SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2017] CSIH 64
XA22/17

Lord Justice Clerk
Lord Brodie
Lord Doherty

OPINION OF THE COURT

delivered by LORD DOHERTY

in the Appeal

by

ASSESSOR, TAYSIDE JOINT VALUATION BOARD

Appellant

against

A DECISION OF THE VALUATION APPEAL COMMITTEE FOR PERTH AND KINROSS COMMUNICATED TO THE APPELLANT ON 9 FEBRUARY 2017

Appellant: Stuart, QC; Clyde & Co (Scotland) LLP

17 October 2017

Introduction

[1] M purchased her house at Birchcroft, 9 Orchil Crescent, Auchterarder in February 2007. She lived there until July 2015. The house had very significant problems with dampness. After she vacated the house she arranged for repair and improvement work to be carried out, part of which was to address the problem of dampness. Stripping out work commenced in January 2016. Installation of new flooring, replacement windows, partition

walls and other replacement or improvement work began in July 2016. While the works were ongoing it seems that M also decided to convert the house's garage into additional living accommodation.

[2] The subjects have been entered in the council tax valuation list as a dwelling since the list was first prepared in 1993. In August 2016 M made a proposal to the appellant that the subjects be deleted from the list with effect from 1 January 2016, on the basis that on that date they had ceased to be a dwelling. The appellant inspected the subjects in August 2016 at which time, while the strip out and some of the repairs and other work had been carried out, a good deal remained to be done. Since the appellant did not accept that the subjects had ceased to be a dwelling, he referred the disagreement between him and M as an appeal to the local Valuation Appeal Committee (reg 15(1) of the Council Tax (Alteration of Lists and Appeals) (Scotland) Regulations 1993 (SI 1993/355) ("the 1993 Regulations")).

[3] The Valuation Appeal Committee for Perth and Kinross heard the appeal on 26 January 2017. M represented herself before the Committee. The appellant was represented by Mr Stuart. The Committee allowed the appeal and directed the appellant to delete the subjects from the valuation list with effect from 1 January 2016. Its statement of reasons made brief reference to the evidence and to the submissions made to it, before setting out its decision and reasons. The crux of its reasoning was as follows:

> "The Assessor cited the *Macleod* case (*Assessor for Highland and Western Isles Valuation Joint Board* v *Ewan Macleod* 2001 SC 476). There were significant differences from this Appeal. In the *Macleod* case, the property was vacant as a result of the death of the owner, who had lived in the property prior to his demise. The subsequent owner did not occupy the property. In arriving at its judgement, the Court noted that other houses in this condition continued to be lived in in certain areas of the Highlands'. In the present case, the condition of the Appeal Subjects made (*sic*) incapable of habitation, not just unsuitable for habitation. As a result the Appeal Subjects lost the characteristics of a dwelling."

[4] Section 82(4) of the Local Government Finance Act 1992 ("the 1992 Act") provides that any party to an appeal to the Valuation Appeal Committee may appeal against a decision of the Committee on a point of law to the Court of Session. The appellant has appealed to this Court against the Committee's decision. No answers to the appeal were lodged. Nevertheless, the appellant required to satisfy us that the Committee had erred in law and that the appeal should be allowed. Moreover, in the absence of a contradictor, and since the issues raised by the appeal appeared to us to be of some importance, the Court did its best to ensure that counsel for the appellant's submissions were thoroughly tested.

The relevant statutory provisions

[5] Section 70(1) of the 1992 Act provides that council tax shall be payable in respect of dwellings. Sections 72(1), 72(6), 72(7) and 73(1) further provide:

> **"72.— Dwellings chargeable to council tax.**
> (1) Council tax shall be payable in respect of any dwelling which is not an exempt dwelling.
>
> (2) In this Part, *"dwelling"*—
> (a) 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) below, be entered separately in the valuation roll;
>
> …
>
> (6) In this Part—
>
> *"chargeable dwelling"* means any dwelling in respect of which council tax is payable;
>
> *"exempt dwelling"* means any dwelling of a class prescribed by an order made by the Secretary of State.
>
> (7) For the purposes of subsection (6) above, a class of dwelling may be prescribed by reference to—

(a) the physical characteristics of dwellings;

(b) the fact that dwellings are unoccupied or are occupied for prescribed purposes or are occupied or owned by persons of prescribed descriptions; or

(c) such other factors as the Secretary of State thinks fit.

…

73.— Alterations to valuation roll.

