the committee to note the VAC decision on 10 December 2014 about the imposition of a double council tax charge on a long term empty property, and to amend the current policy on charging double council tax on long-term empty properties to give effect to the VAC's recommendations and replace the 6 month transitional period for buildings under repair approved in January 2014. This is likely to reduce the income from the double charge by up to £30,000 p.a..

## **6.0 IMPLICATIONS**

- 6.1 Policy: This proposes a change to the policy for charging double council tax on long term empty properties so that where major repairs are underway which require planning permission and/or building warrant, the double charge is only applied after a property has been empty for 2 years.
- 6.2 Financial: A small loss of council tax income which is unlikely to exceed £30k p.a..
- 6.3 Legal: Proposals are in accordance with legislation for council tax which came into effect from 1 April 2013.
- 6.4 HR: None
- 6.5 Equalities: Owners of these unoccupied properties are not expected to fall disproportionately into any particular equalities group.

6.6 Risk: Reduces risk of further similar appeals being lost at VAC hearings.

6.7 Customer Service: None.

**Appendices:**

- 1 VAC decision of 10 December 2014
- 2 Draft revised policy for council tax on long term empty properties

**Douglas Hendry**  
**Executive Director Customer Services**  
**11 February 2015**

**Policy Lead: Councillor Dick Walsh**

For further information please contact Judy Orr, Head of Customer and Support Services Tel 01586-555280 or Fergus Walker, Revenues and Benefits Manager Tel 01586-555237

Background papers

Council tax on empty properties: Council 27 June 2013, reconvened on 8 August 2013  
Council tax on empty properties: Council 23 January 2014

VAC decision of 10 December 2014

## The Local Valuation Panel for Argyll & Bute, Dunbartonshire and Glasgow

**Secretary responsible for Argyll & Bute:**

**Alan M. Urquhart LL.B**

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Our Ref:

Your Ref:

18<sup>th</sup> December, 2014

[REDACTED]

Dear [REDACTED],

**Subjects:** [REDACTED] (“the Appeal Property”)

**Finance Department Council Tax Reference** [REDACTED] (respectively)

**Valuation Appeal Panel Meeting 10<sup>th</sup> December, 2014 at Inverary**

I refer to your appeal in respect of the above property which you both presented at the above Meeting on your own behalves. The Council Finance Department was represented by [REDACTED]. The Panel has ruled as follows:

### A THE FACTS

1. The Appeal Property comprises the former [REDACTED] house at [REDACTED], which were purchased by the Appellants from the [REDACTED] on 28<sup>th</sup> October, 2013.
2. This was not an appeal against the property banding. It was an appeal against the imposition of double Council Tax for the [REDACTED] with effect from 28<sup>th</sup> October, 2014 and [REDACTED] with effect from 28<sup>th</sup> April, 2015. The first of these properties will have been empty and unoccupied for a period of 1 year on 28<sup>th</sup> October, 2014, while the second property, its history of occupation being different from the [REDACTED], will become subject to the double Council Tax charge on 28<sup>th</sup> April, 2015.
3. The Scottish Parliament granted powers to all local authorities to vary the amount of Council Tax payable for properties remaining unoccupied for more than 1 year (“unoccupied” being defined as being not occupied at all or, whether furnished or not, not being lived in for at least 25 days in a calendar year). These powers, contained within the Council Tax (Variation for Unoccupied Dwellings)(Scotland) Regulations 2013 permitted a Council to impose up to double the payable Council Tax on an unoccupied dwelling. Argyll & Bute Council determined to impose such a double charge on 27<sup>th</sup> June, 2013, with effect from 1<sup>st</sup> April, 2014.

### B. CONTENTIONS(for the Appellants)

1. The Appeal property is not empty and unoccupied, it is undergoing extensive restoration. Since the purchase date, and with the assistance of architects and other professional advisors, you have sought and obtained from Argyll & Bute Council Planning Permission for a major reconstruction of the Appeal Property which involves conjoining both parts of the Appeal Property and constructing major extensions. You have also obtained the required Building Warrant from the same Council. Thereafter you have, through your Architects or Surveyors, produced a Bill of Quantities and obtained a successful tender, resulting in work now being commenced with an expected completion date of May 2015. The Council's policy which is intended to prevent properties being wholly or substantially abandoned and unused, is not one which should properly apply here.
2. You stated that *it is your intention to reside in the Appeal Property as your main family home and place of permanent residence from whenever the works described above are completed. It was anticipated that the redevelopment project would be completed by May 2015 when you would commence living in the Appeal Property.*
3. You contended that *the Council's policy is designed to prevent a large number of properties being left unoccupied for long periods of time and to encourage the preservation of the many traditional houses throughout Argyll & Bute. However,*

*the Council's policy, to the contrary, will encourage certain purchasers of properties such as the Appeal Property to demolish and rebuild from new, to the detriment of the architectural mix in Argyll & Bute. Such a property, under total reconstruction from new, would be exempt from Council Tax. This compares markedly with the double imposition and is no "reward" for bringing 2 important and treasured buildings back into use. The policy could also serve as an effective disincentive to others who might wish to purchase and renovate/restore but know they cannot achieve this within a 12 month period.*

4. You had marketed the appeal property for sale or let by advertising within a window of the local shop in [REDACTED], in light of the Council's policy which exempted from the double charge properties being advertised for sale or let.

#### C. CONTENTIONS (for the Director of Finance)

1. [REDACTED] for the Council contended that the Council has acted correctly in accordance with the legislation and the powers available to it thereunder. The primary legislation in this case is the Local Government Finance (Unoccupied Properties etc)(Scotland) Act 2012 where Section 2 thereof allows a Council to vary the payable Council Tax for unoccupied properties. Specific regulations under that legislation were passed being the Council Tax (Variation for Unoccupied Dwellings)(Scotland) Regulations 2013 where Section 4(1) states that, subject to certain restrictions, (which do not apply here), a local authority may modify the charge made (the Secretary's paraphrase) so that instead of a being subject to a discount, an increased amount of council tax is paid. The legislation caps the modification at 200% ie allows the imposition of a double council tax charge.

