Neutral Citation Number: [2022] EWHC 1143 (Admin)

Case No: CO/3599/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 May 2022

Before :

MRS JUSTICE LANG DBE

- -

Between :

DAWN BUNYAN (LISTING OFFICER)	**Appellant**
- and -	
LAXMI PATEL	**Respondent**

- -
- -

Isabel McArdle (instructed by **HMRC Solicitor's Office and Legal Services**) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 28 April 2022

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Approved Judgment

Mrs Justice Lang:

1. This is a statutory appeal against a decision of the Valuation Tribunal for England ("the Tribunal"), dated 17 September 2021, which allowed an appeal by the property owner (Mrs Patel) against the decision of the Valuation Office Agency Listing Officer ("the Listing Officer"), dated 18 August 2020, and deleted the entry in the council tax valuation list for the appeal property, 17 Mill Ridge, Edgware, HA8 7PE ("the Property").

2. The issue in the appeal before the Tribunal was whether the Property still constituted a dwelling, for the purposes of section 3 of the Local Government Finance Act 1992 ("the LGFA 1992"), on 28 August 2019 ("the relevant date"). The Tribunal found that the Property was not capable of beneficial occupation at the relevant date because it required major works to remedy rising damp, and so a hereditament did not exist.

3. The Listing Officer appeals to the High Court, pursuant to regulation 43 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, on the ground that the Tribunal applied an incorrect legal test and thus fell into a material error. The Listing Officer contends that, had the error not been committed, the Tribunal would have dismissed the appeal.

4. The right of appeal from the Tribunal to the High Court under regulation 43 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 is on a question of law only. By paragraph 4, the High Court may confirm, vary, set aside, remove or remit the decision or order, and may make any order the Tribunal could have made.

5. The Respondent has taken no part in the proceedings, to avoid incurring legal costs.

Factual background

6. The Property is a 3 bedroom semi-detached house which was constructed in the 1930's. It has a gross external area of 103 sqm. It entered the council tax valuation list as a band E dwelling on 1 April 1993.

7. The Respondent let the Property to tenants from a date unknown until 27 August 2019 when they were evicted from the Property.

8. On 22 July 2020, the Respondent applied to the Valuation Office Agency to delete the Property from the council tax valuation list with effect from 28 August 2019, when the Property became unoccupied.

9. The basis of her application was that the Property was uninhabitable because of rising damp caused by the intrusion of weather. She relied upon a survey report by Rentokil, with photographs, dated 15 October 2019. The key points in the survey were as follows:

    i) Properties of this age should have an original damp proof course in the form of slate on mortar bed or bitumen layer, some 6 to 7 inches below floor level. It was not visible on inspection. The external ground level may be bridging the existing damp proof course.

ii) A horizontal damp proofing system should be installed.

iii) Meter readings indicated rising damp in the ground floor walls and floors.

iv) The ground floor wall plaster was contaminated with salts due to moisture and needed to be removed and replaced with salt and moisture resistant plaster.

v) The ground floor skirting boards were at risk of attack by fungi due to their moisture content, although there were no visible signs of fungal decay.

vi) Skirting boards were to be removed from treated walls, and replaced or repaired as necessary.

vii) There was evidence of plaster fungus growing from the wall/floor joint near the rear doors, indicative of a plumbing leak, probably from the radiator pipe.

viii) On the first floor, in the rear left corner of the rear room, there was evidence of penetrating damp caused by historic rainwater ingress. The plaster was contaminated with salts due to moisture and needed to be removed and replaced with salt and moisture resistant plaster.

ix) The estimate for the works was £5,032.81.

10. On 18 August 2020, Mr Andrew Corkish MRICS, Listing Officer at the Valuation Office Agency, sent a decision notice rejecting the Respondent's application to delete the entry for the Property. The Supporting Information Document stated:

> "Properties can only be deleted from the council tax list under very limited circumstances. For a property to be deleted I must be satisfied that it is sufficiently derelict to no longer be capable of beneficial occupation and has reached a stage where it is beyond the scope of reasonable or normal repair. It is only where the extent of disrepair is so severe that it would not be reasonable to put the property in an appropriate state of repair for its age, character and location, that a property might be considered derelict.
>
> Simply put, a property is only considered uninhabitable for Council Tax purposes when it has deteriorated to the point when it is incapable of being made habitable again without large scale works, often including substantial structural repairs. A property in this condition is described as being "beyond reasonable repair". A property may be in poor condition or require modernisation works to bring it to modern standards but this would not be considered sufficient for it to be deleted from the Council Tax list. Please note, I cannot take into account whether the property is vacant, or the cost of repairs, I can only consider the current state of the property, and the works required to repair it.