(1) Subject to subsection (7) below, dwellings shall not be entered in the valuation roll in respect of the financial year 1993-94 or any subsequent financial year.

…"

[6] Section 73(7) concerns part residential subjects. It has no bearing on the circumstances of the present appeal. Section 74(2) sets out valuation bands. Section 84 directs local assessors to compile and maintain a valuation list showing each dwelling in the council's area and which of the valuation bands is applicable to it. Section 86 makes provision for the valuation of dwellings, and s 86(2) directs that valuation shall be carried out by reference to such assumptions, and in accordance with such principles, as may be prescribed. Section 87 empowers the Secretary of State (now the Scottish Ministers) to make regulations about the alteration by assessors of valuation lists. Regulation 2 of the Council Tax (Valuation of Dwellings) (Scotland) Regulations 1992 ("the 1992 Regulations") provides:

"2. – (1) For the purposes of valuations under section 86(2) of the Local Government Finance Act 1992 and valuations carried out in connection with proposals for the alteration of a valuation list, the value of any dwelling shall be taken to be the amount which the dwelling might reasonably have been expected to realise if it had been sold in the open market by a willing seller on 1st April 1991, having applied the assumptions mentioned in paragraph (2) below…

(2) The assumptions mentioned in paragraph (1) above are –

…

(d) that the dwelling was in a reasonable state of repair;

…"

[7] Regulation 5(1)(b) of the 1993 Regulations enables an interested party to make a proposal for the alteration of the valuation list so as to delete with effect from a particular date a dwelling which is or was on the list. Regulation 17(2) provides that any alteration of the list effected so as to delete a dwelling which is or was shown on the list shall have effect from the later of 1st April 1993 and "the day on which the property ceased to exist as a dwelling".

[8] Article 3 of, and Schedule 1 to, the Council Tax (Exempt Dwellings) (Scotland) Order 1997 ("the 1997 Order") prescribe certain classes of dwellings as exempt dwellings for the purposes of s 72(6) of the Act. Schedule 1, paragraph 2 (as amended by the Council Tax (Exempt Dwellings) (Scotland) Amendment (No. 2) Order 1999 ("the 1999 Order")) is in the following terms:

"

Schedule 1

EXEMPT DWELLINGS

…

Dwellings under repair

2. An unoccupied dwelling–

(a) which –

(i) is undergoing or has undergone (since the last occupation day) major repair work to render it habitable; or

(ii) is undergoing or has undergone (since the last occupation day) structural alteration;

(b) in respect of which no more than 12 months have elapsed since the last occupation day; and

> (c) in respect of which no more than 6 months have elapsed since the major repair work or structural alteration in question was substantially completed."

As originally promulgated, before its amendment by the 1999 Order, paragraph 2 of the 1997 Order had been in the undernoted terms:

> "**Dwellings under repair**
>
> 2. A dwelling which is incapable of, and is not, being lived in because it is being structurally repaired, improved or reconstructed."

The 1997 Order consolidated and revoked the Council Tax (Exempt Dwellings)(Scotland) Order 1992 ("the 1992 Order") and its amending Orders. Apart from the absence of a heading, paragraph 3 of Schedule 1 to the 1992 Order was in the same terms as paragraph 2 of (the unamended version of) the 1997 Order.

Counsel for the appellant's submissions

[9] Mr Stuart submitted that the Committee had erred in law, and that the subjects ought not to have been deleted from the valuation list. They had been a dwelling house, and therefore a dwelling, when they were entered in the list and during the whole period that they were lived in by M. There was no suggestion that their condition had changed materially between the date of her moving out and the commencement of the works. The question was whether after the commencement of the works the subjects remained a dwelling house and a dwelling. Mr Stuart maintained that they had. At that time they had been a dwelling house (and a dwelling) which had been undergoing repair and alteration. It was not correct to say that the subjects had ceased to exist as a dwelling house or a dwelling. There were, of course, circumstances where such a radical change could occur. Examples were where a house had become derelict; or where a house was undergoing redevelopment

