



## VALUATION TRIBUNAL FOR ENGLAND

*CT Valuation appeal: Local Government Finance Act 1988; Local Government Finance Act 1992; The Council Tax (Situation and Valuation of Dwellings) Regulations 1992; Wilson v Coll (Listing Officer) [2012] RA 45, Guthrie v Highland Region and Western Isles Area Assessor [1995] RA 292, deletion sought as character changed from domestic to non-domestic. Decision: appeal dismissed*

APPEAL  
NUMBER: VT00020679

RE: Flat, 14 Hogshill Street, Beaminster, DT8 3AN  
(the "subject dwelling")

BETWEEN:	Kitson & Trotman LLP	Appellant
	and	
	Lucy Formela-Osborne (Listing Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 30 September 2024

BEFORE: Mr N De Freitas, Presiding Senior Member  
Mrs LR McDermott, Senior Member

CLERK: Mrs J Routledge IRRV(Tech)

APPEARANCES: Ms K Traynor of Landmark Chambers representing the Appellant.  
Mr J Moore representing the Respondent

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### DECISION AND STATEMENT OF REASONS

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#### Decision

1. The appeal is dismissed.

2. The Tribunal Panel found that the storage of non-domestic items in part of the subject dwelling had not substantially altered the character to consider that when next in use it would not be domestic. The subject dwelling remained capable of repair and therefore should not be deleted from the council tax list from 1 October 1995 or any alternative date before 25 September 2014.

## **Introduction**

3. This appeal had been brought in respect of the following: Ms Creek on behalf of the Appellant Partnership had served a proposal on the Listing Officer (LO) on 31 May 2023, requesting the deletion date of the subject dwelling was altered from 25 September 2014 to 1 April 1993. The LO decided that the proposal was not well founded and issued a decision letter to that effect on 20 September 2023. The Appellant lodged an appeal to challenge this decision with the Tribunal on 19 December 2023.
4. The subject dwelling was a four roomed flat on the top floor of the premises, it had been used as employee accommodation until approximately 1991. It entered the council tax list at band C on 1 April 1993. On 14 October 2014, the band was reduced to band B by agreement following a proposal by the Appellant in this case.
5. The Appellant had revised the date sought for deletion to 1 October 1995 when the water was disconnected or alternatively the 4 January 2007 when a Fire Risk Assessment was carried out. Therefore the period in dispute was from 1 October 1995 to 25 September 2014 when the property was deleted from the council tax list.
6. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

## **Issue**

7. Given the state of disrepair, and use of the subject dwelling did it still constitute a domestic dwelling for the purposes of council tax and should it remain in the council tax list until 25 September 2014.

## **Relevant Law**

8. With regards to a dwelling, Section 3 of the Local Government Finance Act 1992 (LGFA 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;

9. Section 115 (1) of the General Rate Act 1967 defines 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'.

10. Under section 3 above, property is required to be shown in the valuation list if it is a hereditament and is domestic property. Domestic property is defined in section 66(1) of the Local Government Finance Act 1988 (LGFA 1988):

Property is domestic if –

- (a) It is used wholly for the purposes of living accommodation
- (b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above
- (c) it is a private garage used wholly or mainly for the accommodation of a private motor vehicle, or
- (d) it is private storage premises used wholly or mainly for the storage of articles of domestic use

11. Section 66(5) of the LGFA 1988 says: "property not in use is domestic if it appears that when next in use it will be domestic"

12. The Council Tax (Situation and Valuation of Dwellings) Regulations 1992, at section 6 provides:

Valuation of dwellings: general

(1) Subject to regulation 7, for the purposes of valuations under section 21 (valuations for purposes of lists) of the Act, the value of any dwelling shall be taken to be the amount which, on the assumptions mentioned in paragraphs (2) and (3) below, the dwelling might reasonably have been expected to realise if it had been sold in the open market by a willing vendor on 1st April 1991.

(2) The assumptions are-

- (a) that the sale was with vacant possession;
- (b) that the interest sold was the freehold or, in the case of a flat, a lease for 99 years at a nominal rent;
- (c) that the dwelling was sold free from any rent charge or other incumbrance;

- (d) except in a case to which paragraph (3) or (3A) applies, that the size, layout and character of the dwelling, and the physical state of its locality, were the same as at the relevant date;
- (e) that the dwelling was in a state of reasonable repair;
- (f) in the case of a dwelling the owner or occupier of which is entitled to use common parts, that those parts were in a like state of repair and the purchaser would be liable to contribute towards the cost of keeping them in such a state;
- (g) in the case of a dwelling which contains fixtures to which this sub-paragraph applies, that the fixtures were not included in the dwelling;
- (h) that the use of the dwelling would be permanently restricted to use as a private dwelling; and
- (i) that the dwelling had no development value other than value attributable to permitted development.