> While the evidence you have provided shows that the property has damp damage, I do not consider that it to be beyond reasonable repair. The works required to repair the property consist of strip-out, dry-out and refurbishment works. Such works are not considered substantial to warrant a deletion from the council tax list. Furthermore, there is no evidence to show that any structural works are required. Due to this, for council tax purposes, the property remains within reasonable repair, I therefore cannot agree to delete it from the Council Tax list."

11. The Respondent submitted an appeal against this decision to the Tribunal on 20 August 2020.

12. The Respondent commenced works at the Property on 23 September 2020. More extensive damp problems came to light after the works began. In a further report dated 15 November 2020, based on a survey on 10 November 2020, Rentokil advised that there was evidence of plaster contamination with salts to the walls in the kitchen. The units needed to be removed, and the plaster replaced with specialist rendering, at an additional cost of £1,746.49.

13. Subsequently the Respondent explained in an email to the Valuation Office Agency, dated 9 February 2021, that a "complete renovation is taking place starting with new wiring, new walls and ceilings. It is currently a building site ….". Photographs taken in January 2021 showed the Property stripped back to bare brickwork. The Respondent also provided a copy of an agreement with a developer to remove and replace the ceilings, floors, skirtings, doors, kitchen and bathroom, at a cost of £25,000.

14. In the light of this extensive re-development of the Property, the Valuation Office Agency reviewed the Respondent's application to delete the entry and concluded that the Property was no longer capable of beneficial occupation once the works commenced on 23 September 2020.

The Tribunal's decision

15. Following a remote hearing on 10 September 2021, the Tribunal (Mr A. V. Clark (Vice-President)) issued its Notice of Decision on 17 September 2021. After summarising the legal framework and the evidence, the Tribunal concluded as follows:

> "22.In reaching my decision on whether or not a hereditament existed at the relevant date, I had regard to the evidence provided by the Appellant. Whilst there were no photographs of the subject property at the relevant date of 28 August 2019, the photographs contained in the survey conducted on 7 October 2019 clearly showed fungus visible to the naked eye present within the property. Mr Patel confirmed that the water ingress had happened some time before the occupants vacated and the property's condition was deteriorating over time. He contended that, once the issues were identified, the property would be no longer fit for habitation until substantial works had been carried out. Mr Cromwell cited *Wilson v Coll* and argued that the

property was capable of reasonable repair until the works began in September 2020.

23.The President's decision in *Tewari v Virk* [2020] (appeal M0826076) highlighted the danger in relying on the Wilson v Coll case, when legislation had changed since that 2011 decision. When that High Court judgment was made, taxpayers had the opportunity to claim a Class A exemption for dwellings that were in need of major repair works to render them capable of occupation. That exemption was abolished from 1 April 2013. In the Tewari case, the President stated, with regard to applying the statutory assumptions to a property in need of works to make it habitable, –

'Such a robust approach without giving proper consideration to whether a property is capable of occupation at the relevant date or whether it is reasonable for the owner to undertake such works to render it habitable is flawed, and fails to appreciate the reality of the situation, with respect in my opinion that approach is wrong'.

24.Whilst a VTE decision is not binding on me in this case, I was inclined to agree with the President's comments. A representative for the LO had not inspected the property when the proposal was made in July 2020, before the works began, so I considered the survey to be a useful guide as to the condition of the property close to the relevant date.

25.In the case before me, I considered that the issues identified by the survey on 7 October 2019 meant that the property required major works to remedy the problems and make it fit for occupation as a dwelling. Whilst I accepted that the works to remedy the issues did not begin until 23 September 2020, this did not alter the facts on the relevant date. Serious levels of rising damp, mould and fungi had been identified and required remedial works before the property could be re-occupied. It was clear to me that the survey and photographs illustrated a building that could pose a health risk to any occupant until such time as the obvious mould and fungus were removed and the damp treated. I therefore found that the subject property was not capable of beneficial occupation at the relevant date and a hereditament did not exist."