to bring a different subject or subjects into existence. *S J & J Monk (a firm)* v *Newbigin* [2017] 1WLR 851 was an example of a case where offices were being refurbished so as to create three separate office units from one large unit. In such circumstances the original office subjects ceased to exist when the refurbishment to create different subjects commenced. However, no such radical change had taken place here. While it was accepted that the subjects could not be occupied as a dwelling house while the works were underway, they had not ceased to be a dwelling house. A dwelling house was being repaired and altered, but it continued to exist. Its nature did not changed. Had dwelling houses fallen to be entered in the valuation roll it would have been in the roll as a dwelling house before, and during, the works. It would not have been entered as, e.g., "premises under development" or "premises under repair" or "premises under refurbishment". On the hypothesis that the subjects required to be valued for valuation for rating, it was possible that some adjustment to the net annual value appearing in the roll might have been be made to reflect the condition of the subjects: but they would have continued to be a dwelling house. Works such as those here, carried out with a view to the subjects being enjoyed as a dwelling house, did not result in the subjects ceasing to be a dwelling house. The circumstances in the present case were similar to those in *Assessor for Strathclyde Region* v *Scottish Special Housing Association* 1986 SLT 421. The decision and reasoning in that case provided very substantial support for the appellant's position. It was also clear, having regard to the terms of paragraph 2 of Schedule 1 to the 1997 Order (in its current and in its previous form) and to the terms of the predecessor provision, paragraph 3 of Schedule 1 to the 1992 Order, that each of those provisions contemplated that a subject could be a dwelling even though it was incapable of being lived in because of works being carried out to repair or alter it.

[10] Initially, Mr Stuart also submitted that in order to determine whether subjects were a dwelling it was necessary to assume that the subjects were in a reasonable state of repair. That, he maintained, was a consequence of the assumption set out in reg 2(2)(d) of the 1992 Regulations. He contended that the decision of the First Division in *Assessor for Highland and Western Isles Valuation Joint Board* v *Macleod, supra,* supported this submission. He acknowledged that a similar argument relating to the corresponding provision in England and Wales had been roundly rejected by Singh J in *Wilson* v *Coll (Listing Officer)* [2012] RA 45 (see in particular paragraphs 12, 17, 28, and 38). Ultimately, Mr Stuart accepted - correctly in our view - that since the valuation assumptions in the 1992 Regulations only applied for the purposes of the valuation of dwellings, the assumption in reg 2(2)(d) had no role to play in determining the prior question of whether a subject was a dwelling.

Decision and reasons

[11] There is no doubt that the subjects were correctly entered in the valuation list as a dwelling prior to January 2016. M had not contended otherwise. The subjects consisted of a dwelling house. M had lived in them until July 2015. There was no suggestion of any material deterioration in their condition between that date and the end of 2015.

[12] The question is whether the subjects ceased to be a dwelling when the works commenced. In the present case that turns on whether they continued to be a dwelling house which, but for the provisions of s 73(1) of the 1992 Act, would have been entered in the valuation roll (s 72(1)(a)).

[13] In our opinion it is clear on a proper construction of s 72 of the 1992 Act and the 1992 Regulations that the initial question is whether the subjects are a dwelling. It is only if that question is answered in the affirmative that one reaches the second stage, *viz.* what is the

appropriate valuation band for the dwelling applying the assumptions contained in reg 2 of the 1992 Regulations? Accordingly, when determining whether subjects are, or remain, a dwelling it is not correct to treat them as if they are in a state of reasonable repair if in fact they are not. The assumption in reg 2(1)(d) does not apply at that stage. Rather, regard has to be had to the subjects' actual state and existing use.

[14] We are clear as a matter of ordinary construction that the two stage approach we describe is the correct one. We are also satisfied that, on a proper reading of *Assessor for Highland and Western Isles Valuation Joint Board, supra,* it is the approach which the Court followed in that case. In paragraph 5 of its Opinion the Court stressed that the first step was to determine *whether* the subjects were a dwelling. In our view it is clear that in deciding whether the subjects were a dwelling it looked at their actual state. In determining the issue it did not apply the reg 2(1)(d) valuation assumption that the subjects were in a state of repair. On the contrary, it reasoned:

> "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."

Paragraph 5 provides the context for paragraph 6 of the Court's Opinion. Having decided that the subjects were a dwelling, the Court observed that there was no statutory provision for the exclusion from the valuation list of *subjects which were a dwelling* on the ground of unsuitability for occupation. Since the subjects were a dwelling, the valuation assumption as to reasonable repair applied when the dwelling came to be valued; and that assumption

was inconsistent with excluding a property which was a dwelling because it was unsuitable for occupation.

