



**IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A COUNCIL TAX VALUATION APPEAL**

Case No: VT00028491

Sitting remotely using
Microsoft Teams

Date: 13 August 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Council tax valuation appeal; Local Government Finance Act 1992; proposed deletion of assessment; flat incapable of occupation due to the presence of Reinforced Autoclaved Aerated Concrete; incapable of reasonable repair; Camden London Borough Council v Civil Aviation Authority and Langford (VO) EWCA [1980] RA 369; appeal allowed.

Before:

**MRS PA CROWTHER-NEWMAN
MRS R HEALD**

Between:

CHRIST CHURCH UNITED REFORM CHURCH

Appellant

- and -

**LUCY FORMELA-OSBOURNE
(LISTING OFFICER)**

Respondent

Regarding:

**CHURCH FLAT, 741 WARWICK ROAD, SOLIHULL B91 3DG
(the "subject property")**

**Reverend Mark Meatcher for the Appellant
Mr Howard Cotes for the Appellant
Miss Amy Pearson of the Valuation Office Agency for the Respondent**

Hearing date: Monday 21 July 2025

DECISION AND STATEMENT OF REASONS

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Decision

1. The appeal was allowed.
2. As the appeal property was found to be incapable of reasonable repair, its entry was deleted with effect from 5 August 2024.

Introduction

3. The appeal process began when the Appellant served a proposal on the Listing Officer on 5 August 2024 which sought a deletion of the appeal property's list entry with effect from 11 April 2024. This was on the basis that the presence of Reinforced Autoclaved Aerated Concrete (RAAC) meant that the flat was unsafe to occupy. After considering the merits of the proposal, the Listing Officer deemed it to be not well founded and issued a decision to that effect on 5 December 2024. The Appellant then filed an appeal against the Listing Officer's decision to this tribunal on 23 February 2025.
4. The appeal property was a former Caretaker's flat that was situated at first floor level, housed within a two storey building owned by the Church. It was built between 1965 and 1966. The flat had an existing assessment of Band B with effect from 1 April 1993.
5. The effective date sought for the deletion of the list entry coincided with the date of the structural survey of the Church's premises which was undertaken on 11 April 2024 by Ian Batkin on behalf of ADM Structural Ltd.
6. The relevant date in this case was the date when the flat ceased to exist as a hereditament. Originally, the Appellant proposed an effective date for a deletion of 11 April 2024. At the hearing, a revised effective date of 5 August 2024 was sought. If the panel found that the flat remained a hereditament on 5 August 2024 the appeal would have been unsuccessful.
7. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Issue in dispute

8. Whether or not the appeal property remained a hereditament given the presence of RAAC.

Relevant Law

9. Section 3 of the Government Finance Act 1992 provided:
 - (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

....

10. Section 115(1) of the General Rate Act 1967 provided:

- (1) In this Act, except where the context otherwise requires, the following expressions have the following meanings respectively, that is to say –

“*hereditament*” means 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.”

11. Thus, under the statutory scheme, in appeals of this nature, the first step was to determine whether a hereditament existed. The essential elements of rateable occupation which have to be met in order for a hereditament to exist have been considered by the courts in a number of different statutory contexts.

12. In *John Laing & Son Limited v Assessment Committee for Kingswood Assessment Area & Others* [1949] 1 KB 344, Tucker LJ said at 350:

Mr. Rowe has said that there are four necessary ingredients in rateable occupation, and I do not think there is any controversy with regard to those ingredients. First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period....

13. The four necessary ingredients in rateable occupation as identified in *John Laing* was often referred to as the ABET test.

14. For the council tax purposes, if a hereditament is found to exist, it is valued having regard to the statutory assumptions as outlined in Regulation 6 (2) of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992. The statutory assumption that was most relevant to the appeal, in this case, was Regulation 6 (2) (e) that the dwelling was in a reasonable state of repair.

15. In *Wilson v Coll (LO)* [2011] EWHC 2824 (admin) Singh J confirmed, in paragraphs 39 and 40 of his judgment, the legal test to determine whether a hereditament existed where it was contended a property was no longer in a reasonable state of repair:

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 Practice Note 4: Disrepair, Building Works, Temporary Disabilities and Flooding to the Council Tax Manual (VOA). The question is: “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.

