



VALUATION TRIBUNAL FOR ENGLAND

Council Tax Valuation appeal: Local Government Finance Act 1992; hereditament test; Wilson v Coll (Listing Officer) [2011] EWHC 2824 (Admin); Bunyan v Patel [2022] EWHC 1143 (Admin); beyond reasonable repair; appeal allowed

APPEAL NUMBER: VT00019180

RE: Crantock, Hixet Wood, Charlbury, Oxfordshire OX7 3SB
(the "appeal property")

BETWEEN:	J S	Appellant
	and	
	Lucy Dyer (Listing Officer)	Respondent

SITTING: *Remotely using Microsoft Teams*

ON: 20 May 2024 10:00

BEFORE: Mrs H Newman-Newing, Senior Member
Mrs A Taylor, Member

CLERK: Richard Gath

APPEARANCES: J S (Appellant)
A Miah (Listing Officer's representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.
2. The panel concluded that the appeal property was not a hereditament and was deleted from the Valuation list with effect from 17 April 2023.

Introduction

3. The Appellant served a proposal on the Listing Officer (LO) on 17 April 2023, seeking a deletion of the entry with effect from 2012, as they considered that the appeal property was

uninhabitable/derelict. Planning permission had been granted to demolish the appeal property. After considering the merits of the proposal, the LO determined that it was not well founded and a decision notice to this effect was issued on 10 July 2023. The Appellant subsequently appealed to the Tribunal against the LO's refusal to alter the list in line with the proposal. The appellant's appeal was received by the Tribunal on 28 September 2023.

4. The Appellant had difficulties with his computer and therefore it was agreed that he could join by audio only.
5. There was a preliminary issue in that the Appellant provided some evidence, a report from Certus Property Consultants dated 5 May 2024, to the Tribunal late. This new evidence was forwarded to the LO on 13 May 2024.
6. The panel considered the situation in light of the Upper Tribunal decision in *Simpsons Malt Ltd and Other v Jones (VO)* UKUT [2017] 460 and had regard to *Denton v TH White Ltd* [2014] 1 WLR 3926 which dealt with the non-compliance with Directions. This laid out the three-stage test which the panel had to consider.

Stage 1 – If the panel conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

Stage 2 – Then the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the panel to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

Stage 3 – The panel must consider all the circumstances of the case including:

the need for litigation to be conducted efficiently and at a proportionate cost; a failure to grant a sanction may leave an inaccuracy being uncorrected; and the need to enforce compliance with rules, directions and orders (para. 55); However, such matters must never be allowed to assume a greater importance than doing justice (para. 56).

7. The LO did not object to the Appellant's late evidence. The panel also accepted that the Appellant would be unfamiliar with the Tribunal's process.
8. The panel therefore decided that in the interests of justice to allow the late evidence. Although the LO was given the opportunity to respond to the Appellant's new evidence, they chose not to do so. Mr Miah was, however, given the opportunity to make oral submissions, in respect of the same.
9. In order to assist the Appellant and with the agreement of the parties, the panel varied the model hearing procedure and invited the LO's representative to present their case first.
10. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Background

11. The issue in dispute concerned whether the appeal property should be deleted from the Valuation list.

Evidence and submissions

12. The LO had provided the joint evidence bundle which included a copy of the proposal, the appeal form, a map of the locality, external and internal photographs of the appeal property and extracts from relevant legislation and case law. A number of authorities were referred to and copies of these judgments had been sent to the Appellant by the respondent. These included *Wilson v Coll (Listing Officer) [2011] EWHC 2824 (Admin)*; *SJ & J Monk (A Firm) v Newbiggin (VO) [2017] UKSC 14*; *Jackson (VO) v Canary Wharf Limited [2019] UKUT 136 (LC)* and *Bunyan v Patel [2022] EWHC 1143 (Admin)*.

Relevant Law

13. The appeal property could only be deleted from the council tax valuation list if it had ceased to be a 'dwelling'. The term 'dwelling' is defined in section 3 of the Local Government Finance Act 1992 (LGFA) as follows:

"... 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 ..."