[15] We note with interest that in England and Wales, when dealing with provisions of the council tax legislation which appear to be analogous to the provisions under consideration here, courts have emphasised the crucial distinction between the existence of a hereditament or a dwelling and its valuation: *RGM Properties Ltd* v *Speight (Listing Officer)* [2012] RA 21, per Langstaff J at paragraphs 34 - 35; *Wilson* v *Coll (Listing Officer)*, *supra*, per Singh J at paras 17, 33-34 and 38. We recognise that the English provisions are not identical to the corresponding Scots' provisions, but they are very similar. We find the reasoning of Langstaff J and Singh J on this point persuasive. While we need not, and do not, rely upon it, we draw comfort from the fact that when construing analogous provisions they have reached a conclusion very similar to our own, for like reasons.

[16] If dwelling houses were not excluded from the valuation roll by s 73(1) of the 1992 Act, they would fall to be valued by reference to s 6(8) of the Valuation and Rating (Scotland) Act 1956:

> "(8) … the net annual value of any lands and heritages shall be the rent at which the lands and heritages might reasonably be expected to let from year to year if no grassum or consideration other than the rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the lands and heritages in a state to command that rent."

They would require to be valued in their actual state. The hypothetical tenant has the obligation to bear the cost of the repairs and insurance and the other expenses necessary to maintain the lands and heritages in a state to command that rent. The subjects would not be assumed to be in a reasonable state of repair: *Central Regional Assessor* v *United Glass* 1981 SC 389; *Glasgow Assessor* v *Ron Wood Greeting Cards* [2000] RA 271; *Armour on Valuation for*

Rating (5th ed.), para 17-19. (By contrast, prior to the repeal of s 6(2) dwelling houses (and, prior to the coming into force of s 3 of the Local Government (Miscellaneous Provisions) (Scotland) Act 1981, other non-industrial subjects) were valued to gross annual value with the hypothetical landlord having the obligation to pay all rates and to bear the cost of the repairs and insurance and the other expenses, with the consequence that for the purposes of valuation subjects were assumed to be in a reasonable state of repair: *MacMurchie* v *Assessor for Dundee* 1962 SLT 195; *Armour,* paras 17-18 and 17-19). The hypothetical tenancy is from year to year, with an expectation of continuance. Where an existing dwelling house becomes temporarily incapable of being lived in because repairs are being carried out, it does not necessarily follow that it is incapable of beneficial use. On the contrary, generally the proper conclusion will be that the restriction on use because repairs have to be carried out is just a normal incident of keeping the property in a state to command the rent; and that regard should be had to the whole period of the hypothetical tenancy when determining whether the subjects are capable of beneficial use. Similarly, where temporary works relate to rearrangement of the accommodation or its improvement, we think that regard should be had to the whole period of the hypothetical yearly tenancy when determining whether subjects are capable of beneficial use.

[17] Where the only reason a dwelling house cannot be lived in is because it is undergoing repairs or alterations, it would not usually be described in everyday speech as having ceased to be a dwelling house. Likewise, such a property would not ordinarily be regarded for the purposes of valuation for rating as having ceased to be a dwelling house. Of course, much is likely to depend upon the nature of the works, their duration, and whether the property retains the basic physical characteristics of a dwelling house during the course of the works. Questions of fact and degree are likely to arise. However, we very

much doubt whether loss of habitability over the course of several weeks because of works would ever be likely to give rise to the conclusion that a dwelling house had ceased to exist while the works were carried out, especially if the main physical characteristics of the structure of the house remained intact. In such circumstances, but for s 73(1), the property would have been entered in the valuation roll as a dwelling house before the works, and there would have been no proper basis for concluding that it had ceased to exist as a dwelling house during the works. On the other hand, there may be cases where the works to a house are so extensive and require to be so prolonged, or where they involve the essential physical characteristics of a house being lost, that the proper conclusion is that the property has ceased to exist as a dwelling house while the works are carried out. The assessment of such factors involves an objective element. Works ought to be planned and executed efficiently and expeditiously.

[18] We agree with Mr Stuart that the decision and reasoning of the Lands Valuation Appeal Court in *Assessor for Strathclyde Region* v *Scottish Special Housing Association* provide substantial support for the appeal. Unfortunately, the case does not seem to have been brought to the Committee's attention. Tenants of two local authority houses were decanted while modernisation works were carried out. The periods involved were two months and two and a half months. Lord Robertson opined (at p 427 D-F):