16. It is thus well established that if the reason why a property cannot be occupied is due to a repair issue, a hereditament will still exist. As the statutory fiction assumes that the property has to be valued in a state of reasonable repair, even if in reality it is in disrepair. Whilst Singh J held there was no economic test, there may come a point where the property is beyond reasonable repair. One such case was *Tewari v Virk* [2020] VTE Appeal M0826076 where the flat was destroyed by a fire and the President held that it had ceased to exist, following the fire. In *Bunyan v Patel* [2022] EWHC 1143 (admin) Lang J held that the President's decision to delete was correct as she explained in paragraphs 39 and 40 of her judgment.

39. In *Tewari*, the President of the Valuation Tribunal found that, following a serious fire, the appeal property was "in effect a burnt-out shell that was incapable of beneficial occupation" (at [38]). He held, at [47]: "The Listing Officer accepted that the property was incapable of beneficial occupation, following the fire, but argued it could have been a later date once a reasonable amount of repair works had been carried out. Having regard to the surveyor's report and the photographs, I do not accept that the amount of repair works required were reasonable. The flat was totally destroyed by the fire as was the public house. The reinstatement works required were major as were the building costs involved and there is no doubt in my mind that the appeal dwelling ceased to exist once the fire took hold. The corollary of that is that the Listing Officer erred in his refusal to delete it. There was no longer a hereditament to begin with to which he could apply the statutory assumptions. To use an analogy, you cannot repair what is not there."

40. In my view, this analysis and conclusion, on the facts, was consistent with a proper application of the principle set out in *Wilson v Coll* and confirmed in *Monk*. The facts were markedly different to this case, as the property had been totally destroyed.

Discussion

17. Miss Pearson defended the Listing Officer's decision not to delete the appeal property's list entry. In the ADM Structural Survey report dated 11 April 2024, the presence of RAAC had been found in the ground floor but there was no mention of it being in the first floor. Moreover, this structural survey did not refer to the flat at any point, so the Listing Officer was not minded to delete the list entry.
18. The Appellant sent additional evidence to the Listing Officer, with a copy to the tribunal, on 22 June 2025. As this information was not included within the hearing bundle by the Listing Officer, the Appellant re-sent the documents on 7 July 2025 by email. Miss Pearson had no objection to these documents being admitted into proceedings. The document was a report from Quinquennial Inspections Ltd who surveyed the site. The date of the survey inspection was 14 March 2024. The other document was a spreadsheet showing the works, identified by Quinquennial Inspections Ltd that needed to be undertaken, and their estimated cost.

19. Having seen sight of the photographs of the ground floor accommodation beneath the flat which showed numerous acroprops supporting the ceiling, Miss Pearson accepted that RAAC was present in the floor of the flat. Reverend Meatcher said there was also an issue with the staircase that led from the ground floor to the flat above which meant it was unstable.
20. In fairness to the Listing Officer, Reverend Meatcher admitted that the Church's intention had been to carry out the repairs on the flat to bring it back into use. He also conceded that the flat was still in use on 11 April 2024 but due to safety concerns all use of it had ceased soon afterwards. Given that the costs of the remedial works, as shown on the spreadsheet, were in excess of £250,000, it was not considered viable to undertake the repairs and the intention was to demolish the building. Given the facts, Reverend Meatcher asked the panel to allow the appeal and delete the list entry with effect from 5 August 2024, being the date when the proposal was served on the Listing Officer. As demolition work had not begun, Miss Pearson was of the opinion that it would not be appropriate to delete the list entry until a programme of works began.
21. The Court of Appeal's judgment in *Camden London Borough Council v Civil Aviation Authority and Langford (VO)* [1980] RA 369 had been sent to the parties prior to the hearing and both were invited to comment on its relevance. Reverend Meatcher believed that the case had similarities with the appeal before the panel. Miss Pearson conceded that the question of whether the presence of RAAC meant that the flat was beyond reasonable repair was a grey area and a matter for the panel to decide. She admitted that she had not sought technical advice on the point.
22. RAAC was a lightweight material that was used to construct flat roofs, floors and walls. It was frequently used between the 1950s and 1990s because it was far cheaper than standard concrete and was quicker to produce and easier to install. It was now present in a number of public buildings which was a cause of public concern, especially following the collapse of a school ceiling. Some people have described it as bubbly like an Aero chocolate bar. It was less durable than standard concrete and had a lifespan of around 30 years. Its structural behaviour differed from standard concrete and was susceptible to structural failure especially when exposed to water as the bubbles facilitated ingress into the material.
23. RAAC although called concrete was completely different to traditional concrete and was much weaker because of the way it was manufactured. If RAAC was in *situ* beyond its lifespan, it was prone to collapse without warning. That was why if its presence was known and identified the affected area had to be reinforced pending replacement with a different material. In the appeal case the affected ground floor ceiling below the floor of the flat was reinforced by acroprops. It being accepted that buildings that contain RAAC were dangerous to occupy. The acroprops was a short term fix to help prevent the ceiling from collapse. As identified by Ian Batkin's ADM report dated 11 April 2024, the long term solution to bring the property back into use was to replace the RAAC with a floor of a different construction. The recommended solution was engineered joists (TGI) which the panel understood to be Truss Joist I-beams and was more commonly known as TJI.

