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FIRST DIVISION, INNER HOUSE, COURT OF SESSION

Lord President
Lord Philip
Lord Weir

XA/95/00

OPINION OF THE COURT

delivered by LORD PHILIP

SUMMARY

in

APPEAL

under section 82(4) of the Local
Government Finance Act 1992

by

THE ASSESSOR FOR THE
HIGHLAND & WESTERN ISLES
VALUATION JOINT BOARD

against

A decision of the Highland & Western
Isles Valuation Appeal Panel dated 25
April 2000

in relation to subjects at 14 Portnalong,
Isle of Skye

Act: R.W.J. Anderson, Q.C.; Biggart Baillie
Alt: No appearance

7 December 2000

[1] Section 70 of the Local Government Finance Act 1992 required each local authority in Scotland to impose a council tax, to be payable in respect of dwellings situated in the authority's area. In terms of section 72(2)(a) of the Act "dwelling" -

"means any lands and heritages -

(i) which consist of one or more dwelling houses with any garden, yard,

garage, outhouse or pertinent belonging to and occupied with such dwelling house or dwelling houses; and

- (ii) which would, but for the provisions of section 73(1) (of the Act), be entered separately in the valuation roll.”

Section 74 contains provisions for the calculation of the amounts of council tax payable in respect of dwellings by reference to valuation bands. Section 84 requires the local assessor for each council to compile and maintain a valuation list showing each dwelling in the council's area and the valuation band applicable to it under section 74(2). To enable him to compile the valuation list, section 86(1) requires the assessor to carry out a valuation of such of the dwellings in his area as he considers necessary or expedient to determine which of the valuation bands applies to each dwelling in his area. These valuations are to be carried out on the basis of the assumptions set out in Regulation 2(2) of the Council Tax (Valuation of Dwellings)(Scotland) Regulations 1992. One of the assumptions is that the dwelling is in a reasonable state of repair.

[2] This is an appeal against a decision of the Highland & Western Isles Valuation Appeal Panel dated 25 April 2000, allowing an appeal under section 81(1)(a) of the Act by the tenant of the house at 14 Portnalong, Isle of Skye against the inclusion of those subjects in the council tax valuation list for the area. The subjects were entered in the valuation list at 1 April 1993 and placed in Band A. At that time they were occupied by Donald Macleod, the uncle of the tenant, who continued in occupation until his death on 10 April 1995. On his death the tenancy of the croft, of which the subjects form part, passed to the present tenant and the subjects have been vacant and uninhabited since then. The tenant's ground of appeal as set out in his letter dated 28 December 1999 was that the property was in such a dilapidated state that it could not

be classed as a dwelling in terms of section 72 of the Act. By their decision dated 25 April 2000 the panel allowed the appeal and found that the subjects should be removed from the valuation list. The note accompanying the decision was in the following terms:

“The Committee notes that this property has no plumbed in running water, no 13 amp electricity supply or sewage disposal facilities. The Building Control Officer has recommended that the chimney head on the near lean-to section of the property be demolished. In all the circumstances the Committee considers that the application of the statutory assumption of the property being in reasonable repair would not of itself necessarily render this property as being ‘suitable for occupation’ in terms of the relevant regulations. In all the circumstances the Committee does not consider this dwellinghouse as suitable for occupation and therefore should be excluded from the Council tax list.”

[3] The assessor appealed to this court against the panel’s decision under section 82(4) of the 1992 Act. At the hearing the assessor was represented by counsel. There was no appearance on behalf of the tenant. We were informed that the subjects are typical of a number of older properties in this part of Skye. They were built in the 1920s, with stone gables, corrugated iron walls and an asbestos tiled roof. There is no internal sanitation or running water. The electricity supply is 5 amp but is now disconnected. The rear wing is totally derelict and unfit for use and the back room of the house has had its window boarded up. Other houses in this condition continue to be lived in in certain areas of the Highlands.

[4] Counsel for the assessor submitted that the panel had erred in law in basing their decision to exclude the subjects from the valuation list on the basis of their unsuitability for occupation. The relevant statutory provisions provided no warrant

for such a basis for exclusion. The test was whether the subjects fell within the definition of "dwelling" in section 70. The spartan nature of the property did not alter the fact that it was a dwelling. The panel themselves had described the subjects as a "dwellinghouse".

[5] In carrying out his duties under the Act the first step that the assessor requires to take is to determine whether the subjects fall within the definition of a dwelling. If they do, he must include them in the valuation list and determine which valuation band should apply to them. In our opinion the subjects are properly described as a dwelling. They were lived in up until 1995 and in particular on 1 April 1993. There is no suggestion that their condition has altered materially since that date. While they have no internal sanitation or running water, they are roofed, have external doors and most of the windows are glazed. There is an electricity supply, although it is at present disconnected and in need of modernisation. The panel describe the subjects as a dwellinghouse.

[6] There is no provision in the 1992 Act, or in the Regulations made under it, which provides for the exclusion of a dwelling from the valuation list on the ground that it is unsuitable for occupation. The valuation assumption as to reasonable repair, already referred to, is inconsistent with such a ground of exclusion. We therefore consider that the panel erred in law in importing suitability for occupation as the test for inclusion in the valuation list. We shall accordingly allow the appeal and the subjects will, as a consequence, be restored to the valuation list.