

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Portree, 25 August 2016

Subjects	Reference Number
Struan House, 4 Balgown, Struan, Isle of Skye, IV56 8FA	04/10/014100/9 46503
For the Appellant	For the Respondent
	Frank Finlayson, Esq, Assistant Assessor

INTRODUCTION

The Appeal Subjects are situated on the North shore of Loch Beag, Struan on the West coast of the Isle of Skye. Constructed around 1850 they are a detached, one storey and attic property constructed of stone walls and slated roof. The Appellant sought to have the Appeal Subjects deleted from the Council Tax List with effect from 19 January 2007. The Assessor declined to do so. It was against that decision the Appellant appealed to the Committee.

EVIDENCE AND SUBMISSIONS FOR THE APPELLANT

The Appellant was ably assisted in the presentation of his case by Ms Judy Foottit of Advocacy Highland. She produced, and referred to, a letter of 4th April 2016 from Skye and Lochalsh Citizens Advice Bureau to the Secretary, Valuation Appeal Committee which set out the basis for the Appeal.

The Appeal Subjects were originally constructed as an Inn. They came into the ownership of the Appellant's grandfather in 1902. The Appellant was born there in 1935. On the death of

his father in 1968, the Appellant inherited the subjects. Until then the property was being run as a boarding house with five bedrooms. After 1968 the subjects ceased to be used as a boarding house and were instead used as a dwelling, latterly for the Appellant and one of his sisters. From 1968 the subjects began to fall into a state of disrepair. By November 2006, when the house was inhabited by the Appellant and his sister, there were only two rooms habitable, an upstairs bedroom and a downstairs bedroom. The Appellant and his sister shared the upstairs bedroom. They had converted the downstairs bedroom into a lounge/kitchen. The only electric lighting in the property was from a single bulb in the downstairs room. They cooked on a camping stove.

In a storm in November 2006, a chimney breast situated approximately in the middle of the property collapsed into the bedroom then occupied by the Appellant and his sister. They vacated the property at that time, taking with them only the clothes they stood in. They presented to the Local Authority as homeless and were housed under its Homeless Persons Policy on 24 November 2006. A Council Housing Officer noted at the time there was a river running into the back of the house, through the downstairs room the Appellant and his sister had been living in, and out the front of the building towards the shore. The subjects have not been occupied since then.

Ms Foottit submitted the subjects were a complete ruin. Due to its historical significance she understood the subjects were a Category C Listed Building. Due to their condition it was stated on behalf of the Assessor, that they were listed on the Buildings at Risk Register. Due to these two listings, the Appellant believed there may be regulatory impediments to demolition of the subjects. Those aside, there was, for the Appellant, also the insurmountable

practical impediment to demolition, that of cost. He understood the cost of demolition to be of the order of £30,000.

Ms Foottit also made comparison with subjects in Earlish and Lochcarron which, from the photographs presented, appeared to be more structurally sound than the Appeal Subjects but which were not entered in the Valuation List. Under cross examination she accepted the Assistant Assessor's explanation that, when last valued, each had been entered in the Valuation Roll and had been deleted from it under separate rules allowing that. The property in Earlish had previously been a self-catering property. That in Lochcarron had been a dwelling that was deleted as derelict when dwellings were still entered in the Valuation Roll prior to the introduction of, first, the Community Charge and, second, the Council Tax.

In her submissions, Ms Foottit stated the subjects were not a dwelling and had not been since 2006. They were a ruin. As such they ought not to be included in the Council Tax List and so their entry should be deleted.

EVIDENCE AND SUBMISSIONS FOR THE ASSESSOR

Evidence was given for the Assessor by Angus Bethune, MRICS, a Valuer based in the Assessor's Inverness Office. He has been dealing with the valuation of dwellings in Skye since before the inception of Council Tax in 1993.

No issue was taken by Mr Bethune as to the account given on behalf of the Appellant regarding the history of the subjects. He agreed they had fallen into a state of dereliction.

He gave an account of how the subjects had originally been listed in the Council Tax List at Band E. That banding was not appealed. However, at the request of the Local Authority's Finance Department, in 2002 he had reviewed the banding of the subjects. As a result he determined the subjects had been entered in the Council Tax List at Band E in error and that they should instead have been in Band C. The entry was amended accordingly. The re-banding was to correct the original error and was not on account of the condition of the subjects. He had to apply the statutory valuation assumption as to reasonable repair.

The Committee was greatly assisted in this case by the production by Mr Bethune of a number of photographs he had taken. They were taken in, variously, February 1993, July 2002, February 2013 and February 2016. From these photographs it appears the subjects were in a very poor state of repair by July 2002. One half of the subjects can be seen from these pictures to have been derelict, missing most of the slates and much of the sarking from the roof. Some of the windows in the derelict half of the property were missing. All of the windows in the half then still occupied by the Appellant and his sister appeared to be in situ.