Given the RAAC that was present in the floor of the appeal property was beyond its lifespan and the recommended solution was to effectively rip it out and replace it with a material of superior construction with greater stability and durability, the question to be resolved was were the works that would be involved fall within the nature of repair?. The panel therefore looked for authoritative guidance on this point and it was found in the Court of Appeal's judgment in the Space House case *Camden LBC v Civil Aviation Authority*.

24. When the Court of Appeal heard the Space House case, a different type of building material was a significant concern and causing nationwide anxiety in the 1970's and 80's, it was high alumina cement concrete (HAC). Like RAAC, HAC had unreliable strength and was prone to collapse, especially when cracks appeared.
25. Space House was blighted by the presence of HAC beams which meant that it was unstable and incapable of occupation for office use. A nominal £1 Rateable Value was sought, which was similar to a deletion of the list entry as in practice no rate charges would have been levied. The Lands Tribunal held that the works involved to strengthen the structural integrity of the building went beyond the repairs that were assumed to be undertaken under the statutory hypothesis for rating. In the Court of Appeal's judgment which upheld the Lands Tribunal member's decision, the latter's finding on the repair issue was referred to as follows;

Faced with that position — the condition of the building on March 21 1975 — the member decided that the premises were in fact unlettable and, accordingly, made the nominal assessment. Referring to the work of the "Y" beams or columns and the work of the HAC beams, he said this:

I do not consider that these two items can in any sense be deemed to be work of repair, still less that they can be considered as repairs which the hypothetical landlord is to be deemed to have carried out. They both represent substantial structural defects going far beyond what would ordinarily be considered to be repair. They had their origin in defects of design or construction, and the remedying of these defects has the result of producing a building which was in a material and significant way better than and different from that which existed before.

26. In Space House, it was not a question of just filling in the cracks of the concrete columns. Struts had to be inserted between the columns and for extra precaution an extra ring/collar was added to the building to prevent movement. Once those works were done, as the Lands Tribunal had identified the owner would be left with a building of a different quality. Although this was a Rating case, this judgment was of great assistance to the panel, in the issue it had to decide, as it had parallels with the council tax appeal before it.
27. Whether the works involved in remedying a defective building or part of a building were reasonable repair was a question of fact and degree. In the Space House case it was held that the works went beyond what could be considered repairs. In the present case, the panel had an independent report that showed that the RAAC was beyond repair and needed to be replaced by a material of greater structural integrity and stability. If and when that work was completed, the appeal property would be a dwelling of a different quality. Ultimately, based on the independent expert evidence placed before it, the panel made a finding of fact that the remedial work required to enable the appeal property to be re-occupied as a flat went beyond what could legitimately be expected by reasonable repair work that the statutory fiction assumed would have been undertaken. As the appeal property could not be re-occupied without removing the RAAC and replacing it with a floor of a different construction, it was incapable of beneficial occupation/use and therefore no longer a hereditament. No counterfactual evidence was presented, on behalf of the Listing Officer, to persuade the panel to come to a different conclusion.

Determination

28. In view of the above findings and conclusion, the appeal was allowed and the list entry deleted effect from 5 August 2024.

Order

29. 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 appeal property's entry from the Rating List with effect from 5 August 2024.
30. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Right of further appeal

31. Any party who is aggrieved at the Tribunal's decision has a statutory right of further appeal to the High Court on a point of law pursuant to Regulation 43 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the High Court within **four weeks** of the date this decision and statement of reasons is issued.
32. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions*" available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mrs PA Crowther-Newman, Senior Member (Presiding)
Mrs R Heald, Senior Member
13 August 2025

David Slater
Registrar & Chief Clerk
Date issued to the parties: 13 August 2025