14. 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."

15. Provided a hereditament existed, the statutory assumptions as set out in the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 became engaged. In particular, Regulation 6 (2) (c) being the assumption "that the dwelling was in a state of reasonable repair".

Discussion

16. In the event that the Appellant was correct that the property was no longer a dwelling, the relevant and effective date would be the date when the dwelling ceased to exist.
17. In his proposal, the Appellant had proposed 2012 as the effective date for the dwelling's deletion. However, no factual evidence was provided to show that the dwelling had ceased to exist in 2012. The Appellant did not become the property's owner until February 2016. In the absence of any factual evidence to show that the appeal property had ceased to exist, prior to the proposal being made, the panel determined that the relevant date should be the date

the proposal was submitted to the LO which was 17 April 2023. This would also be the effective date for any deletion if the appeal was successful.

18. Mr Miah contended that the appeal property should only be removed from the Valuation list if it was considered to be derelict. He did not consider that the appeal property was derelict, as images taken from the internet in June 2019 showed that it was watertight. It still had windows, although some of them were boarded up, it still had a roof and there had not been any change to the structure. In Mr Miah's opinion, the appeal property was capable of repair and it therefore remained a dwelling.
19. The Appellant argued that the appeal property had not been properly maintained for 60 years. In the last few years, it had remained unoccupied. As nobody was living there, the property had been targeted by vandals and thieves. Pipework had been stolen and the property had fallen into ruin and was now in a dilapidated state. The Appellant informed the panel that the corrugated tin roof which formed part of a very old extension was leaking. He was also disappointed that the LO had not visited the appeal property to verify its condition.
20. The internal photographs recently taken by the Appellant showed that the appeal property was clearly in a state of significant disrepair. The photographic evidence clearly depicted the exposed brickwork, as plaster had rotted and come away from the walls exposing the property's inner shell. The ceilings were damaged and there were no kitchen units.
21. In support of his case, the Appellant had engaged the services of a surveyor to undertake a full survey. Giles Cooper MRICS, a qualified Chartered Surveyor, from Certus Property Consultants conducted a survey and his findings were as follows;

An internal and external inspection of the house was undertaken on 3rd May 2024. Our inspection was to provide an overview of the condition of the property, and we have not inspected covered, unexposed, or inaccessible areas and are therefore unable to report that any such parts of the property are free from defect. The property was found to be in very poor condition, and it has clearly received no significant recent maintenance.

Externally, there is an immediate need for repairs to all principal elements. The render finish and rainwater fittings are defective, and some window fittings have failed.

The corrugated metal roof over the rear projection is overgrown and sub-standard. Internally, general rising and penetrating dampness was noted, and spores on internal joinery is indicative of significant past condensation.

Wall and ceiling plasterwork is severely defective in places.

Mains electricity is laid to the house, but the original installation is now obsolete. A temporary builders supply has been installed.

The plumbing installation has been vandalised and the hot water storage cylinder and ancillary pipework has been removed (stolen).

There are no kitchen fittings.

Sanitary fittings have been vandalised and the WC pan is broken.

22. No site inspection or survey was conducted on behalf of the LO. Even though the respondent had had sight of the above, Mr Miah maintained that the appeal property was a hereditament which was capable of repair.
23. In *Bunyan v Patel*, Mrs Justice Lang set aside a Valuation Tribunal for England (VTE) decision made by a Vice President and remitted it back to the VTE for reconsideration. When the case was re-heard by the President, he upheld the LO's argument that the appeal property, (in the Patel case), remained a dwelling. In paragraphs 35 to 37 of Mrs Justice Lang's judgment she stated;

“35. The Tribunal correctly identified the issue in the appeal as whether or not, at the relevant date, a hereditament, and therefore a dwelling within the meaning of section 3(2)(a) LGFA 1992, was in existence.