There was no marked change in the condition of the subjects as between the photographs from February 2013 and February 2016. There are however significant changes as between those two sets of photographs and those from July 2002. Mr Bethune said that he believed the photographs taken in 2013 fairly represented the state of the property during the whole period since 2006.

What remained of the roof over the derelict half of the building in 2002 had collapsed by February 2013 and those roofing materials lay within the walls of that part of the building.

There was a cavernous hole in the gable separating the two halves of the building, caused by the collapse of the chimney stack in November 2006.

The roof ridge over the half occupied until November 2006 was, by February 2013, seen to be devoid of slates and sarking leaving the roof trusses there exposed.

There were no external doors in place. None of the windows were glazed and some of the window apertures had no frames.

Mr Bethune stated he had been asked in 2012 to review the entry of these subjects in the Council Tax List and consider their deletion. He gave consideration to this but decided the entry should be maintained. The last use of the appeal subjects had been as a dwelling. He had to assume a reasonable state of repair. There was no provision in the legislation which allowed for deletion of an entry in the List just on the ground that a dwelling was not habitable. He accepted there were regulatory impediments to demolition of the subjects as previously referred to. Standing those it was his view that the subjects could therefore never be deleted from the Council Tax List.

In his submissions to the Committee the Assistant Assessor accepted the subjects could be described as derelict. However the subjects still possessed the physical characteristics of a dwelling and their last use was as such. He referred the Committee to the provisions of Section 72 (2) (a) of the Local Government Finance Act 1992 and also to the decision of the First Division of the Court of Session in the Appeal by the Assessor for the Highland and Western Isles Valuation Joint Board against a decision of a Committee of this Panel dated 7 December 2000 relating to subjects at 14 Portnalong, Isle of Skye (hereinafter referred to as

“the Portnalong case”). Those provisions of Section 72 of the Act read with the Portnalong case required the Assessor to continue to treat the subjects as a dwelling and therefore to maintain their entry in the Council Tax List.

DISCUSSION AND DECISION

Section 70 of the Local Government Finance Act 1992 required each Local Authority in Scotland to impose 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.

These subjects were entered in the Valuation List at 1 April 1993 and placed in Band E. In 2002, the Assessor, at his own hand, corrected what he perceived had been an error by placing the subjects in Band C rather than in Band E. The entry, with any banding, was challenged by the Appellant in 2012. The Assessor reconsidered whether the subjects should remain in the Council Tax List at that time. He concluded they should remain.

The facts of the case were essentially agreed. They are as set out in the Evidence and Submissions Sections above. The issue for the Committee was how the relevant provisions of the 1992 Act and case law should be applied to those facts.

If the subjects retain the characteristics of a dwelling they should remain in the list. If they no longer have those characteristics, they should be deleted from the list.

In the evidence given, and submissions made for the Assessor, there was an inference that once subjects had been entered in the List, unless they were demolished or put to some use other than as a dwelling, they had to remain on the list, irrespective of how derelict they might become. That is an inference with which the Committee did not agree. Without being demolished or put to another use, subjects **could** lose the characteristics of a dwelling. It had to be a matter of fact and degree in each case.

Section 72(2)(a)(ii) of the Local Government Finance Act 1992, in essence, imposes the same criteria for determining whether (a) lands and heritages categorised as a dwelling should be included in the Valuation List, or (b) other lands and heritages should be included in the Valuation Roll. That implies, in turn, that ruinous properties not capable of any beneficial

occupation should be deleted from either the Valuation List or the Valuation Roll, according to where they were last entered.

The Assessor sought to found on the Portnalong case. The facts of that case were, however, markedly different from those in this Appeal.

The period from last occupation to the hearing in the Portnalong case was five years; it was ten years in this Appeal.

It was said in the Portnalong case there was no suggestion the condition of the subjects had altered materially since they were last occupied; there has been significant dilapidation of the subjects of this Appeal since they were last occupied. That occupation was terminated by a catastrophic accident which left the Subjects ruinous and incapable of any beneficial occupation.

In the Portnalong case it was said on behalf of the Assessor that other houses in the condition of the subjects in that case continued to be lived in in certain areas of the Highlands; quite properly, given the totally ruinous condition of the Appeal Subjects here, no such suggestion was made in this Appeal.

Taking account of the condition of these Appeal Subjects, the Committee decided they could no longer be said to have the characteristics of a dwelling. Since 2006 they have become a ruin. Therefore they fell to be deleted from the Council Tax List.

As for the effective date for their removal from the List, the Assistant Assessor said the Appellant contended for 19 January 2007. However, there was no evidence as to what significance, if any, that date held. The significant event which changed the characteristics of the subjects from a dwelling to a ruin, and which precipitated their permanent evacuation, was in November 2006.

Therefore, the Committee allowed the Appeal and directed the deletion of the subjects from the Council Tax Valuation List with effect from 24 November 2006.