Ground of appeal

16. The Appellant submitted that the Tribunal erred in failing to apply the appropriate test, as set out in the binding High Court decision of *Wilson v Coll (Listing Officer)* [2011] EWHC 2824 (Admin), [2012] PTSR 1313, namely, that a hereditament will cease to exist for council tax purposes only if the property is "truly derelict". The fact that a

property is in need of repair is not sufficient, even if those repairs are expensive or uneconomic to perform.

Law

17. Section 1 LGFA 1992 establishes the duty for a billing authority to levy and collect council tax in respect of dwellings within its area.

18. Section 3 LGFA 1992 materially provides:

> "(1) This section has effect for determining what is a dwelling for the purposes of this Part.
>
> (2) Subject to the following provisions of this section, a dwelling is 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
>
> ……"

19. Section 115(1) of the General Rate Act 1967 materially provides:

> "(1) In this Act, except where the context otherwise requires, the following expressions have the following meanings respectively, that is to say –
>
> "*hereditament*" means property which is or may become 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."

20. Thus, under the statutory scheme, the first step is to determine whether a hereditament exists. The essential elements of rateable occupation which have to be met in order for a hereditament to exist have been considered by the courts in a number of different statutory contexts.

21. In *John Laing & Son Limited v Assessment Committee for Kingswood Assessment Area & Others* [1949] 1 KB 344, Tucker LJ said at 350:

> "Mr. Rowe has said that there are four necessary ingredients in rateable occupation, and I do not think there is any controversy with regard to those ingredients. First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period…."

22. In *Ravenseft Properties v Newham LBC* [1976] 1 QB 464, the Court of Appeal set out the test as being whether a building was ready for occupation, per Lord Denning at 474H and 475G-H).

23. In *Post Office v Nottingham City Council* [1976] 1 WLR 624, Browne LJ said at 635H:

> "… as a matter of fact and degree, is, or will the building, as a building, be ready for occupation, or capable of occupation, for the purpose for which it is intended?"

24. In *Wilson v Coll (Listing Officer)* Singh J. considered the application of these principles in the context of an appeal by a property owner who contended that his property should be deleted from the list because it was not in a reasonable state of repair.

25. Singh J. accepted the Listing Officer's submission that

> "17. …. there is a crucial distinction in law between the valuation of a hereditament and the prior question of whether a hereditament exists. The respondent submitted that confusion has sometimes entered this area of law between these two legally distinct concepts…."

26. Singh J. held that the Valuation Tribunal had confused those two concepts when it applied the statutory assumption in regulation 6(2)(e) of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 "that the dwelling was in a state of reasonable repair". That statutory assumption only applied at the stage of valuation of the dwelling, as the title to regulation 6 and the terms of paragraph (1) made clear. It did not apply at the prior stage of determining whether or not a hereditament, and therefore a dwelling, existed.

27. Singh J. rejected the property owner's submission that the concept of a hereditament continuing to exist necessarily imported a requirement in law that any repair that may be needed must be a repair which it was economic to carry out (at [10])). He concluded that such a requirement was not supported by the terms of the statutory scheme nor by the case law (at [41]).

28. The Listing Officer's submission was summarised by Singh J. at [16]:

> "16. …. The respondent accepts …. that there may come a point at which a property is so derelict as to be incapable of repair. The important distinction which the respondent seeks to draw is not between economic repair and uneconomic repair, but rather a distinction between repair, or at least a reasonable amount of repair, which is still repair, as distinct from a complete reconstruction or replacement of a building. The latter, submits the respondent, will mean that the original hereditament no longer continues to exist. The former, even if repairs which are uneconomic are required, will mean that the property is not derelict because it is capable of being rendered suitable for occupation for its purpose by some repair, even if in fact that is a repair which it would be uneconomic to undertake."

29. Singh J. accepted the Listing Officer's submission and concluded as follows:

> "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 Practice Note 4: Disrepair, Building Works, Temporary Disabilities and Flooding to the Council Tax Manual (Valuation Office Agency). The question is: "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?"
>
> 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."

30. In *SJ & J Monk (A Firm) v Newbigin (Valuation Officer)* [2017] UKSC 14, [2017] 1 WLR 851, the Supreme Court held that an empty office building which was undergoing major reconstruction, rather than simply being in a state of disrepair, was incapable of beneficial occupation. There was no basis for applying the assumption in paragraph 2(1)(b) of Schedule 6 to the Local Government Finance Act 1988 to override the reality principle and create a hypothetical tenancy of the previously existing premises in a reasonable state of repair.

