

THE VALUATION TRIBUNAL FOR ENGLAND



Council tax valuation appeal; section 3 of the Local Government Finance Act 1992; end of terrace cottage; deletion; hereditament test; repair assumptions; beneficial occupation; whether capable of reasonable repair; Wilson v Coll (Listing Officer) [2011] EWHC 2824; appeal dismissed.

APPEAL NUMBER: VT00007834

BETWEEN:	M T	Appellant
and	Alexandra Morley (Listing Officer)	Respondent

RE: Alpha Cottage, Gweek, Helston, Cornwall TR12 6TU
("the subject property")

PANEL: Ms J L Hadley (Presiding Senior Member)
Mrs F Rahman-Cook (Senior Member)

CLERK: Mrs A Sloan

SITTING ON: 17 November 2023 (remote hearing 2)

APPEARANCES: M T (Appellant)
Mr A Wakley (representing the Listing Officer)

Summary of decision

1. Appeal dismissed. The panel determined that the subject property should remain in the valuation list.

Introduction

2. The subject property entered the valuation list from its inception on 1 April 1993 at band B. The Listing Officer (LO) received a proposal from the appellant, as the new owner and taxpayer, on 23 February 2021 seeking deletion of the entry in the valuation list with effect from 14 September 2020. After considering the content, the LO decided that the proposal was not well founded and issued a decision notice to that effect on 23 April 2021. The appeal to the Tribunal against that decision was received on 15 July 2021.
3. According to the LO's records, the subject property is a Grade II listed end of terrace cottage in the village of Gweek. The accommodation consists of a lounge, kitchen/diner, one bedroom and one bathroom. The property was measured at 58m² reduced covered area

(RCA). There is no off-street parking and although the property included a garden, it was not contiguous to the property and therefore not included in the council tax valuation. Since the appeal was lodged the LO had reduced the entry in the valuation list from band B to band A, backdated to 1 April 1993. The appellant's proposal and appeal sought deletion of the entry for the dwelling from the date of his purchase.

4. In order to assist the appellant and with the agreement of all parties, the panel varied the Tribunal's model procedure and invited the LO's representative to present his case first. Mr Wakley was acting as Advocate for the LO, presenting evidence prepared by a colleague.
5. This document is not intended as a verbatim report of the proceedings, nor does it purport to reproduce in full all the parties' evidence.

Issue

6. The issue before the panel was to determine whether the property should be deleted from the valuation list with effect from 14 September 2020, the date proposed by the appellant in his originating proposal. Therefore, the panel must consider the physical state of the locality and the size, layout, and character of the subject dwelling on that relevant date.
7. The joint evidence bundle provided by the LO contained the parties' respective cases and supporting documents and included: photographs of the appeal property, surveys, reference to council tax legislation and the following caselaw:
 - *Wilson v Coll (Listing Officer)* [2011] EWHC 2824 (Admin)
 - *Newbigin (Valuation Officer) v S J & J Monk* [2017] UKSC 14
 - *Jackson (Valuation Officer) v Canary Wharf Ltd.* [2019] UKUT 136 (LC)
 - *Bunyan (Listing Officer) v Patel* [2022] EWHC 1143 (Admin)

Decision and reasons

8. The correct approach in appeals of this nature is to consider whether a hereditament or dwelling exists at the relevant date. If it does, then it must be valued on the statutory assumption that it is in reasonable repair even if, in reality, it is in need of repair.
9. The legal basis of a dwelling for council tax purposes is that it must constitute a hereditament, in accordance with section 3 of the Local Government Finance Act 1992:

"Meaning of "dwelling"

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

3(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;"*

10. Section 115(1) of the General Rate Act 1967 defined a hereditament as:

“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.”

11. A dwelling within the meaning of section 3, is a unit of property that qualifies as a hereditament because it is capable of beneficial occupation and is domestic property.
12. The appellant explained that he and his business partner had purchased the subject property because they wanted the garden plot for another development. They were aware that the subject property was in a poor state of repair and established, by way of a survey carried out by South West Drains, that the property was not connected to a drainage system. It was found that the toilet was connected to a Saniflo system which, along with the bath/shower, hand basin, and kitchen waste, was discharged into a storm drain. From there the water flowed into the nearby river. By way of background, the appellant stated that the property had been previously occupied by an elderly lady until around 2017-18 when the roof was damaged and blew off during a storm. The occupant moved into a care home and the roof was repaired but the property remained unoccupied at the time of the appellant's purchase in 2020. He contended that the property was incapable of beneficial occupation as there was no drainage system and to continue using the property's existing arrangements was illegal. He was prevented from letting the property out and needed to obtain listed building consent for any alterations. He submitted that the cottage is on a small corner plot, meaning there is nowhere to install a drainage system and neither he nor his business partner, a chartered quantity surveyor, could find an economical, effective solution.
13. The starting point for the LO was *Wilson v Coll*, in which the judge outlined the stages to follow when considering a dwelling in poor repair. The LO must consider if a dwelling exists. If it does, then the LO must assume reasonable repair as set out in the statutory assumptions in the Council Tax (Situation and Valuation of Dwellings) Regulations 1992. Unlike properties in the non-domestic rating list, there was no economic test on this repair assumption. When considering whether a hereditament exists, the LO must ask *“Having regard to the character of the property and a reasonable amount of repair works being undertaken could the premises be occupied as a dwelling?”*
14. In *Wilson v Coll*, the appeal property was generally in a poor condition, but capable of being repaired. In the judgement a distinction was drawn between the appeal property and one that was “truly derelict”. If a property was “truly derelict”, it would fail to be a hereditament and so not appear in the council tax list.
15. In *Newbigin (Valuation Officer) v S J & J Monk*, a non-domestic rating case, the Supreme Court decided that a property which was incapable of beneficial occupation due to a scheme of works was not a hereditament. In the subject appeal, the LO contended that there was no evidence that a scheme of works was in place or had begun on the relevant date of 14 September 2020 as the appellant had just purchased the cottage.
16. Following *Monk*, the Upper Tribunal heard *Jackson (Valuation Officer) v Canary Wharf Ltd*. In that case, offices in Canary Wharf had been stripped out by the landlord when a tenant vacated. The property remained unfinished until a new tenant was identified, at which point a fit out appropriate for that new tenant was completed. The Valuation Officer argued that there was no scheme of works as there was no plan in place to complete the property; it was merely in disrepair. The Upper Tribunal found that there was a scheme of reconstruction underway, and the strip out was the first phase of that. In the case of Alpha Cottage, there was no evidence that any works to strip out and repair the property had begun on the relevant date.

