VALUATION TRIBUNAL FOR ENGLAND

Referencer:

Council tax valuation list appeal; vandalised flat in disrepair; inability to access the site; section 3 of the Local Government Finance Act 1992; Wilson v Coll (Listing Officer) [2011]; property was repairable; appeal dismissed.

Re: Mr C W Pattapola, Apartment 12, 70 Vernon Road, Worsbrough, Barnsley, South Yorkshire S70 5BF (band A effective from 25 October 2002)

Appeal number: 4405594605/257CAD

Hearing on: Wednesday, 21 March 2012

At: Hepworth House, 2 Trafford Court, Doncaster

Parties in attendance: Mr C Pattapola (appellant)
Mr A Pattapola (appellant's son and representative)
Ms R Y Marsden (Listing Officer's representative)

Members: Mr K Peck (Chairman)
Mr J Stanley
Mr J F Vause

The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as being overlooked by the Panel.

Introduction:

1. The appeal property, Apartment 12, 70 Vernon Road, Worsbrough, Barnsley, was a two-bedroom flat in a building built pre-1900, formerly used as a nursing home and converted into 13 self-contained apartments in 2002. The appeal concerned whether the appeal property should remain in, or be removed from, the valuation list from April 2009, owing to its poor state of repair.

Appellant's Case:

2. It was explained to the panel that the appeal property had been completely uninhabitable since March 2009 and would remain so until all of the leaseholders could collectively buy the freehold from the management company (which was ineffective) to manage it themselves and redevelop the building.

3. The appeal property currently had a negligible value on the open market due to its current condition and the issues regarding the freeholder works. The only offer received was from one of the other property owners in the same development for £16,000, made several months ago. The appellant was unable to sell the property because there was a mortgage on it for substantially more than this.

4. The property was in the hands of an agent and had been rented out to a tenant from 2007 to 2009. The tenant vacated the property in March 2009, leaving the property

in complete disrepair. The property had been uninhabitable since that time and had deteriorated further between late 2009 and 2011.

5. The mortgage lenders repossessed the other 12 flats in the development during 2009 and 2010. The receivers in charge of the properties did not secure the development. This meant that there was a continuous series of burglaries to the properties, resulting in damage to the roof of the appeal property, which now leaked rainwater. The windows were damaged and finally the receivers had boarded up the property, but there were still intrusions into the flat.

6. The appellant was not able to access the appeal property as the mortgage company's appointed agent had locked the main gate. One had to climb over a high gate to gain access.

7. There had been an internal fire in the flat when a mattress was set alight by trespassers who were using it as a drug den. All of the copper piping in the building had been stolen to the extent that the floorboards had been taken up. There were no utilities provided to the building as the main electrical fuses had been stolen in 2009 and then the electricity and gas companies removed the remaining equipment. The appellant also believed that the mains water may have been cut off, coupled to general damage to the water pipes. The drains were blocked and there was also considerable rubbish in the grounds surrounding the building.

8. The flat was bought as a buy to let property but there was clearly no possibility of renting it out. Not only was the property uninhabitable, it was also beyond any reasonable means of repair at this time due to the issues with the freeholder and lack of access. Any repairs to the appeal property would be in vain as there was a continued threat of vandalism. The appellant was not able to get any utilities to the property due to the ongoing dispute and lack of clarity over the management of the development. In essence, the appellant was in a ‘catch 22’ situation.

9. In reply to a question, the repairs would cost at least £50,000 for the appeal property and would be between £300,000 and £500,000 for the whole building. There was little point repairing one flat unless the whole building was to be repaired. With regard to the appeal property, repairs were required to the roof, ceilings, all of the plumbing work, sanitary fittings, a new kitchen, floor coverings, redecoration, new windows and doors, new locks, new downpipes, drains and replacement of electrical wiring which had been removed. The gas system was central to the whole building and would not be reconnected until work was done to the whole building.

10. The panel was requested to delete the appeal property from the valuation list with effect from April 2009.

Listing Officer’s Case:

11. Section 3 of the Local Government Finance Act 1992 stated that a dwelling was 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…"

12. Ms Marsden also referred to section 66 of the Local Government Finance Act 1988 contending that although the property was not in use as domestic property, it was still regarded as domestic property because when next in use it was to be domestic living accommodation. In her opinion, as the property had previously been used as living accommodation it was reasonable to assume that this use would continue when the property was used again.