36. In determining that issue, the Tribunal was bound by the authorities cited above on the essential elements of a hereditament, in particular, the element of beneficial occupation. *Wilson v Coll* was directly applicable as it concerned council tax and disrepair. In *Wilson v Coll*, Singh J. accepted the submission of the Listing Officer that the key distinction was between, on the one hand, a property which would be capable of occupation for its intended purpose if a reasonable amount of repair work were undertaken, and on the other hand, a property which was truly derelict, and so required reconstruction or replacement in order to become capable of occupation for its intended purpose. It was only in the latter case that the element of beneficial occupation was not met, and so the hereditament had ceased to exist.

37. The test enunciated by Singh J. is not, of course, limited to “derelict”, implying severely neglected, properties. As explained in the cases of *Monk* and *Jackson*, a property may be incapable of beneficial occupation because it is currently undergoing major reconstruction works, or because major reconstruction works will be required before it can be occupied. Although *Monk* and *Jackson* concerned non-domestic properties under a different statutory scheme, these principles are relevant to council tax cases too, as advised in Practice Note 4 of the Council Tax Manual. In the light of this, I consider that the Listing Officer in this case was correct to concede that, once the Respondent decided to undertake major reconstruction works at the Property in September 2020, the entry on the list should be deleted because the Property was no longer capable of beneficial occupation”.

24. As Mrs Justice Lang acknowledged above, although the Supreme Court's judgment in *Monk* and the Upper Tribunal's judgment in *Canary Wharf* related to non-domestic rating appeals, under a different statutory scheme, the underlying principles from those judgments relating to whether or not a hereditament exists remain relevant to council tax. However, in this Tribunal's experience, the LO will only consider the implications of *Monk* if there is a scheme of ongoing works.
25. In the case under consideration, Mr Miah reaffirmed the LO's position. He argued that the appeal property could only be deleted from the Valuation list where a property is incapable of beneficial occupation due to a scheme of works.
26. An earlier appeal heard by this Tribunal's President highlighted the folly of the LO's blinkered approach to the impact of *Monk* in relation to council tax. In *Tewari v Virk* [2020] VTE Appeal M0826076, the appeal property was a flat situated above a public house. The whole property

had been fire damaged. Whilst the Valuation Officer was satisfied that the public house had ceased to be a hereditament, following the fire, the flat above it which was similarly affected was still considered to be a dwelling by the LO, who refused to delete it. The President had no difficulty in deciding that the flat had ceased to be a hereditament and deleted the entry. There was no appeal by the LO against that decision, as it was correctly decided based on its facts, as the flat had been destroyed.

27. In the *Tewari* judgment, in paragraph 34 of his decision, the President was very critical of the LO's current approach when a deleted entry was sought. He made the following observations;

"34. The Listing Officer's current approach, for appeals of this nature, which appears to have been endorsed by earlier lay tribunal panel decisions is that if a property is in disrepair and even if the state of decay is such that it cannot be occupied as a dwelling, a hereditament still exists as long as it can be repaired, no matter what the cost of those works will be, because there is no economic test for council tax purposes. Such a robust approach without giving proper consideration to whether a property is capable of occupation at the relevant date or whether it is reasonable for the owner to undertake such works to render it habitable is flawed, and fails to appreciate the reality of the situation, with respect in my opinion that approach is wrong."

28. 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?
29. As is usually the case, when this Tribunal's decisions are appealed to the High Court, the taxpayer often does not participate in proceedings and if they do, they do not have the benefit of any legal Counsel. In *Bunyan*, Mrs Justice Lang only received legal submissions from the LO. In her judgment, she stated in paragraph 43 that she agreed with the LO's Counsel's submissions that this Tribunal was guilty of a misreading of *Wilson v Coll*. It is therefore pertinent to have regard to what Mr Justice Singh stated in his judgment in paragraphs 39 and 40 in *Wilson v Coll*.

"39. In answering that question correctly the respondent submitted to me that what in fact should be asked is a question which is posed for Listing Officers to consider in a practice note to the Council Tax Manual, practice note number 4. The question is as follows:

"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?"

