

# THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax valuation appeal; proposal seeking amended effective date for deletion; hereditament test; Wilson v Coll (LO) [2011] EWHC 2824 (Admin); Bunyan v Patel [2022] EWHC 1143 (Admin); No works being undertaken at relevant date; appeal dismissed.*

RE: 21 Tollgate Court, Stoke-on-Trent, ST3 3BH (“the appeal property”)

APPEAL NUMBER: VT00014532

BETWEEN:	PG & EH	Appellants
and	Alexandra Morley (Listing Officer)	Respondent

PANEL: Mr MH Smith (Senior Member)  
Mr S Hooberman  
CLERK: Mr J Massey

REMOTE HEARING #3: Tuesday 8 August 2023

APPEARANCES: PG (Appellant)  
Mr R Pike (Respondent’s representative)

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## Summary of decision

1. Appeal dismissed. The panel was satisfied that the appeal property remained capable of beneficial occupation and therefore a dwelling on 6 April 2022.

## Introduction

2. The appeal began with a proposal that was served by the appellants on the Listing Officer (LO) on 29 July 2022. The appellants sought a deletion of the appeal property’s entry from the valuation list from 6 April 2022 as a result of a fire in one of the other flats in the block. The LO deemed the appellants’ proposal to be not well founded and issued a decision notice to that effect on 11 October 2022. The appellants appealed that decision to the Tribunal on 6 January 2023.
3. The “relevant date” for the purposes of this appeal was 6 April 2022 being the effective date proposed by the appellants for the deletion of the entry. The appellants contended that the appeal property was not capable of beneficial occupation from this date as it had no electricity supply and the freeholder had prevented access to the appeal property by changing the locks

on the doors. The LO did not consider that the evidence provided showed that the appeal property had been rendered in a state of disrepair such that works constituting normal repairs would not bring it into a state fit for occupation as a dwelling.

4. The appeal property was a one-bedroom purpose-built flat on the third floor of a block of thirty flats.
5. With the agreement of the parties the panel varied the procedure outlined in the Consolidated Practice Statement PS8- Model Procedure and requested the respondent's representative to present the LO's evidence first.
6. This Tribunal decision document is not and does not purport to be a verbatim record of the proceedings.

## **Issue**

7. The panel was required to determine whether or not, at the relevant date, a hereditament, and therefore a dwelling within the meaning of section 3(2)(a) of the Local Government Finance 1992 (the Act), was in existence.

## **Evidence and submissions**

8. Arguments and factual evidence from both the appellants and the respondent were subsumed into a combined evidence bundle prepared by Mr Pike. This included the appellants' original proposal and subsequent appeal form and his supporting evidence, the respondent's decision, relevant legislation, and extracts from the Valuation Office Agency's (VOA) council tax manual.
9. The respondent's representative supplied and made reference to the following case law within his submission:
  - *Wilson v Coll (LO)* [2011] EWHC 2824 (Admin)
  - *Bunyan (LO) v Patel* [2022] EWHC 1143 (Admin)
  - *S J & J Monk v Newbiggin (VO)* [2017] UKSC 14
  - *Jackson (VO) v Canary Wharf* [2019] UKUT 136 (LC)

## **Decision and reasons**

10. The appellants contended that the appeal property was uninhabitable following a fire in one of the other flats in the same block. They stated that both electricity and water supply to the whole block had been turned off, and all the residents were required to vacate the block by the fire officer and council officials. The freeholder of Tollgate Court had changed the lock on the entrance door to the block and had replaced the individual flat doors, which resulted in the appellants not being able to enter the appeal property. The appellants contended that the appeal property was therefore not habitable until 11 December 2022 when they were given keys to the new locks.
11. For the appeal property to be deleted from the valuation list it must be determined that it did not constitute a dwelling under section 3 of the Local Government Finance Act 1992 and would not have been a hereditament under section 115 of the General Rate Act 1967. The panel therefore considered the definitions of a dwelling and a hereditament.

12. With regards to a dwelling, Section 3 of the Local Government Finance Act 1992 states –
- (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;'
13. Section 115 (1) of the General Rate Act 1967 defined a hereditament as 'property which is or may become 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 panel was also assisted by the case of *Wilson v Coll* as in that case Singh J. laid down the legal test for determining whether or not a property constituted a hereditament. The panel noted that in paragraph 40 Singh J. stated -
- “40. . . . I accept that as a general matter of law the crucial distinction for the purposes of deciding whether there is, or continues to be, a hereditament should focus upon whether a property is capable of being rendered suitable for occupation (in the present context occupation as a dwelling) by undertaking a reasonable amount of repair works. The distinction.... , in my view, is between a truly derelict property, which is incapable of being repaired to make it suitable for its intended purpose, and repair which would render it capable again of being occupied for the purposes for which it is intended.”
15. The respondent had applied the hereditament test expounded in *Wilson v Coll* and referenced in the VOA's Council Tax Manual and considered that, as of the relevant date, the appeal property was reasonably capable of repair without changing its essential character. In turn, the respondent was satisfied that the property was viewed as capable of occupation and therefore qualified as a dwelling.
16. Following the High Court judgment *Bunyan v Patel*, the panel considered that there was a very high bar to overcome before a property could be deleted from the valuation list. In the case before the panel, it would have to be shown that at the relevant date the appeal property was incapable of being reasonably repaired and therefore failed to constitute a hereditament in line with the test in *Wilson v Coll*.
17. The panel appreciated that the appellants had not been able to enter the appeal property following the fire to take photographs. However, in answer to a question from the panel, the appellant described the damage caused to the appeal property as minor smoke damage, and that the only work carried out to the appeal property itself was the replacement of its front door, and the upgrade and relocation of the electricity meter.
18. The panel appreciated the appellants' frustration with the freeholders for the delay in providing keys for the new locks, and with the billing authority for its alleged failure to respond to their enquiries. However, from the legislation and case law before it, the panel noted that, in order

to remove the appeal property from the valuation list for the period sought by the appellants, it must be demonstrated that the appeal property was in such a state of disrepair that works constituting normal repairs would not bring it into a state fit for occupation as a dwelling.

19. Whilst the panel accepted that the appellants had not been able to access the appeal property during the period of the appeal, and that it had no electricity or water supply, it found that these were not factors which prevented the appeal property from being a hereditament. There was no evidence provided to show that the appeal property was truly derelict or was beyond a state of reasonable repair, and the panel found that it qualified as a dwelling on the relevant date.
20. In view of the foregoing, the appeal was dismissed.

**Date:** 1 September 2023

**Appeal number:** VT00014532

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### **Right of 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.

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