31. Lord Hodge JSC said, at [22] – [23]:

> "22 In a helpful intervention, the Rating Surveyors' Association and the British Property Federation submitted that, where works were being carried out on an existing building, the correct approach was to proceed in this order: (i) to determine whether a property is capable of rateable occupation at all and thus whether it is a hereditament, (ii) if the property is a hereditament, to determine the mode or category of occupation and then (iii) to consider whether the property is in a state of reasonable repair for use consistent with that mode or category. The first two stages of that process involve the application of the reality principle. At the third stage the valuation officer applies the statutory assumption in paragraph 2(1)(b) if the reality is otherwise. In my view, this is a helpful approach where a building is undergoing redevelopment. But it is subject to the useful practice, which I discuss in para 31 below, of reducing the rateable value of a building, which is incapable of rateable occupation because of such temporary works, to a nominal figure rather than removing it from the rating list altogether.

> 23 How does a valuation officer ascertain that premises are undergoing reconstruction rather than simply being in a state of disrepair? The subjective intentions of the freehold owner of a property are not relevant to the reality principle. The matter must be assessed objectively. But, in carrying out that objective assessment of the physical state of the property on the material day, the valuation officer can have regard to the programme of works which is in fact being undertaken on the property. It is clear on the UT's findings of fact, which I have summarised in para 4 above, that on 6 January 2012 the premises had been largely stripped out in the course of a redevelopment and an outline of the future development (the communal lavatory facilities) had been created. The premises were incapable of beneficial occupation, because, as an objective fact, they were in the process of redevelopment and no part of them was capable of beneficial use. If the works are objectively assessed as involving such redevelopment, there is no basis for applying the assumption in paragraph 2(1)(b) to override the reality principle and to create a hypothetical tenancy of the previously existing premises in a reasonable state of repair….."

32. *Monk* was applied by the Upper Tribunal (Lands Chamber) in *Jackson (VO) v Canary Wharf Limited* [2019] UKUT 136 (LC). The appeal concerned two floors, situated in a tower block of offices, which had been stripped out to a shell state, pending re-letting, and were incapable of beneficial occupation for a period of time between 2011 and 2014. The issue was whether the two floors should be valued for rating purposes as offices in an assumed state of repair or in their actual condition as premises undergoing redevelopment. The Lands Chamber (Martin Rodger QC Deputy Chamber President and Peter McCrea FRICS) rejected the Valuation Officer's attempt to distinguish the decision in *Monk* and held:

> "35. The suggestion that in *Monk* the Supreme Court created "a building under reconstruction exception" to the repair assumption, as Mr Singh submitted and as the VO's Rating Manual implies, is a mistake. As is apparent from paragraph 20 of Lord Hodge's judgment, and from his adoption in paragraph 22 of the sequence of questions suggested by the RSA and BPF in their intervention, before one comes to consider the effect of the repair assumption in the context of a building undergoing redevelopment, the logically prior question is whether the property is capable of beneficial occupation at all, and thus whether it is a hereditament at all.
>
> 36. If premises are not capable of beneficial occupation, they are not a hereditament. The only basis on which they may then be included in the rating list is under the convention that allows property temporarily incapable of occupation to remain in the list at a nominal value as a matter of administrative convenience, rather than deleting the entry and creating a new entry when the property once again becomes capable for beneficial occupation.

……

38. We agree with the submission of Mr Kolinsky QC for the respondent …. that Lord Hodge did not prescribe that the existence of a detailed programme of works, or physical evidence on the ground of the eventual form of the reconstructed premises, were necessary ingredients before a property in disrepair could be distinguished from a building undergoing reconstruction. The programme of works which is in fact being undertaken is part of the material which can be taken into account in deciding whether, objectively, a building is undergoing reconstruction, but it does not follow that the absence of a detailed programme rules out such an assessment….."

"39. …. We return to Lord Hodge's question at paragraph 23 of his judgment. How is a valuation officer to ascertain that premises are undergoing reconstruction rather than simply in a state of disrepair? By assessing the known facts, rather than by shutting his eyes to them. While the subjective intentions of the owner are irrelevant, the objective facts to which these intentions have given rise are not….."

"40. ….. The question whether a building is incapable of beneficial occupation as a result of a programme of refurbishment is a matter of objective fact …."