17. In *Bunyan (Listing Officer) v Patel*, a council tax deletion appeal, the High Court considered whether the appeal property should be deleted from the valuation list. In that case, the landlord sought a deletion for poor repair the day after the tenant left the appeal property. The LO accepted that, about a year later, there was a scheme of works underway and those works were significant and would change the character of the property. The judge reviewed *Wilson v Coll* as well as *Monk* and *Canary Wharf* and concluded that the LO's approach as set out in the Council Tax Manual was correct. The day after the tenant left, the property was simply in disrepair and was capable of repair. It was not "truly derelict."
18. Turning to Alpha Cottage, the panel noted the appellant's submissions that the property has never had a legal drainage system, "*needs to be re-plumbed, re-wired, have new ceilings and floors and has no real kitchen*". He contended that no internal work had been carried out for decades. Reference was made to legislation concerning habitability for rental purposes and environmental legislation. However, the panel was aware that it is not uncommon for council tax legislation and case law to be at odds with definitions in other areas. Its jurisdiction was purely to consider the council tax legislation and case law in this appeal. The panel understood that the appellant was prevented from renting the property to a tenant and restricted by needing Listed Building consent before any work could be carried out. It also appreciated that, with the drainage situation in place on the relevant date, there were legal considerations in continuing to use the property. However, the panel must consider the facts at the property and determine whether a reasonable amount of repair could make the property capable of beneficial occupation.
19. On the evidence provided by the parties, the panel found that on the relevant date of 14 September 2020, Alpha Cottage had been unoccupied for two to three years. The property was in need of modernisation, but a new roof had recently been installed. Having sat empty for a few years, the state of repair had deteriorated but, regardless of the legal position regarding the drainage, the property had been occupied as a dwelling for many years. Apart from the new roof, there appeared to have been no significant change to the property since it was last occupied.
20. The panel found that older properties often require modernisation and extensive refurbishment when they have been sitting empty for a number of years and not regularly maintained. The appellant provided an extract from the Listed Building consent application which set out the works required, including some structural works dating back to 2017 when the property lost its roof. No costs were provided or a structural survey to support the submission.
21. The panel must consider in this case whether the level of works to make the property capable of beneficial occupation was beyond the usual level of repair for this type of dwelling, due to the property being '*truly derelict*'. Alternatively, was there a scheme of works underway to reconstruct the property, making it incapable of beneficial occupation as a dwelling and changing its character?
22. The panel found that the property was not in a derelict state. On the relevant date it had a new roof and was in need of extensive refurbishment, including re-wiring, re-plumbing and addressing the issues with floors, staircase and ceilings. In order to comply with housing and environmental legislation, a solution to the drainage issue was required. However, the property had been occupied a few years before the relevant date and there was no evidence that it had changed significantly since then. As an application had been made to obtain listed

building consent, it appeared there was an intention to refurbish the property and carry out remedial works, but there was no evidence that those works had begun on the relevant date.

23. The appellant highlighted that the drainage issue was not one of repair, as there had never been a legal drainage system. The panel noted that he had identified a solution to the drainage problem by potentially connecting Alpha Cottage to a private drainage system for the development nearby. It therefore considered the drainage solution to be an enhancement to the property, which would add value when the other work was completed to modernise and refurbish Alpha Cottage. The un-dated sales details in the evidence bundle showed the property being marketed as ‘in need of updating works throughout’ and included photographs showing the internal rooms cleared of furniture but no evidence of works being carried out.

24. When considering what is a “*reasonable amount of repair works*” the panel must determine whether repair is possible. It is not a question of whether it is economically viable or whether the appellant would want to carry out the repairs, but rather whether it is feasible that the property could be repaired or if it is beyond repair. The panel appreciated the difficulties faced by the appellant in this case, with the legal complications concerning the drainage and environmental issues and the restrictions of working on a listed building. However, it was satisfied that on the relevant date of 14 September 2020, there was no scheme of reconstruction works underway, the property had not been stripped out in preparation for works and it was not a derelict property. The panel found that Alpha Cottage on the relevant date remained a hereditament capable of beneficial occupation and was simply in a state of disrepair, which could be remedied with a reasonable amount of work. The appeal was therefore dismissed.

Date: 4 December 2023

Appeal number: VT00007834

Right of further appeal

Any party who is aggrieved by the Tribunal’s decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.