

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 3 December 2014

Subjects	Reference Number
House, Thornbush House, Thornbush Road, Inverness, IV3 8AB	06/01/784004/4 71621
The Appellant	For the Respondent Assessor

INTRODUCTION

The subjects of Appeal are a stone built, two storey and attic, semi-detached property situated on Thornbush Road, Inverness. The subjects are over 100 years old. They were part modernised in 1983. They were entered in the Valuation Roll as offices until on or around August 1995 when, following a survey by staff of the Assessor, they were found to be being used as bedsit accommodation. The subjects were then entered in the Council Tax Roll with effect from 1 February 1995, the date their use as bedsit accommodation was found to have begun. The Appellant purchased a property, of which the Appeal Subjects formed part, in the late 1980's. He subsequently sold that property off in tranches at different times until (on his account) around 1996 or "the late 1990's" when he sold the last of it, the Appeal Subjects, to Donald F MacKenzie and Ainslie Fraser. The Appellant sought to have the entry for the subjects deleted from the Council Tax Roll with effect from 1 February 1995. Notwithstanding the fact the Appellant had not had any proprietorial interest in the subjects for (on his account) up to some 18 years, the Assessor conceded, quite

properly, that this Appeal could still competently be brought by virtue of Regulation 5(1) of the Council Tax (Alteration of Lists and Appeals)(Scotland) Regulations 1993.

EVIDENCE FOR THE APPELLANT

The Appellant gave evidence on his own behalf and led evidence from Donald F MacKenzie, 44 Broadstone Park, Inverness, IV2 4LA.

According to the Appellant, when he purchased the Appeal Subjects, they were in use as offices. Prior to the purchase, the ground floor was occupied by the Company from whose Receiver or Liquidator (he could not recall which) the Appellant bought the subjects. The occupation of that Company ended at or prior to the time of purchase. Two other businesses occupied offices on the first floor and their tenure continued for a time after the Appellant's purchase. Following the purchase, after an unspecified time, the two first floor tenants vacated the subjects thus rendering them empty. The Appellant then allowed a neighbouring proprietor to use the subjects. The Appellant was vague as to when this arrangement began and as to the legal basis for the neighbouring proprietor's occupation of the Appeal Subjects. He was unsure of the neighbouring proprietor's name – he thought it might be a Mr Rutherford. It was unclear what use the neighbouring proprietor was putting the Appeal Subjects to or whether he was paying for that use. In his evidence in chief, the Appellant stated it was during this period of use by the neighbouring proprietor that the Appeal Subjects began to be used for residential accommodation. He described those that resided there as "squatters". He had no idea what was the legal basis of their occupation nor when they took up occupation. Occupation for residential purposes ceased when, according to the Appellant, the Building Standards Department of Highland Council

declared the property to be unfit for human habitation and imposed an Enforcement Notice to that effect. The Appellant could not say when the Enforcement Notice was imposed nor when residential occupation ceased.

In cross-examination, the Appellant admitted he did not know when the residential occupation had begun and conceded, for all he knew, it could have been in place as at 1 February 1995, the date from which he was seeking to have the subjects deleted from the Council Tax List.

Mr MacKenzie gave evidence to the effect he and Ainslie Fraser purchased the Appeal Subjects from the Appellant in the late 1990's (although, in cross-examination, he conceded the purchase might have been early in 2001). He and Mr Fraser bought the Appeal Subjects with redevelopment in mind. The subjects were in a dilapidated state when they were purchased. They have not been redeveloped. They are still owned by Messrs MacKenzie and Fraser. The subjects have not been lived in during the ownership of Messrs MacKenzie and Fraser. Mr MacKenzie did not know if they had been occupied for residential purposes prior to his purchase. During the ownership of Messrs MacKenzie and Fraser, the subjects have been used for storage of building materials.

EVIDENCE FOR THE ASSESSOR

Fiona Rostock, a Member of the Royal Institute of Chartered Surveyors, gave evidence for the Assessor. She has 13 years post qualifying experience, most of that time working in the Assessor's Office in Inverness. Her work includes valuation of domestic and non-domestic properties.

