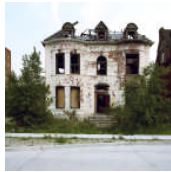




## Council Tax: Removal of empty homes from valuation lists

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## Right to make proposals

- Limited: but there is always a right to make a proposal to remove or to bring a dwelling into the valuation list.
- Thus empty properties on the borderline can be subject to proposals either way.
- The effective date is the date it either became a dwelling, or ceased to become a dwelling.



## What is a dwelling?

- Definition basically the same as for Non-Domestic Rating – called by a different name.
- Dwelling is a domestic hereditament (S3 Local Govt Finance Act 1992)
- A 'hereditament' – property liable to a rate, being an entry in a valuation list.
- Rateable occupation – a very old concept indeed in Rating Law (1601 poor relief Act etc)
- One facet of rateable occupation – hereditament must be *capable of beneficial occupation*.



## Empty properties: The Council Tax (Chargeable Dwellings) Order 1992

- Classes A to W.
- See handout: 23 classes of property on which no CT will be payable
- e.g. Class A –Unoccupied and unfurnished property requiring or undergoing major repairs to render the property habitable or undergoing structural alterations. This exemption is allowed for up to one year only or six months after the work is finished, whichever is the sooner.

## Empty properties: The Council Tax (Chargeable Dwellings) Order 1992



- These exemptions are entirely administered by the billing authority and do not affect the listing officer's duty to maintain the band in the CT valuation list
- However, often when class A exemption runs out, the taxpayer receives a bill, and the listing officer receives a request that the dwelling be taken out of the list.
- What are the principles to be applied?

## Dwellings and Repair



- However: the CT Situation and Valuation of Dwellings Regulations states a valuation assumption that:-
- **"The dwelling was in a reasonable state of repair"** and...
- **"reasonable repair"** must take account of **"the age and character of the dwelling and its locality..."**

"But I cant live in this property – look at the poor state of repair!"



## Dwellings and repair



- Thus when a dwelling is simply allowed to fall into disrepair, as a basic principle it will remain to be treated as a dwelling and be banded, ignoring the dilapidation.
- The average state of repair for the age, character and locality is the standard to be applied.
- A proposal to reduce a band or remove a dwelling from a list simply of grounds of poor repair will normally fail, *unless the disrepair is so severe that the property can no longer be considered a dwelling.*
- A question of fact and degree. A judgement to be made on the facts of the case

## Is this a dwelling?



## Or this?



## Repairs or major renovation?



- A property that physically cannot be occupied without works of major renovation or reconstruction to make it capable of habitation will not be considered a dwelling.



## What is the test applied?



- Would a schedule of normal repair restore the original dwelling to liveable condition without changing the character of a property?
- What is not regarded as normal repair?
  - Significant or wholesale reconstruction, renovation, renewal & replacement of the structure.
  - Improvement to general specification.
  - Work resulting in a change to the 'character' of the property.
  - Anything which is not simply a basic repair of the original - i.e. an unmodernised cottage must remain an unmodernised cottage, but in reasonable repair.

## These could be restored....



- ...But not without fundamentally changing their derelict character. They are not 'dwellings' for CT. Beyond 'reasonable repair' assumption.



## Empty property requiring refurbishment / upgrading



It may require:-

- Rewiring,
- Lead to copper/pvc plumbing
- Replacement of slates/tiles
- Repair of windows
- Brickwork /plaster repairs
- Redecoration

But if it is 'wind and watertight', and normal repairs (without substantial improvement) would make it habitable & would not be unrealistic taking into account its general value....then it is a dwelling

## An 'economic' test for 'reasonable repair'



- A principle inherited from case law relating to domestic rating: Lord Denning in Court of Appeal in Saunders v Maltby (VO) 1976
- *Are the repairs required of such magnitude that no reasonably minded landlord would undertake them for the return he would get?*
- In applying the principle in the CT context the cost is balanced against effect on Capital Value



## A recent CT Repairs case



- Burke v Listing Officer for Camden, High Court 2009. A neglected house in 'Fitzrovia' requiring £40,000 spend on a new roof:- Judge endorsed this principle:-

*"If a dwelling is in such poor repair that it is incapable of beneficial occupation and being repaired at reasonable cost, then the entry must be deleted from the list since it is no longer capable of being a hereditament within the meaning of the section sub paragraph (2) of the 1992 Act"*

- In this case it was held the property was still a dwelling and therefore in repair. No band reduction appropriate. If it's a dwelling it's "in reasonable repair".

