

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 13 April 2016

Subjects	Reference Number
House, Inverailort Castle, Inverailort, Lochailort, Inverness-shire, PH38 4LZ	05/08/009300/1 50467
For the Appellant	For the Respondent
	Frank Finlayson, Esq, Assistant Assessor

INTRODUCTION

The Appeal Subjects are situated close to the North Eastern shores of Loch Ailort, approximately one half mile South of the junction of the A830 (Road to the Isles) with the A861, 27 miles West of Fort William. They are of stone and slate construction. They comprise two storeys with attic. There are over 20 rooms with significant additional accommodation and extend to over 23,000 square feet.

The Castle stands on what was described on behalf of the Appellant as “a small family estate”.

It was requisitioned as a centre for commando training during World War II.

The Appellant sought to have the Appeal Subjects removed from the Council Tax List where they are in Band H, on account of the poor condition of the property.

EVIDENCE AND SUBMISSIONS FOR THE APPELLANT

The Appellant told the Committee that the Castle was occupied by his Great Aunt until she died in 1994. Thereafter it was occupied by Barbara MacIntosh, a friend of his Great Aunt, until 2015. Mrs MacIntosh ran the local Post Office from the morning room of the Castle. She paid the Council Tax. The Castle was “shut down” and not occupied after the death of Barbara MacIntosh in 2015.

The property is in a very poor state of repair. The Appellant was and is concerned about allowing access to the property to anyone because of the risk of floors and/or ceilings collapsing and causing serious injury.

He explained that plans were afoot to try to raise funds to turn the castle into a rehabilitation centre for injured service personnel. The Appellant considered this to be a worthy and appropriate use to which to put the Castle, given its historical armed forces connection. A budget of between £5,000,000 and £6,000,000 was thought to be necessary to renovate it for this purpose.

In cross-examination the Appellant conceded that the Castle retains features of a dwelling apart from the fact that at one part, of what is a fairly large structure overall, the roof had fallen in. He also conceded that there was no physical separation between what might be regarded as “safe” and “unsafe” areas. He advised that the deterioration of the property had been gradual but had accelerated more rapidly in the last 2 to 3 years.

EVIDENCE AND SUBMISSIONS FOR THE ASSESSOR

Evidence was given on behalf of the Assessor by Stephen MacKenzie a valuer in the Assessor's Office with some 6 years relevant experience. He became involved in this case as a result of the Appellant asking for the property to be deleted from the Council Tax List.

He did not dispute the Appellant's evidence about the general condition of the subjects. Indeed, Mr MacKenzie produced photographs which showed, in quite graphic detail, the property in a serious state of disrepair. He conceded that he would not choose to live in the property were the opportunity to arise.

He was not surprised by the budget figure of £5,000,000 to £6,000,000 being talked of to renovate the property.

Despite the sympathy which Mr MacKenzie had with the Appellant having regard to the obvious physical state of disrepair of the property, it was still a "dwelling" within the terms of the Regulations and so had to be included in the Council Tax List.

The Assessor submitted that if the property falls within that definition then he must include it in the Council Tax List and determine in which Band the property lies. (There was no attempt by the Appellant to argue that if the property falls to be entered in the List that it should not be in Band H). There is no provision allowing for the exclusion from the List of a property which is merely unsuitable for occupation. The valuation assumptions which the Assessor has to make do not allow for that.

The Assessor referred to previous cases by Committees of this Valuation Appeal Panel where the same point had been considered.

The Assessor for Highland & Western Isles Valuation Joint Board versus MacLeod 2001 SC476 (“the Portnalong case”);

Anson Fraser versus The Assessor for Highland & Western Isles Valuation Joint Board, a case decided on 24 January 2008, (“the Anson Fraser case”);

Alexander MacKay versus The Assessor for Highland & Western Isles Valuation Joint Board, a case decided on 9 April 2015, (“the Alexander MacKay case”).

He submitted these cases supported the stance he was taking in relation to the Appeal Subjects. A property can only be removed from the Council Tax List if it ceases to be a dwelling. Notwithstanding its poor state of repair, the Appeal Subjects retain the principal characteristics of a dwelling, when last occupied that was as a dwelling and that occupation was as recent as 2015.

DISCUSSION AND DECISION

Section 70 of the 1992 Act 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 dwellinghouses with any garden, yard, garage, outhouse or pertinent building belonging to and occupied with such dwellinghouse or dwellinghouses; 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 amount 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) Regulation 1992. One of the assumptions is that the dwelling is in a reasonable state of repair.

The relevant facts in relation to these Appeal Subjects were essentially not in dispute. The subjects are clearly in a poor and dilapidated state of repair. Nonetheless, that observation in itself would not be sufficient to justify the removal of the subjects from the Council Tax List.

The Committee considered the Portnalong case not only relevant but binding. The same legal principles apply even although the subjects being considered in the Portnalong case were a croft house whereas here they are a castle. The opinion of the Court in the Portnalong case was delivered by Lord Philip who, at paragraph 6, stated – “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.”

As was referred to by the Assessor, Committees of this Panel, including those which heard the Anson Fraser and Alexander MacKay Appeals, have previously considered themselves bound by what was said by Lord Philip.

Therefore, while acknowledging the unenviable position in which the Appellant now finds himself, the Committee considered that the subjects continued to meet the statutory definition of a “dwelling”. For this reason the Appeal was refused with the effect that the Appeal Subjects remain on the Council Tax List.