13. Ms Marsden had inspected the appeal property; she explained that it had its own access which meant that one did not have to go through the rest of the building. On the day of the inspection the external door to the appeal property was open.

14. A brief reference was also made to the High Court decision in *RGM Properties Ltd v Speight (LO)* [2011] EWHC 2125 (Admin) and *R v East Sussex Valuation Tribunal,ex parte Silverstone* [1996] RVR 203. [The panel's tribunal officer, Mr D Mulgrew, advised that the decision of *R v East Sussex Valuation Tribunal, ex parte Silverstone* was only relevant for the purpose of determining a council tax band; it confirmed that the statutory assumptions to be made when banding a property, including an assumption that it was in reasonable repair, could not be rebutted by the facts. This had been confirmed by the High Court decision in *Wilson v Coll (LO)* [2011] EWHC 2824 (Admin)].

15. Ms Marsden said the relevant test was, 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? In her opinion, it could be repaired because it had been tenanted before it was vandalised and the pipe work, kitchen and bathroom fittings could be replaced. There was no evidence in the case of the appeal property to say that walls or floors were structurally unsound. In her view, a hereditament still existed.

16. The panel was requested to dismiss the appeal.

17. The hearing was briefly adjourned to give the appellant an opportunity to read the High Court decision in *Wilson v Coll (LO)* [2011] EWHC 2824 (Admin), which was referred to by both the tribunal officer and the Listing Officer's representative. Ms Marsden was of the opinion that if a dwelling was repairable then this decision supported her view that the property should remain in the valuation list. Mr A Pattapola said that the circumstances in *Wilson v Coll (LO)* were different to the present appeal because it was a freehold property; however, the appeal property could not be repaired without the involvement of other leaseholders. The threat of vandalism and lack of services meant there was an inability to repair the appeal property.

Decision and Reasons:

18. The issue for the panel to determine was whether or not the appeal property had ceased to be a dwelling and should be removed from the valuation list. The definition of 'dwelling' in section 3 of the Local Government Finance Act 1992 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."

19. The panel found the High Court decision in *Wilson v Coll (LO)* to be relevant and it provided useful guidance. The High Court decision acknowledged that the legislation was designed to keep dwellings in the valuation list. There was an exemption under Class A of the Council Tax (Exempt Dwellings) Order 1992 to cover those situations when properties were in disrepair. Class A exemption had originally been enacted to run indefinitely provided the conditions were satisfied, but unfortunately for the appellant the position was changed on 1 April 2000 to limit it to a maximum period of 12 months.

20. Additionally and unlike properties assessed for non-domestic rates, the council tax legislation did not allow the Listing Officer or panel to consider whether the repair work was economically viable to carry out. If a dwelling could be repaired it had to stay in the valuation list.

21. Of particular assistance to the panel were the following paragraphs from *Wilson v Coll (LO)*, which dealt with the question of whether a hereditament exists or continues to exist:

> *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:*
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> > *"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?"*
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> *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.*
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> *41. The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake. As I have already indicated, that submission, and my conclusion in accepting it, draws force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present legal regime, whereas it is present in the legal regime which governs non-domestic rating.*

22. The panel appreciated that the circumstances at Apartment 12, 70 Vernon Road, Worsbrough, Barnsley were more exceptional. Unlike in *Wilson v Coll (LO)*, the appeal property was part of a larger vandalised building in disrepair. The decision to repair the building was not that of one person; it required the cooperation of the other leaseholders and the freeholder. The panel appreciated the difficulty the appellant found himself in, because repair work was pointless given the present situation at the building. Even if the appeal property was repaired, would any reasonable person occupy it given the disrepair of the larger building on-site?

23. The panel was particularly sympathetic to Mr Pattapola given the reality of the situation he found himself in. However, the panel found that it could not delete the flat from the valuation list because it had not ceased to be a dwelling. The panel found that the appeal property could be repaired. This point was also acknowledged by the appellant who estimated that £50,000 needed to be spent to rectify the damage. The panel appreciated that this was a high proportion of the property's value but on a finding of fact, the property could be repaired; it had not reached the point where demolition was the only viable option. In view of this, the appeal was unsuccessful and the panel dismissed it.

Approved by the Chairman for issue to the parties

DM/LH