Guidance

33. The Valuation Office Agency issues guidance to Listing Officers in the Council Tax Manual which is updated from time to time, most recently on 9 February 2022. The guidance was updated following the decision in *Monk*, and the relevant passages referred to below were available at the date of the Tribunal decision. In my judgment, the guidance set out below is consistent with the legal principles which I have referred to above.

34. Practice Note 4 includes the following guidance:

"**1. Introduction**

Practice Note 1 (Definition of Dwelling and Basis of Valuation for Council Tax) sets out the basis of the dwelling, as being a hereditament from Section 3 LGFA 1992. Para 4.4. of PN1 deals with the assumption that the dwelling to be banded is a 'state of reasonable repair'. This Practice Note 4 covers all aspects of disrepair, including whether a hereditament exists at all (truly derelict properties), the effect on banding of dwellings undergoing works of repair or improvement and temporary disabilities external to the dwelling.

Since April 2013, the Council Tax (Exempt Dwellings) order 1992 has been amended by the abolition of Class A which gave mandatory relief for a set period of up to 12 months for properties awaiting or undergoing structural repair.

Appendix 1 to PN4 gives examples of possible list alterations due to disrepair and building works. Appendix 2 is a summary of the basic principles to be applied. Appendix 3 is a practical guide to assist in deciding whether a property is derelict or not."

"**2. A hereditament must exist**

It is important to understand that a dwelling must exist before repair assumptions can be invoked. Thus the 'hereditament test' must be applied and satisfied first, then the matter of valuation considered separately. The question posted by the hereditament test is "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?"

Newbign (VO) v Monk adds a further consideration. Where a hereditament is vacant and undergoing a scheme of works, the hereditament may cease to exist …. As a dwelling cannot exist without first identifying a hereditament, vacant domestic property evidenced as undergoing a scheme will be deleted from the CT list."

"**3. Reasonable repair assumption**

In PN1 it is explained that if a dwelling exists, then the assumption that the dwelling is in a state of reasonable repair becomes valid.

……"

"**4. Scheme of works**

If a vacant property is shown to be undergoing a scheme of works, then the decision in Newbigin (VO) v Monk must be considered…..The Supreme Court examined a series of rating cases and found case law:

'distinguished between a mere lack of repair, which did not affect rateable value because of the hypothetical landlord's obligation to repair, and redevelopment works which made a building uninhabitable' (Monk, para. 17).

The Supreme Court identified a 'logically prior question' that needed to be asked when a building was undergoing redevelopment: requiring the valuation officer to ascertain whether the premises were 'undergoing reconstruction rather

> than simply being in a state of disrepair'. If so, the premises would be incapable of beneficial occupation and cease to be a hereditament.
>
> The same principle should be applied when considering a case for Council Tax. If a property is simply in poor repair, then LO's should follow Wilson v Coll. If there is a scheme of works, then LOs will need to consider the evidence and make a judgment if the works made a building uninhabitable. Clearly this will only apply to vacant property and generally where there is a major renovation and extension underway. It is not envisaged works to replace a kitchen or bathroom, which may temporarily render a property incapable of beneficial occupation will be sufficient to delete a property from the valuation list."

Conclusions

35. The Tribunal correctly identified the issue in the appeal as whether or not, at the relevant date, a hereditament, and therefore a dwelling within the meaning of section 3(2)(a) LGFA 1992, was in existence.

36. In determining that issue, the Tribunal was bound by the authorities cited above on the essential elements of a hereditament, in particular, the element of beneficial occupation. *Wilson v Coll* was directly applicable as it concerned council tax and disrepair. In *Wilson v Coll*, Singh J. accepted the submission of the Listing Officer that the key distinction was between, on the one hand, a property which would be capable of occupation for its intended purpose if a reasonable amount of repair work were undertaken, and on the other hand, a property which was truly derelict, and so required reconstruction or replacement in order to become capable of occupation for its intended purpose. It was only in the latter case that the element of beneficial occupation was not met, and so the hereditament had ceased to exist.

37. The test enunciated by Singh J. is not, of course, limited to "derelict", implying severely neglected, properties. As explained in the cases of *Monk* and *Jackson*, a property may be incapable of beneficial occupation because it is currently undergoing major reconstruction works, or because major reconstruction works will be required before it can be occupied. Although *Monk* and *Jackson* concerned non-domestic properties under a different statutory scheme, these principles are relevant to council tax cases too, as advised in Practice Note 4 of the Council Tax Manual. In the light of this, I consider that the Listing Officer in this case was correct to concede that, once the Respondent decided to undertake major reconstruction works at the Property in September 2020, the entry on the list should be deleted because the Property was no longer capable of beneficial occupation.

