

NORTHERN IRELAND VALUATION TRIBUNAL

**THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007 (AS AMENDED)**

CASE REFERENCE NUMBER: NIVT 10/22E

O & C C - APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr C Kenton FRICS & Mrs N Wright

Hearing: 15 May 2023, Belfast

DECISION

The unanimous decision of the tribunal is that the appellants' appeal is not upheld, for the reasons stated, and the tribunal Orders the appeal to be dismissed.

REASONS

Introduction

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellants, by Notice of Appeal (Form 3) dated 18 July 2022 appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 1 July 2022 in respect of the Capital Value of a property situated in Ballymena, County Antrim ("the property").

2. This case was case-managed and a preliminary hearing was directed concerning jurisdiction. The parties to the appeal were invited to make submissions and a Valuation Tribunal determined that the tribunal had proper jurisdiction to hear and determine this appeal and the matter proceeds accordingly. This tribunal sat to hear the matter on 15 May 2023. The appellants indicated that they were content for the matter to be determined in accordance with the documentation and written representations and the respondent, likewise, agreed with that procedural course. The tribunal accordingly considered any evidence available and all written representations in determining the appeal. For the purposes of this determination the names of the appellants and identifying details of the charity are not given and the property details likewise.

The Law

3. The general rating law applicable and relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). As is now the case in all determinations of this nature, the tribunal does not intend in this decision fully to set out the detail of the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many previous decisions of the Valuation Tribunal, readily available. The detail of this is not necessary for the purposes of this appeal. The appeal in this case is confined to a single discrete issue, this being whether or not the property falls for rating exemption relief. Accordingly, there are specific statutory provisions which now fall for scrutiny in this appeal. These are the provisions of Article 41 of the 1977 Order. The relevant part reads as follows:

“Distinguishment in valuation list of hereditaments used for public, charitable or certain other purposes

41.— Subject to the provisions of this Article, where the Commissioner or the district valuer is satisfied that a hereditament is a hereditament of a description mentioned in paragraph (2), he shall distinguish the hereditament, or cause it to be distinguished, in accordance with paragraph (3).

(2) The hereditaments referred to in paragraph (1) are—

(a)(b)

(c) any hereditament..... which—

(i) is occupied by a charity; and

(ii) is used wholly or mainly for charitable purposes (whether of that charity or of that and other charities);

(d) any hereditament, other than a hereditament to which sub-paragraph (b) applies, which is occupied by a body—

(i) which is not established or conducted for profit; and

(ii) whose main objects are charitable or are concerned with science, literature or the fine arts;

where the hereditament is used wholly or mainly for the purposes of those main objects;

(9) In this Article—

..... “charity” means a body established for charitable purposes only.”

The Issue to be Determined and the Evidence

4. As mentioned, there is a discrete issue to be determined and much is not in contention in this case. The facts are fully accepted by the respondent in that the appellants conduct charitable work from the premises, this being the work of a body established for charitable purposes. The tribunal’s task is accordingly, in the light of uncontested facts, to establish whether the use of the property for such charitable purposes falls within the provisions of Article 41 (2) of the 1977 Order.

The Appellants’ Case

5. In summary, the appellants contend that, whilst the property is a family home, it is also used for charitable purposes and is the head office of a charity (which shall be referred to as “SD”) where it is contended that the day to day running of this charity SD is conducted. The appellants provide examples of the activities of the charity SD (which it is not necessary to detail for the purposes of this determination) and they confirm that the property address is registered with the Northern Ireland Charity Commission and with HM Revenue & Customs as the “business address”. The appellants state that, on behalf of the respondent, the property has been inspected and, whilst those inspecting might only see a kitchen, the same kitchen is also used as a meeting room and for preparation work concerning the charitable activities and the living room doubles as an office/administration area; the bedroom doubles as a sorting room for such activities. The appellants’ written submission notes that charitable rates relief has been declined on the ground

that the charity does not have exclusive occupation of a certain area of the property and that the property is not wholly or mainly used for charitable purposes, but designating 100% of a particular area of the property to the charity is impractical as it is also a family home. Space has been allocated in several rooms to charitable purposes. The charity is not in a financial position to lease business premises and therefore the appellants are required to balance family life with the running of a charity from the property. One of the appellants' children has a disability and this also limits certain areas of the property, which must remain clutter free for mobility purposes. The appellants are also approved as foster carers and they need to keep a spare room clutter free for a child who might come to stay with them at short notice. The appellants strongly contend that the property is used for charitable purposes and should qualify accordingly under the statutory provisions.

The Respondent's Case

6. For the respondent, the fundamental assertion is made that the property does not meet, upon the facts, the statutory qualifying criteria.

The Tribunal's Determination

7. The tribunal's determination in this case is made by examining the uncontested facts and by applying the applicable statutory provisions. The key to determining this case rests with the specific words of the 1977 Order, Article 41 (2) (c) which provision refers to any hereditament, which: (i) is occupied by a charity; and which (ii) is used wholly or mainly for charitable purposes. These premises are certainly occupied by a charity, so the first element is satisfied. The key question is whether or not the premises fall within the definition of being used **wholly or mainly** (the tribunal's emphasis) for the charitable purposes. Examining the facts as set out by the appellants in their case, the appellants, for quite understandable reasons which have been clearly articulated by them, are unable to designate specific areas, or a specific area, within the property wholly or mainly for these charitable purposes; this is not practicable given the domestic circumstances applicable. The appellants clearly portray this as being a busy family home, where domestic activities and charitable activities are carried on, as it were, in parallel. The tribunal fully understands the applicable situation and how and why the charitable activities are carried on in the manner in which they are. The essential issue is whether or not the facts bring the use of the property within the parameters of the statutory provisions.
8. There is no broader discretion available to the tribunal save to determine whether or not the premises are used "wholly or mainly" for the charitable purposes. On the facts, the tribunal cannot determine that the test has been satisfied. The use of the premises for these charitable purposes does not fall within the statutory definition.

9. This being the case, the appeal cannot succeed. The tribunal fully accepts that this decision will be disappointing to the appellants, but the tribunal's task is to apply the statutory provisions, as a matter of proper statutory interpretation, and in this instance the determination is as mentioned. Accordingly, the appeal cannot succeed and for these reasons the appeal is dismissed by the tribunal, without further Order.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 1 June 2023