## Capable of repair at 'reasonable cost'



- Not at any cost
- No change to general character
- Unmodernised not to be transformed into modernised (apart from necessary introduction of new essential elements necessary for occupation)
- Test is not "dream cottage" conversion & renovation costs, but a more basic "would it be worthwhile bearing in mind no change in character or significant specification improvement allowed?"
- Would a basic repair make it habitable? –could it be achieved at reasonable cost balanced against its value?
- Not an easy decision: A question of fact and degree in each case.



## Empty defective dwellings



Same layout  
Different character



- Example: 1940s/1950's 'Airey houses' had fundamental defects involving corrosion to steel reinforcing rods in the concrete post structure at wall bases.
- Incapable of repair at reasonable cost, without substantial demolition and/or replacement/reconstruction of former structure.
- Dwellings would be deleted during works and brought back as new

## Large scale repair, refurbishment or redevelopment of empty flats?



- Are they simply boarded up & in general disrepair?
- Are the flats mere shells, with all services & fixtures stripped out awaiting demolition?
- Are self contained units still identifiable?
- Will the end result be of a different character to the 'before' situation?

## The method of a typical economic test



- Remove costs of elements from a specification that are improvements or structural alterations, beyond basic repair.
- Index back adjusted costs to 1991 (in England).
- Compare with Value of the actual property "in reasonable repair" & subject to valuation banding assumptions as at 1991.
- Compare with Market value in 1991 in existing condition.
- Compare the repair estimate with the two capital values – do they suggest repairs would be worthwhile. Do they show a sensible return?
- Would it have been financially viable for an owner to carry out the repairs?

## The maths of a typical economic test (1) Low value



Unoccupied terraced house on council estate in Newcastle in poor repair awaiting demolition or renovation.

- 1991 Value in existing state £20,000
- 1991 Value in reasonable repair & subject to other assumptions £40,000
- Cost of repair £21,000

**X** Conclusion : Not a dwelling – Market would not undertake work.

## The maths of a typical economic test (2) High Value



Unoccupied top floor flat in prime location in South Kensington, London.

Neglected for 50 years & in poor repair & unmodernised.

- 1991 Value in existing state £250,000
  - 1991 Value in reasonable repair & subject to other assumptions £350,000
  - Cost of repairs £85,000
- ✓ Conclusion : Capable of repair at reasonable cost – still a dwelling.

## Properties actually undergoing repairs or renovation



- Normal repairs :- assumed to have been already done.
- Incapable of occupation because of major structural renovation or alteration (in builders hands) . Character being changed :- Result deletion, and re-entered as a new dwelling reflecting improvements.
- House converted into flats:- A 'new animal' created. Old dwelling disappears and is being replaced by two or more dwellings. Delete from list during works.
- Extensions:- will normally be \*'material increase' cases and band will remain unchanged in list, if part remains capable of occupation.

\* 'building, engineering of other operation carried out in relation to the dwelling'. Material increases await change of ownership before re-banding is triggered.

## Completion Notice procedure



- S 17 Local Gov Finance Act 1992 (also Sch 4A LGFA 1988)
- Where a building is left in an incomplete state, and it comes to the notice of the billing authority, the BA is required to serve a 'completion notice', where works of completion can reasonably be expected to take place within a 3 month period.
- The completion date stated in the notice becomes the date the dwelling is deemed to come into existence and is brought into the list – even if the works remain incomplete.
- Subject to appeal on the ground that the works cannot reasonably be completed by the set date in the notice.

## Empty Properties and CT



✓ Questions