38. In this case the Tribunal departed from the test set out in *Wilson v Coll*, in reliance upon the decision of the Valuation Tribunal in *Tewari v Virk* (2020) Appeal M0826076 which, according to the Tribunal, "highlighted the danger in relying on the *Wilson v Coll* case" following the abolition of the Class A exemption in the Council Tax (Exempt Dwellings) Order 1992/558 for vacant dwellings in need of major repair works to

render them habitable or undergoing structural alteration, which was abolished from April 2013.

39. In *Tewari*, the President of the Valuation Tribunal found that, following a serious fire, the appeal property was "in effect a burnt-out shell that was incapable of beneficial occupation" (at [38]). He held, at [47]:

> "The Listing Officer accepted that the property was incapable of beneficial occupation, following the fire, but argued it could have been a later date once a reasonable amount of repair works had been carried out. Having regard to the surveyor's report and the photographs, I do not accept that the amount of repair works required were reasonable. The flat was totally destroyed by the fire as was the public house. The reinstatement works required were major as were the building costs involved and there is no doubt in my mind that the appeal dwelling ceased to exist once the fire took hold. The corollary of that is that the Listing Officer erred in his refusal to delete it. There was no longer a hereditament to begin with to which he could apply the statutory assumptions. To use an analogy, you cannot repair what is not there."

40. In my view, this analysis and conclusion, on the facts, was consistent with a proper application of the principle set out in *Wilson v Coll* and confirmed in *Monk*. The facts were markedly different to this case, as the property had been totally destroyed.

41. However, earlier in his judgment at [32] – [34], the President appears to have concluded that it was necessary to distinguish *Wilson v Coll* because it was founded upon a submission by counsel for the Listing Officer "that once hereditaments were entered into the council tax valuation list, they were effectively locked in even if they were in disrepair and needed repairs before they were capable of occupation" by reference to the irrebuttable statutory assumption that "the dwelling was in a state of reasonable repair" (regulation 6(2)(e) of the Council Tax (Situation and Valuation of Dwellings Regulations 1992) and the statutory exemption from liability to pay council tax under Class A of the Council Tax (Exempt Dwellings) Order 1992/558.

42. The President went on to say:

> "33. Having regard to the present case, the Listing Officer has overlooked the fact that the council tax legislation was amended with effect from 1 April 2013.
>
> The Class A of the Exempt Dwellings Order 1992 which was referred to in paragraph 14 in *Wilson* was abolished. Now unoccupied dwellings that are in need of major repair works to render them capable of occupation are chargeable dwellings rather than exempt. Prior to 1 April 2013, for all intents and purposes, a number of former dwellings did cease to be hereditaments.

> The regulatory wording of what was Class A of the Council Tax (Exempt Dwellings) Order 1992 leaves no doubt that a dwelling requiring or undergoing major repair works to render it habitable was incapable of actual or beneficial occupation. However, no prejudice was suffered to the owner of such properties provided he carried out any repairs in a timely fashion, otherwise any exemption period afforded by Class A was lost.
>
> 34. The Listing Officer's current approach, for appeals of this nature, which appears to have been endorsed by earlier lay tribunal panel decisions is that if a property is in disrepair and even if the state of decay is such that it cannot be occupied as a dwelling, a hereditament still exists as long as it can be repaired, no matter what the cost of those works will be, because there is no economic test for council tax purposes. Such a robust approach without giving proper consideration to whether a property is capable of occupation at the relevant date or whether it is reasonable for the owner to undertake such works to render it habitable is flawed, and fails to appreciate the reality of the situation, with respect in my opinion that approach is wrong."

43. I accept the Appellant's submission that the President's observations, upon which the Tribunal in this case later relied, were based upon a mis-reading of *Wilson v Coll*.

44. In *Wilson v Coll*, the property owner submitted that the appeal property was not a hereditament since the repairs required were uneconomic, because they would not enhance the underlying value of the property (at [9], [10]).