As at 1 April 1993 these subjects were entered in the Valuation Roll as offices. In 1995, after information was received suggesting the subjects were being used as bedsit accommodation, staff of the Assessor carried out a survey of the subjects in August 1995. They satisfied themselves the subjects were then being used as bedsit accommodation and had been since 1 February 1995. On that basis the Assessor entered the subjects in the Council Tax List at Band D with effect from 1 February 1995. Neither the entry on the list nor the Banding have been appealed until now, when the Appellant has appealed the entry.

On the issue of whether the subjects were fit for human habitation, she conceded her Department's 1995 survey suggested the standard of the subjects then was "not of the best". However, they were in fact being used as residential accommodation in 1995.

SUBMISSIONS FOR THE APPELLANT

Prior to the Appellant's ownership of the subjects they had not been put to use for residential purposes. During his ownership they were used briefly as residential accommodation. This was a use which was brought to an end by the Highland Council declaring the subjects to be unfit for human habitation. The brief period of residential occupation was not sufficient to merit entry in the Council Tax List.

SUBMISSIONS FOR THE ASSESSOR

The Assessor referred the Committee to Sections 71 and 72 of the Local Government Finance Act 1992. The latter defines "chargeable dwellings". The former provides that liability for Council Tax shall be determined on a daily basis. This means that if

a property is on any day occupied as a dwelling that renders it susceptible to entry in the Council Tax List. The Appellant having conceded that the property was, for a time, occupied for residential purposes, that meant the original entry was justified. The question then was whether there was now good reason to remove the subjects from the Council Tax List and, if so, with effect from what date?

The Assessor referred the Committee to the Council Tax (Valuation of Dwellings)(Scotland) Regulations 1992, Regulation 2(2)(d) and to a decision of the First Division of the Court of Session in the case of Assessor for Highland & Western Isles Valuation Joint Board against a decision of Highland & Western Isles Valuation Appeal Panel dated 7 December 2000. These, he said, were authority for the proposition that the poor state of the fabric of a building, even to the extent of rendering it unfit for residential occupation was not, of itself, sufficient reason to delete the property from the Council Tax Roll.

DISCUSSION AND DECISION

The Appellant proposed deletion of the Appeal Subjects from the Council Tax List from 1 February 1995. On the basis of the evidence led, the Committee considered it would fly in the face of the evidence to grant the proposal in the terms sought. The Appellant himself conceded the property had been occupied for residential purposes since 1 February 1995, the date from which he sought to have the subjects deleted from the Council Tax List. He said he did not know if this occupation extended as far back as 1 February 1995, but he could not exclude the possibility it might. He said he did not know when the residential occupation ceased.

The Committee recognised that there may be circumstances where the use to which subjects are put makes it appropriate to delete their entry in the Council Tax List and enter them instead in the Valuation Roll, or vice versa. Indeed, in relation to these subjects, they had, up until 1995, been entered in the Valuation Roll. The Committee accepted that the subjects had not been put to residential use since their purchase from the Appellant by Messrs MacKenzie and Fraser. It might therefore be possible to delete the entry in the Council Tax List from the date of that sale. The difficulty faced by the Committee in this regard was the vagueness and uncertainty of the evidence given by and on behalf of the Appellant as to when that happened. The Appellant suggested it was 1996 or “the late 1990’s”; Mr MacKenzie thought it was “the late 1990’s” before agreeing with the Assessor’s suggestion that it may have been in “early 2001”.

For the reasons previously stated, the Appellant’s proposal to delete the entry back to 1 February 1995 must fail. As for an alternative, there was nothing in the evidence presented which would allow the Committee to favour one of those three alternative dates over the two others. Even if the Committee took the view that one was more likely than the other two, the lack of a definite date in respect of any of the three scenarios would make it impossible for the Committee to determine the precise date with effect from which the subjects should be removed from the Council Tax List. For the avoidance of doubt, it is the responsibility of the Appellant in all such cases to put before the Committee credible and reliable evidence of sufficient clarity to enable the Committee to grant an order in the terms sought. In this case there was no credible, reliable evidence of sufficient clarity led by or on behalf of the Appellant from which the Committee could identify another, later date.

As for the condition of the subjects, the terms of the Regulations and the previously decided case in the Court of Session are binding on this Committee. Therefore, the poor state of repair of the subjects cannot be taken into account in considering the Appellant's proposal.

For all of these reasons the Committee considered the Appeal could not succeed. Therefore, the Appeal is refused.