## **Evidence and submissions**

13. The Listing Officer's bundle was served prior to proceedings, which contained both parties' submissions. It included, the originating proposal form and accompanying correspondence, a copy of the Appellant's appeal to the Valuation Tribunal and the correspondence between the parties, including the LO's decision notice, photographs of the subject dwelling, a number of statements from employees of the business and extracts from cases including *The Valuation Appeal* case ref: 5690727898/084CAD 32 Scrooby Street, London SE6 4JB, *Wilson v Coll (Listing Officer) [2011]EWHC 2824 (Admin)* and *Bunyan v Patel [2022] EWHC 1143(2022)*.
14. The Appellant provided a chronology of the whole property and witness statements from various employees of the business to attest to the use of the subject dwelling. It was submitted that the property could not be occupied due to the lack of a separate entrance which would be a breach of confidentiality and security of the premises. The water had been disconnected as of 1 October 1995 which rendered it uninhabitable. A Fire Risk Assessment undertaken on 4 January 2007 was submitted as evidence that occupation was not possible due to the lack of fire protection measures this formed the basis of the alternative date for deletion. It was also cited as proof that the character had altered and the use of the subject dwelling was storage for the business by that date.
15. Mr Moore referred the panel to the statutory framework and referred specifically to paragraph 19 of the Valuation Tribunal decision in *32 Scrooby Street* which dealt with a request for the deletion of a property between 2001 and 2007 made in 2015. He acknowledged he could not challenge the witness statements but considered that as they were made by employees of the business, they were not truly independent and had been made many years after the fact, they should not carry weight.

**19** ...*The burden is upon the appellant in this challenge and it will be up to them to satisfy the Listing Officer and ultimately the Tribunal that the property*

*was no longer a dwelling. The test is quite a difficult one and it would be, in my opinion, right and proper to take into consideration the lateness of the challenge when considering the evidence presented by both parties. I accept this does make the respondent's position difficult but not impossible. The facts about the condition of the property will need to be proved and it will be the interpretation of the facts that will decide the appeal."*

## **Decision and reasons**

16. In an appeal of this nature, the relevant date is usually the date of change, or the date submitted on the proposal form. In this case the date specified on the proposal form was 1 April 1993. The Appellant had accepted that this date should be amended to either 1 October 1995 or 4 January 2007 as the council tax band proposal in 1994 implied acceptance of the subject dwelling being capable of occupation at that time. The panel had to have regard to the physical state of the appeal property and its locality as it stood at either of these dates.
17. Under Section 22 of the Local Government Finance Act 1992, the LO has a statutory duty to compile and then maintain a valuation list for each billing authority area. Under Section 23 of the same Act that list must show, for each day that it remains in force, each dwelling which is situated in the billing authority's area and which council tax band is applicable to that dwelling. A "dwelling" is defined for the purposes of Part 1 of the 1992 Act by Section 3. It is any property which, by virtue of the definition of a 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 had remained in force.
18. In the High Court's judgment in *Wilson v Coll (LO)* [2012] RA 45, Mr Justice Singh made reference to the Court of Appeal's judgment in *Post Office v Nottingham City Council* [1976] where Browne LJ gave an authoritative view on the definition of a hereditament: "I think the test is: as a matter of fact and degree, is, or will the building as a building, be ready for occupation, or capable of occupation, for the purpose for which it is intended?"
19. Therefore, the panel considers that, where a domestic property is derelict or undergoing structural alteration to the extent that it is neither ready for nor capable of beneficial occupation, it will not constitute a dwelling for the purposes of section 3 of the Local Government Finance Act 1992.
20. If the subject property is considered to be a dwelling, then the panel must have regard to the *Council Tax (Situation and Valuation of Dwellings) Regulations 1992* which sets out the statutory assumptions which must be made when valuing a dwelling for council tax purposes. One of those assumptions is that '*the dwelling was in a state of reasonable repair*'.
21. The concept of 'reasonable repair' was examined in *Wilson v Coll (LO)* where it was established that the test to be applied is whether it is reasonable that the dwelling could be brought back into a state for habitation with a reasonable

amount of repair work. In the *Wilson v Coll (LO)* judgment in paragraphs 40 and 41 reproduced below, Mr Justice Singh outlined the correct legal test:

“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.