> "In the circumstances of this case, as set out in the findings, it cannot in my opinion be affirmed that, when the tenant moved out to allow the modernisation work to start, the subjects ceased to be a house. There may be various circumstances in which subjects may cease to exist by virtue of demolition in order that they be rebuilt or altered (eg *Assessor for Glasgow* v *Bank of Scotland*, 1925 SLT, Lord Hunter at p 302): and there may be cases where subjects under construction are not yet complete (as for instance *London, Midland and Scottish Railway Co* v *Glasgow Assessor*). In *Greenock Corporation* v *Arbuckle Smith & Co* the building in question had been purchased for use for a purpose requiring alteration before they could be used. But in *Provincial Cinematograph Theatre* v *Assessor for Glasgow* the decision in *Assessor for Glasgow* v *Bank of Scotland* was held not to apply to a case where a reconstruction of the subjects

> did not amount to demolition and did not entitle the ratepayers to have them deleted from the roll. The proper remedy was for the valuation to be reduced by an appropriate sum, if the facts justified such a reduction. In the present case the period of modernisation was so short that it could well be that the tenant would be prepared to continue to pay the full rent, as he knew he would be returned to occupation of modernised premises within a short time.
>
> In my opinion, accordingly, the assessor was wrong in stating that the subjects ceased to be a 'House' and became 'Premises', when the tenant was decanted."

His lordship continued at p 427J-K:

> "When the modernisation of the subjects was complete and the tenant reoccupied them, I can see no justification for the assessor treating them as subjects falling to be entered in the roll as 'coming into existence or occupancy since the roll was made up'… They had never ceased to exist since the roll was made up: they had been modernised. The assessor had not deleted them from the roll… As already mentioned, the subjects were not affected in the same way as those in *London Midland and Scottish Railway Co* v *Assessor for Glasgow* and *Greenock Corporation* v *Arbuckle Smith & Co Ltd.* The subjects were in existence and occupancy at the time when the roll was made up and never ceased to be so during the whole valuation year in question."

Lord Brand observed (at p. 429C-D):

> "The question was whether the houses had gone out of existence and been replaced by dwelling-houses coming into existence… Subjects do not cease to exist because they are being altered (*Provincial Cinematograph Theatres*, *supra*). Rateable occupation continues during alterations (*Edinburgh International House Ltd* v *Assessor for Edinburgh*, 1958 SLT per Lord Sorn at p 62). In the instant case the Committee had taken the view that what was done was not so radical as to take the dwelling-houses out of existence. The Committee were well entitled to reach the conclusion which they did. In that situation the description of 'House' did not fall to be altered."

Lord Ross opined at p. 430 J:

> "In the light of the findings in this case, I am of opinion that the approach of the assessor was wrong. When the tenant moved out and the modernisation works began, the subjects did not cease to be a house."

and at p 431F:

> "In the present case … the house never ceased to exist even when it was being modernised."

We recognise that at the time *Assessor for Strathclyde Region* v *Scottish Special Housing Association* was decided dwelling houses were valued to gross annual value, and the assumption was that the hypothetical landlord would bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the lands and heritages in a state to command the rent. That made it all the more likely that the hypothetical tenant would have been prepared to enter into the hypothetical tenancy even though the property would not be available for him to live in during part of the yearly tenancy. However, notwithstanding that difference, we think it is unlikely that the outcome of the case would have been different had the repairing obligation been the tenant's. The need for the hypothetical tenant to expend sums fulfilling his repairing obligation might have affected the level of rent which the subjects could command, and might have led the assessor to reduce the value of the subjects in the circumstances, but we do not think it would have justified the conclusions either that there could be no beneficial use of the subjects by the hypothetical tenant or that the subjects had ceased to be a dwelling house.

[20] We also think there is force in the submission that provisions in the secondary legislation dealing with exempt dwellings proceed upon the premise that some properties are capable of being dwellings during periods when they are incapable of occupation because of ongoing repairs or structural alterations. The exemption specified in paragraph 3 of Schedule 1 to the 1992 Order was made very soon after the enactment of the 1992 Act. It was re-promulgated in the same terms in paragraph 2 of schedule 1 to the 1997 Order (which was a consolidating Order). While the provision was amended in 1999, the premise inherent in the current amended provision remains essentially the same as the premise in the previous provisions. In those circumstances we consider that it is legitimate to have regard to the secondary legislation and the premise contained within it when construing the

words "dwelling houses" and "dwelling" in s 72 of the 1992 Act (see *Bennion on Statutory Interpretation* (6th ed), pages 657-8; *Craies on Legislation* (11th ed), paragraphs 27.1.12.5 and 27.1.12.6). On that approach those expressions ought to be construed so as to include at least some circumstances where properties continue to be dwelling houses and dwellings during periods when they become incapable of habitation because of major repair or structural work. In fact, as we have already outlined, that accords with our understanding of the valuation for rating law and practice which would apply but for s 73(1) of the 1992 Act.