40. I accept the respondent's submission as a general matter in that respect. 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, which is correctly drawn by the respondent, 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."

30. In *Wilson v Coll*, Mr Justice Singh agreed with the respondent's Counsel that there was a difference between a truly derelict property, which is incapable of repair to make it suitable for use as a dwelling and one which was capable of repair. The problem is, over the passage of time, LO's fail to draw a distinction between properties that are truly derelict and ones that are capable of repair. As was shown in *Tewari*, their default position appears to be that any property, regardless of the extent of disrepair can be repaired and therefore until a programme of works begin, the list entry cannot be deleted. In this Tribunal's opinion, the LO's approach shows a misunderstanding of *Monk* in that it does not just apply to properties undergoing a scheme of works. This was confirmed by the Upper Tribunal in *Canary Wharf*.
31. After the President had conducted the re-hearing of the *Bunyan* appeal, he made the following comments in paragraphs 35 and 36 of his judgment;

"Given the High Court judgments in both *Wilson* and *Bunyan v Patel* [2020] EWHC 1143 any taxpayer seeking a deletion would be wise to secure independent expert reports to show that the level of disrepair has resulted in their property ceasing to be a hereditament. The tribunal is aware that one such Appellant did successfully appeal to the High Court against a VTE panel decision to dismiss his appeal, on the basis of *Wilson*. The tribunal understands that the Listing Officer conceded the appeal part way through the High Court hearing. The appeal was then referred back to the VTE for redetermination by Order of Roger Ter Haar QC who was sitting as a Deputy Judge of the High Court. The appeal property in that case was Flat 10, Yellowhammer Court, 26 Eagle Drive, London NW9 5AJ. In Yellowhammer, the respondent agreed to concede the appeal on the basis that the VTE decision contained insufficient reasons as to why the Appellant's property could be rendered suitable for occupation with a reasonable amount of repair in the light of expert reports before it.

36. The appeal flat in Yellowhammer was not truly derelict but was badly affected by raw sewage coming in from broken drains and water penetrating it from other flats in the building. As a result, the property suffered from damp and smelt of sewage. According to the Appellant's proposal dated 22 December 2015 the flat had flooded on numerous occasions between 5 September 2007, his proposed effective date for the deletion of the band B entry, and 2014. The flat had never been cleaned, dried or fumigated and was covered in mould. A ceiling had collapsed, and water penetration meant that the electricity supply had had to be switched off. One of the Appellant's main arguments was that the cost of him undertaking the reinstatement works would exceed the value of his flat. As proceedings were aborted, it raised the question why the Listing Officer threw in the towel given Mr Justice Singh's earlier judgment in *Wilson*. After the appeal was remitted back to the VTE for re-determination, the Listing Officer agreed to delete the entry from the list with effect from 5 September 2007 which obviated the need for a re-hearing."

32. In *Wilson v Coll* reference was made to the fact that if a property can be made suitable for occupation by undertaking a reasonable amount of repair works. This raises the question as regards to what is considered a reasonable amount? There must come a point, when a property is considered beyond reasonable repair and certainly that was not the case in Mrs Wilson's appeal. In *Wilson v Coll* the appeal property was clearly a hereditament and the outstanding repair works, identified when the appeal was re-heard by this tribunal included the following;