41. The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake.”

22. The panel fully understood the reasons for the appeal, the subject dwelling had been unoccupied for many years and used as storage for the business and therefore, it was submitted should be considered part of the non-domestic hereditament. The panel was obliged, however, to consider the appeal in the light of the guidance contained in the binding High Court decision in *Wilson v Coll*. It found that, the subject dwelling had not been, in the judge’s words, a “truly derelict property.” Therefore the panel considered whether the subject dwelling was capable of repair to make it suitable again for use as living accommodation.
23. The Appellant did not dispute that the property had been used as a domestic dwelling in the past, which established the domestic nature of the property. Therefore compelling evidence would be required that its character had changed substantially if reclassification as a non-domestic hereditament was to be justified in accordance with *Guthrie v Highland Region and Western Isles Area Assessor [1995] RA 292*. It was submitted the storage of business files had changed its use and the subject dwelling had lost its character as a domestic dwelling.
24. There were several witness statements that attested to the fact that the property was unoccupied and used as storage for documents of the business. These supported the chronology of events and also confirmed that there were domestic items stored in the subject dwelling. None advised the extent to which the rooms in the subject dwelling were used or if any alterations had been made to facilitate the storage. The panel accepted the statements and gave them weight as to the fact that there was storage of non-domestic items, however they were of little assistance in determining the extent of the use or whether the character of the subject dwelling had substantially changed.
25. The photographs that had been submitted showed it to be wind and watertight with some sanitary fixtures still in place. The rooms appeared to require mostly cosmetic work for the subject dwelling to be returned to habitable

condition. The question of access through the business was not material to whether it was a dwelling. The panel noted that in the Fire Risk Assessment the top floor was described as ancillary accommodation which supported the view that as of 4 January 2007 it was domestic in nature.

26. The panel was mindful of the definition of domestic property in Section 66 (1) of the LGFA 1988 that a property is domestic if it is private storage premises used wholly or mainly for domestic storage. The panel had regard to the lease dated 2010 this defined the “premises” as ground and first floor and storage room on the second floor it also provides the landlord with the “right of access from the back door over the rear stairs to the second floor for the purposes of using the rooms therein not demised for storage purposes”. This was given some weight as it established that there was a provision within the lease that the business storage was limited to one room of the subject dwelling and therefore the majority of it remained as domestic. The panel concluded the subject dwelling was still capable of being repaired and used as a dwelling.
27. The panel also considered the provision of Section 66 (5) that “property not in use is domestic if it appears that when next in use it will be domestic”. The panel concluded that the character of the subject dwelling had not changed substantially as the majority of the rooms were not being used for storage for the business. The photographs that had been taken in 2021 after the subject dwelling had been taken out of the list, showed one room where file boxes were on the floor, there was no shelving or fittings for storage. There were also some files in another room alongside several domestic items. There was no evidence supplied that there had been more files stored in the subject dwelling at any time before this. The panel gave the photographs substantial weight as evidence of the use, character, and condition of the subject dwelling, although they were several years after the date of deletion, there had been no evidence provided that this was different to the condition of the property on any of the earlier dates.
28. The Appellant also stated the subject dwelling was unoccupied and a search of the electoral register showed no-one registered after 1990. The panel was aware that it was not necessary for a property to be occupied to be a dwelling, therefore it gave no weight to this evidence.
29. The panel found the disconnection of the utilities could easily be reversed; the lease indicated that one room was leased to the Appellant Partnership for storage the rest remained available to the landlord to be used for domestic storage. The photographs from 2021 and floorplan indicated that no work had been done to change the physical character of the dwelling itself. The evidence from the employees stated that the subject dwelling had continued to be used as domestic storage as well as storage of non-domestic items, for the period, this was supported by the evidence of personal items being stored in the subject dwelling in the photographs from 2021. The panel was not satisfied on balance of probabilities that on either 1 October 1995 or 4 January 2007 the subject property had changed in character so that it could not be used as domestic property in future and it was beyond repair.

## **Disposal**

30. In view of the above findings and conclusions, the Tribunal Panel was satisfied that the subject property remained a domestic dwelling as the character had not changed substantially with only a quarter of the subject dwelling being used for non-domestic storage, the remainder either being empty or used for domestic storage and no physical changes having been made to the fabric of the subject dwelling. Therefore the subject dwelling was capable of repair and should not be deleted before 25 September 2014.
31. The appeal was dismissed.

**Date issued to parties:** 24 September 2024

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### **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.

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