[20] As we have explained, mere incapacity to be lived in for a temporary period while repair or other alteration works are being carried out is not necessarily enough to cause a dwelling to cease to be a dwelling. The Committee approached the case on the basis that it was. We are satisfied that in doing so they erred in law. They approached the facts on the footing that because during the works the subjects were incapable of occupation they had lost the characteristics of a dwelling. In the whole circumstances we conclude that it is necessary and appropriate that this court reconsiders the case, applying the correct approach to the facts.

[21] The subjects are a detached one-storey and attic house built in 1970. Before the works commenced they were habitable - they were lived in up to a few months before January 2016. They had a lounge, living room, kitchen, bathroom, three bedrooms, a small porch/utility area, and an attached single garage.

[22] In January 2016 stripping out of internal partition walls, floors, ceilings and services began. The architects' plans for the proposed alterations were dated April 2016. Most of the proposed works were internal. The plans included changes to the internal layout (including making the ground floor more open plan), creating new en suite bath/shower rooms for the bedrooms, and rebuilding the utility/porch and garage. Additional Velux windows were to

be inserted in the roof to the main house, but otherwise it remained intact. Building warrant for the alterations was granted on 14 July 2016. The installation of new floors and partition walls began during the same month. When the subjects were inspected on behalf of the assessor on 30 August 2016 the work proposed in the building warrant had been partially carried out. The flooring to the ground floor had been replaced. New Velux windows had been inserted in the roof. New plasterboard partition walls had been installed on the ground floor. The upper floor was being re-floored. A replacement porch was under construction and the garage roof was being replaced. At some point it seems that M decided that she wished to convert the garage to living accommodation. When the subjects were inspected again on 19 January 2017 that conversion work had been carried out. Generally, the alterations were at an advanced stage at that time, but they had not yet been completed.

[23] After she vacated the subjects M claimed that, for the first six months after she ceased to occupy them, they were an exempt dwelling in terms of paragraph 4 of Schedule 1 to the 1997 Order. That exemption was granted for a period of six months from 13 July 2015. M also claimed that the subjects were an exempt dwelling by reason of being a dwelling under repair in terms of paragraph 2 of Schedule 1 to the 1997 Order. That exemption was duly granted for the period from January 2016 until 12 July 2016 (the maximum period of exemption, because by the latter date 12 months had elapsed since the last occupation day).

[24] In our opinion it is clear that, looked at objectively, the nature of the alterations comprised repair works to remedy dampness, and other - mostly internal - works designed to improve the subjects as a dwelling house or to adapt them to accord with M's preferences for the layout of the living space. Importantly, the alterations were not designed to change the subjects from a dwelling house into a building of a different character or with a different use. The alterations did not involve redevelopment and subdivision of the house to create

more than one house (*cf S J & J Monk (a firm)* v *Newbigin, supra,* where a single office building was refurbished and redeveloped to create three separate office premises).

[25] While stripping out began in January 2016 and the alteration works had not been fully completed a year later, progress appears to have been slow and intermittent. We consider that had the works been planned and executed efficiently and expeditiously they could have been completed in a very much shorter period. There seems to have been a hiatus after stripping out commenced. The relevant building warrant application was not submitted until several months after work began: and after the grant of building warrant there were significant changes to the works, most notably the conversion of the garage to living space. In the whole circumstances we are not satisfied that the subjects would have been incapable of beneficial use (by a hypothetical tenant on a tenancy from year to year with an expectation of continuance) had the works been planned and executed efficiently and expeditiously.

[26] Finally, in our opinion, at no stage during the course of the works did the subjects lose the basic characteristics of a dwelling house. Most of the work was internal. The structural envelope of the building remained essentially intact. To the informed objective observer the subjects were, throughout, obviously a dwelling house undergoing repair and internal rearrangement rather than property which had ceased to be a dwelling house. That was how M viewed them when she applied for them to be treated as an exempt dwelling in terms of paragraph 2 of Schedule 1 to the 1997 Order. In our view her characterisation of the subjects as a dwelling at that time was apt.

[27] For the foregoing reasons we consider that the Committee erred in law. We are not satisfied that the subjects ceased to be a dwelling in January 2016 (or at any later date). Accordingly, we shall allow the appeal against the Committee's decision. The consequence

is that, contrary to the Committee's direction, the dwelling does not fall to be deleted from the valuation list.