- a. The whole property needed re-decorating;
 - b. all windows needed rubbing down and repainting;
 - c. the kitchen units needed replacing;
 - d. one windowpane in the kitchen needed replacing;
 - e. the bath needed replacing;
 - f. a hole in the bathroom ceiling needed filling;
 - g. a few tiles from the roof were missing and needed replacing;
 - h. the hot water cylinder and copper piping (which had been stolen) needed replacing; and
 - i. part of the kitchen floor and some of the joists needed replacing but the extent of the decay was unknown.
33. It was also accepted that Mrs Wilson’s property did not require any significant re-construction work and the house was largely wind and watertight. Whilst it is clear from the above that Mrs Wilson’s property was capable of being re-occupied as a dwelling, following a reasonable amount of repair works, there will be other cases where that test is not met like *Tewari* and *Yellowhammer Court*.
34. In the case under consideration, the panel only had one expert surveyor’s report before it and as previously stated, it had identified the following issues which needed to be remedied, before the property could be re-occupied as a dwelling;
- a. it required repairs to all principal elements...some window fittings have failed;
 - b. it had significant damp;
 - c. the report confirmed that the plumbing installation had been vandalised including the hot water cylinder and pipework had been stolen;
 - d. the corrugated metal roof over the lean-to was overgrown and sub-standard. The Appellant argued that when it was going to be repaired, as it formed part of the main living accommodation, the whole property would be open to the elements;
 - e. rising and penetrating dampness was noted;
 - f. spores in internal joinery;
 - g. Plasterwork was severely defective;
 - h. the mains electrics was obsolete with a temporary builders supply;
 - i. no kitchen fittings;
 - j. sanitary fittings had been vandalised; and
 - k. it was in a very poor condition and not wind or watertight.
35. No counterfactual evidence was put forward by the LO to challenge the accuracy of Mr Cooper’s survey and it was clear to the panel that, in the property’s existing state, it was not a hereditament as it was incapable of beneficial occupation. Mr Miah, having not inspected the appeal property, was not in a position to explain why the LO was of the opinion that the property could be rendered suitable for occupation with a reasonable amount of repair.
36. The level of disrepair, highlighted in Mr Cooper’s report, went beyond what the panel thought could be considered a reasonable amount of repair work. The level of disrepair, damage and several years lack of maintenance, the appeal property had reached the stage where the property was completely unfit for use as a dwelling. In the concluding remarks of his report, Mr Cooper commented;
- “A truly derelict property is deemed to be one which is in severe disrepair and would have deteriorated so much, usually over a long period of time, that it cannot be lived in

without major reconstruction work. It is our opinion that this definition applies to the property.”

37. Ultimately, the panel had to determine if the appeal property would be capable of occupation for its intended purpose if a reasonable amount of repair work were undertaken, and on the other hand, consider if the appeal property was truly derelict, and so required reconstruction or replacement in order to become capable of occupation for its intended purpose. It was only in the latter case if the element of beneficial occupation was not met, the hereditament had ceased to exist.
38. Given the contents of Mr Cooper’s expert report, it was difficult for the panel to understand why the LO had refused to delete the appeal property’s entry from the Valuation List. It appeared to be an unreasonable position to take relying on outdated photographs sourced from the internet and assuming it was wind and watertight, when a routine inspection would have quickly established that this was not the case. Mr Cooper had found that the appeal property was not wind or watertight, there was a lack of mains electricity, it was damp and there were spores on the internal woodwork which was clearly hazardous for health.
39. It was therefore clear to the panel that the appeal property was incapable of beneficial occupation, even with a reasonable amount of repair work, due to it not being wind and watertight and requiring an entirely new roof covering. As the panel determined it extending beyond reasonable repairs, the panel therefore determined that the appeal property was not capable of beneficial occupation, it cannot therefore be a hereditament and must be deleted from the Valuation list. The panel therefore rejected Mr Miah’s argument that the entry could not be deleted until a programme of works began. The Consent Order that was issued by the High Court, following the Listing Officer’s capitulation in the appeal between Steve Sanders and Charlotte Corkish (LO) dated 20 June 2018, in respect of 10 Yellowhammer Court, showed that it was not necessary for a programme of works to commence before a property could be deleted from the list.

Disposal

40. In view of the above findings and conclusions, the panel was satisfied that the appeal property was truly derelict and that it should be removed from the Valuation list from the date the Appellant submitted their proposal which was 17 April 2023.

Order

41. 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 remove the entries of the appeal property from the council tax valuation list with effect from 17 April 2023.
42. Under regulation 38(9), the Listing Officer must comply with this order within two weeks of the date of its making.

Date issued to parties: 3 July 2024

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.