45. The Listing Officer submitted in response:

> "11….. that the question of whether a property continues to be a hereditament … does not depend on whether any repairs which may be needed can be economically carried out … a dwelling that is capable of repair remains a hereditament even if it would not necessarily be economic to carry out those repairs…. There are two legislative provisions which would appear not to make sense, unless the existence of a hereditament is taken for granted.
>
> 12 The first of those legislative provisions is regulation 6(2)(e) of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 (SI 1992/550). That provision requires that in conducting a valuation exercise for a relevant property certain assumptions are to be made and, by regulation 6(2)(e), one of those assumptions is that the dwelling was in a state of reasonable repair.
>
> 13 For the respondent it was observed that this court has previously held that the presumptions in regulation 6 are irrebuttable: see R v East Sussex Valuation Tribunal, Ex p Silverstone [1996] RVR 203, 205. That is a decision to which I will return.

> 14 The other legislative provision upon which the respondent relies, as providing a statutory indication that the legislator has proceeded on the assumption that a hereditament continues to exist, even if repairs to it are required which may not be economic to undertake, is article 3 of the 1992 Order (as amended by article 2 of the Council Tax (Exempt Dwellings) (Amendment) (England) Order 2000(SI 2000/424)). This sets out a number of classes which are exempt from liability to pay council tax for a limited period of time of 12 months. Class A, which is material to the present case, provides:
>
> > "(1) a dwelling which satisfies the requirement set out in paragraph (2) unless it has been such a dwelling for a continuous period of 12 months or more ending immediately before the day in question;
> >
> > (2) the requirement referred to in paragraph (1) that the dwelling is vacant and - (a) requires or is undergoing major repair work to render it habitable . . .
> >
> > (3) for the purposes of paragraph (2) above major repair work includes structural repair work".
>
> 15 In essence, therefore, the submission on behalf of the respondent is that those legislative provisions would simply make no sense if the underlying assumption was not implicit in them, namely that a hereditament continues to exist, even though repair to it may not be economic to undertake.
>
> 16 Nevertheless, the position does not stop there, according to the respondent's submissions. The respondent accepts, and indeed it appears that this was the way in which submissions were made to the tribunal, that there may come a point at which a property is so derelict as to be incapable of repair. The important distinction which the respondent seeks to draw is not between economic repair and uneconomic repair, but rather a distinction between repair, or at least a reasonable amount of repair, which is still repair, as distinct from a complete reconstruction or replacement of a building. The latter, submits the respondent, will mean that the original hereditament no longer continues to exist. The former, even if repairs which are uneconomic are required, will mean that the property is not derelict because it is capable of being rendered suitable for occupation for its purpose by some repair, even if in fact that is a repair which it would be uneconomic to undertake."

46. For the purpose of the submissions in *Wilson v Coll*, the significance of the Class A exemption from liability, in cases where major repair was required to render a property habitable, was simply that, under the statutory scheme, it could only arise where there was in existence a hereditament, and therefore a "dwelling" within the meaning of section 3(2)(a) LGFA 1992, which rendered the property owner liable to pay council

tax in the first place. It was therefore implicit in the legislation that a hereditament could exist even where repair was required which was not necessarily economic (at [15]).

47. Singh J. accepted the submissions of the Listing Officer that the Class A exemption legislation was one of a number of legislative provisions which were statutory indicators that a test of what repairs a landlord would consider to be economic was not to be imported into determining whether a hereditament, and therefore a dwelling within the meaning of section 3(2)(a) LGFA 1992, existed at a particular date.

48. Beyond the issue of economic repair, the Class A exemption played no part in Singh J.'s analysis and conclusion on the test to be applied when determining whether a hereditament was still in existence, namely, whether a property is capable of being rendered suitable for occupation as a dwelling by undertaking a reasonable amount of repair works, or whether it is a truly derelict property, which requires reconstruction or replacement to make it suitable for occupation as a dwelling. That test is consistent with the judgment of the Supreme Court in *Monk*, per Lord Hodge at [22] and [23]. Therefore, the abolition of the Class A exemption was not a valid reason for departing from *Wilson v Coll*.

49. In my judgment, the Tribunal in this case erred in not applying the test set out in *Wilson v Coll*. Instead, it applied a less stringent test, namely, whether "the property required major works to remedy the problems and make it fit for occupation as a dwelling" (at [25]). I consider that, if the Tribunal had followed *Wilson v Coll*, as it was bound to do, it might well have reached a different conclusion on the facts of this case, given the nature and extent of the works described in the survey dated 15 October 2019.

50. Therefore the appeal is allowed, and the case is to be remitted to a freshly constituted Tribunal for re-determination.