2. In Argyll & Bute local authority area, [REDACTED] stated that there are over 1,000 properties which have been effectively abandoned by their owners. These properties are not being lived in or occupied and are, in some cases, falling into disrepair. Of more importance to the Council, however are 2 factors in relation to such properties (a) that the owners of such properties do not contribute to the local economy; and (b) that the continued non-use and non-sale/let of such properties prevents the local population from accessing affordable housing in their locality.

3. Argyll & Bute Council, at its meeting on 27<sup>th</sup> June, 2013, decided to exercise its power under the above legislation and increased the charge on unoccupied properties which are not being marketed for sale or let under appropriate conditions and which have been unoccupied for over 12 months by 100% with effect from 1<sup>st</sup> April, 2014. The effect of this legislation and decision in regard to the [REDACTED] is to apply such an increase from 28<sup>th</sup> October, 2014 while the effective date for [REDACTED] itself is 28<sup>th</sup> April, 2015.

4. The Council contended that the appeal property was not being actively marketed for sale or rent as per the Scottish Government's Guidance as (a) it was only being marketed by a small advert in a local village shop; (b) no Home Report had been produced for the Appeal Property; (c) no Estate Agent had been instructed; and (d) no marketing via any one of the usual property websites was being undertaken.

#### D. THE LAW/PRACTICE

The principal legislation is as detailed above and does not require repeating.

#### E. THE PANEL DECISION

1. The Panel was concerned that it had not had made available to it the Report to the Council by its Officers or any note of the discussion both of which led to the Council's decision of 27<sup>th</sup> June, 2013. From the paperwork which was available, however, it appeared to the Panel that the Council decision was intended to deal with the issue of long term empty/abandoned properties, but, in the particular circumstances applicable here, was a blunt instrument with unintended consequences of a manifestly unjust nature. It was perfectly within the ability and power of the Council to exclude from its decision of 27<sup>th</sup> June, 2013 certain types of properties, such as the Appeal Property which, in its view, fell within the definition of "unoccupied" but were not properties such as are referred to in Section C2 above. Its failure to do so rendered its decision as partially flawed.

2. The Oxford English Dictionary defines "Unoccupied" as not being occupied or used. While the Panel readily agreed that the Appeal Property was not being physically lived in, it was being "used" in the sense that the Appellants were making "use" of the whole property by carrying out a detailed and costly renovation project as detailed above.

3. The Panel agreed that the Appeal Property was not being marketed for sale or let.

4. It appeared to the Panel to be wholly inappropriate, and indeed contrary to natural justice, for arbitrary time-limits to be imposed by a Council which, by itself, has direct control over the Appellants' ability to meet same. To complete this redevelopment, the Appellants required to (a) obtain Planning Permission from Argyll & Bute Council, the timing for which was wholly or at least partially within the Council's control; (b) Building Warrant from Argyll & Bute Council, the timing for which was wholly or at least partially within the Council's control; (c) a Bill of Quantities and Tender, all of which were within the Appellants' control; and (d) a Completion Certificate (granted when the whole project was completed) or at least a Certificate of Occupancy (granted when the project is sufficiently completed to allow safe occupation of the majority of the building), both of which are issued by Argyll & Bute Council, the timing for which was wholly or at least partially within the Council's control. In short, to the extent that the Appeal Property is not being lived in or occupied by the Appellants, this is a direct result of the redevelopment project being incomplete and the Council prohibiting its occupation until a certain stage of the redevelopment has been completed. The Panel was clearly of the view that a period of 12 months from purchase to obtain both the above permissions, proceed to Bill of Quantities/Tender and



complete the works themselves was quite unrealistic and simply unachievable. In the Panel's view however, a period of 24 months has merit and is achievable.

5. The Panel has accordingly ruled (a) that in general, Argyll & Bute Council should revisit its decision of 27<sup>th</sup> June 2013 and provide exceptions to its blanket policy to cover unoccupied properties which are in course of active renovation in terms of Planning Permission/Building Warrant; and (b) that in respect of this particular case, the extra 100% Council Tax Charge applied from 28<sup>th</sup> October, 2014 for the [REDACTED] and intended to be applied from 28<sup>th</sup> April, 2015 for the [REDACTED] (as explained above) should be and is hereby revoked to be reapplied to both parts of the Appeal Property should the whole property continue not to be lived in as a main family home (or at least a second home as defined in and dealt with by separate legislation) by 28<sup>th</sup> October, 2015.

I have copied this letter to Argyll & Bute Council. To the extent that they are aggrieved by this decision, they may exercise their rights to lodge an appeal with the Court of Session with a time-limit of no more than 42 days from today's date.

Yours sincerely,

Alan M. Urquhart  
Secretary

**Draft revised policy for council tax on long term empty properties**

The council exercises its discretion under regulation 4 The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulation 2013 to increase the council tax charge on the following categories of unoccupied property by 100% across the whole of the council area with effect from 1 April 2015, as follows:

1. any property which has been unoccupied for over 24 months.
2. any property which has been unoccupied for over 12 months and:
  - (a) is not being actively marketed for sale or let under appropriate conditions and;
  - (b) is not the subject of major repair works or structural alteration which require planning permission and/or building warrant, and such works or structural alteration commence before the property has been unoccupied for 24 months.

provided that no property above falls under regulations 5 and 6:” Limitations on local authorities’ power to modify the application of these regulations”.