



## **Introduction**

2. The appeal arises from a proposal made by the appellant on 27 February 2019, seeking a deletion of 149 Meldon Drive, Bilston, West Midlands WV14 8BE (the appeal property) from 3 March 2018 due to the major structural work necessary to make good the premises after a flood. After considering the merits of the proposal, the Listing Officer determined that it was not well founded and a decision notice to this effect was issued on 11 March 2019. The appellant made an appeal to this Tribunal which was received on 12 April 2019.
3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.
5. The appeal property is a semi-detached house with three bedrooms, a living room, kitchen and bathroom. It has a reduced covered area of 103m<sup>2</sup>. The property was flooded as a result of a burst pipe and required substantial structural work before it could be occupied again.
6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

## **Issue**

7. The issue in this appeal was whether the appeal property still constituted a dwelling with effect from 3 March 2018.

## **Evidence and submissions**

8. Mr Shore provided his evidence bundle, which included a schedule of works for the appeal property and correspondence with the insurance company.
9. With reference to the schedule of works for the appeal property he submitted that the property should be removed from the List with an effective date of 3 March 2018.
10. On behalf of the Listing Officer, Mr Parker provided the panel with a copy of the proposal, layout plan and details of the appeal dwelling, copies of relevant legislation and case law.
11. With reference to the legislation and case law Mr Parker asked the Tribunal to dismiss the appeal.

## Decision and reasons

12. The definition of a dwelling for council tax is contained within Part 1 Section 3 of the Local Government Finance Act 1992.

“...3 (1) This section has effect for determining what is a dwelling for the purposes of this Part.

(2) Subject to the following provisions of this section, a dwelling is any property which-

(a) by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act if that Act remained in force: and

(b) is not for the time being shown or required to be shown in a local or a central non-domestic rating list in force at that time; and

(c) is not for the time being exempt from local non-domestic rating for the purposes of Part III of the Local Government Finance Act 1988 (“the 1988 Act”);

And in applying paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption.

13. Unless a property was non-domestic, the definition of dwelling essentially referred back to the definition of a ‘hereditament’ under section 115(1) of the General Rate Act 1967, which stated the following:

“property which is or may be liable to a rate, being a unit of such property which is, or would fall to be shown as a separate item in the Valuation List.”

14. The relevant date for this appeal is 3 March 2018, the date that the appellant had requested that the entry be deleted from the Valuation List.

15. Mr Shore explained to the panel that he had requested the appeal property be removed from the list from 3 March 2018 as on that date the property was flooded when a pipe burst. This was the last time, in his view, that the property could have been used as a dwelling until the work had been completed. He submitted that as a result of the flooding the property ceased to be a hereditament from that date.

16. He referred the panel to the schedule of work drawn up by the insurance company which was included in evidence. In it there was a long list of major work in every room of the appeal property. The insurance claim amounted to £45,000 of work that was required to make the appeal property capable of being used as a dwelling again. During the period of work the contractors found that the property had asbestos and black mould in it which both needed treatment. The work took eleven months in total to complete.

17. The panel found that the necessary work outlined in Mr Shore’s evidence was considerable. It involved work that was structural and extensive and went well beyond what was, in their view, repair or maintenance work.

18. Mr Shore further submitted that the level of damage to the property was similar to the fire damage in the case of *Sandeep Tewari v Dal Virk*. In both cases, he maintained, there was major structural work required.
19. In the case *Sandeep Tewari v Dal Virk* the property had been damaged by a fire but in this case the damage to the appeal property was by flooding. The panel determined the resulting damage was very similar.
20. On behalf of the Listing Officer, Mr Parker explained that in order for the appeal property to remain in the List it would need to be determined to still be a hereditament. If the property was a hereditament then the statutory assumptions would be applicable, and it would be assumed to be in reasonable repair.
21. He referred the panel to the case of *Wilson v Coll* where it was held that a property remained a hereditament if, with a reasonable amount of repair work, it could be returned to being a dwelling with the same character as previously. In this case he argued that the property had been restored to the same character and was once again being used as a dwelling.
22. The panel found that any property according to the case of *Wilson v Coll*, should only be deleted if it was incapable of beneficial occupation and it could no longer be considered to be a hereditament. In the case of the appeal property the panel found that this was the case and it therefore required deleting from the Valuation List.
23. Mr Parker referred the panel to the cases of *Mr Iqbal v Mrs C Corkish [2016] VTE*, *Mr E Lloyd v Mrs C Corkish [2014] VTE* and *Mr N Birtles v Mrs A Thomas [2017] VTE*. In these cases the respective panels found that the appeal properties should not be deleted from the Valuation List as they only required a 'reasonable' amount of repair to allow them to return to being used as a dwelling again. He submitted that this was also the case with this appeal property.
24. The panel was advised that decisions made by other VTE panels were not binding on them although they should be given weight. The panel found that in all three cases referred to by Mr Parker the properties were allowed to get into a bad state of repair before any work was to begin. In the case of the appeal property it was in a very good condition and able to be lived in prior to the flood and so the cases were not on all fours with this case.
25. In relation to the case *Sandeep Tewari v Dal Virk* Mr Parker maintained that in that case the property had been a flat above a pub, both of which had been badly damaged by fire. This, he maintained, was different to the present case being decided where the damage was only to one half of a semi-detached house. The neighbouring property, the other half of the semi-detached had not sustained any damage and that it was only the appeal property which required the work.
26. After having regard to all of the evidence presented, the panel allowed the appeal. The panel found that the property ceased to be a hereditament in that it was incapable of beneficial occupation after the flood. It was persuaded that the appeal property required extensive structural work to be carried out before it could be considered to be a hereditament again and therefore the statutory assumptions did not apply in this case.
27. The panel was guided by and put weight on the case of *Sandeep Tewari v Dal Virk*. In that case it was held that the fire damaged property was to be removed from the Valuation List. In this case the appeal property was badly damaged by a flood and should therefore also be

removed from the List. Accordingly, the panel determined that the appeal property's entry should be deleted from the Valuation List, with effect from 3 March 2018.

## **Order**

28. Under the provisions of Regulation 38(2) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Listing Officer to delete the entry for the appeal dwelling with effect from 3 March 2018.
29. Under Regulation 38(9), the Listing Officer must comply with this order within two weeks of the date of its making.

**Date:** 30 June 2021

**Appeal number:** M0846579