LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL OF A DECISION OF THE

NORTHERN IRELAND VALUATION TRIBUNAL

VT/2/2023

BETWEEN

COMMISSIONER OF VALUATION – APPELLANT

AND

COLM MARK McATEER – RESPONDENT

Re: 3 Windmill Road, Newry

PART 2

Lands Tribunal – Henry M Spence MRICS Dip Rating IRRV (Hons)

Background

1. The subject reference concerns an appeal by the Commissioner of Valuation ("the appellant") from a decision of the Northern Ireland Valuation Tribunal ("NIVT") delivered on 20th December 2022 and which determined that property at 3 Windmill Road, Newry ("the reference property") should be removed from the Rates Valuation List ("the Valuation List").

2. The ratepayer of the reference property is Mr Colm McAteer ("the respondent") and following an unsuccessful application for a Protective Costs Order, the respondent has confirmed to the Lands Tribunal that he no longer intends to pursue his objection to the appellant's application. The subject appeal is therefore advanced on an undefended basis.

Chronology

3. The reference property comprises a detached cottage located on the outskirts of Newry.

4. In or around 24th July 2017 the respondent made an application to the District Valuer to have the reference property removed from the Valuation List, on the basis that it was undergoing "works". The District Valuer then considered the property to be temporarily incapable of beneficial occupation and removed it from the Valuation List on or about 9th October 2017, effective from 1st April 2017.

5. Planning permission was subsequently granted in respect of the reference property in May 2018, for a "single storey disabled adaptation and alterations to dwelling" (LA07/2018/0644/F). Further planning permission was then granted on 22nd May 2019 for a "replacement dwelling and garage" (LA07/2019/0286/F).

6. The District Valuer returned the reference property to the Valuation List in or around 25th September 2019. The Capital Value rates assessment was assessed at £145,000.

7. In or around 12th June 2020 the respondent requested that the reference property be removed from the Valuation List on the basis that he considered it to be incapable of beneficial occupation.

8. Planning permission LA07/2020/0565/F ("the 2020 planning permission") was then granted in the interim, on 5th August 2020. This was for a "replacement dwelling and retention of derelict house for conversion to garage/garden store, in substitution for approval granted under LA07/2019/0286/F". The 2020 planning permission contained a stipulation that upon occupation of the replacement dwelling, the reference property could no longer be used or adapted for purposes of human habitation.

9. On 5th October 2020 the District Valuer concluded that the reference property should remain in the Valuation List, following an inspection on 24th July 2020. At that time the Capital Value rates assessment was reduced to £105,000.

10. The respondent appealed the decision of the District Valuer to the appellant in or around 14th October 2020. On 5th November 2020 the appellant determined on appeal that the reference property was capable of beneficial occupation and on that basis it should remain in the Valuation List, without change to its Capital Value rates assessment of £105,000.

11. The respondent then appealed the appellant's decision to the NIVT in or around 10th November 2020. The NIVT agreed with the respondent's position and held that the reference property should be removed from the Valuation List.

12. The appellant then sought leave to appeal the decision of the NIVT to the Lands Tribunal and this was granted on 5th January 2023.

The Appellant's Submissions

13. On behalf of the appellant Ms Louise Maguire BL made the following submissions and the Tribunal is grateful to Ms Maguire BL for her helpful submissions.

(i) Application for Leave to Appeal

14. In the appellant's application for leave to appeal, the appellant observed that the NIVT's decision to remove the reference property from the Valuation List centred on the 2020 planning permission. This granted permission for the construction of a replacement dwelling and the retention of the reference property for conversion to a garage/garden store. It was a stipulation of the 2020 planning permission, that upon occupation of the new replacement dwelling, the reference property could no longer be used or adapted for the purposes of human habitation.

15. The NIVT held, at paragraph 28 of its decision, that the "legal effect" of the 2020 planning permission was that the reference property ceased to be a domestic dwelling, to be used as ancillary storage only. It reached this conclusion on the basis that the respondent desired to proceed with the construction work in accordance with the 2020 planning permission at the date of the appeal (paragraph 27.4). However, on the specific facts of the case, he had been legally constrained from doing so due to issues regarding access to the site that were subsequently remedied by an interim injunction made in or around 11th December 2020. The NIVT held that this was a factor to be taken into account, and notwithstanding that construction had not commenced at the appeal date, the respondent was entitled to the benefit of the 2020 planning permission and it was therefore "properly regarded as engaged legally" (paragraph 27.5 of the NIVT decision). The NIVT held that the "older structure was legally entitled under the 2020 planning permission, to be used as ancillary storage only" and was not a rateable hereditament at the date of the appeal and therefore did not pass the first stage of the three stage test in Newbigin v Monk [2017] UKSC 14.

16. It is apparent, therefore, that the NIVT considered the date of the appeal to be the material or relevant date for the purposes of ascertaining whether the reference property comprised a rateable hereditament. The appellant respectfully contends that the NIVT is incorrect in its assessment and in this regard the appellant relies on the well-established principle that the relevant or material date for assessment of the state and circumstances of the reference property is the date of the District Valuer's Certificate, pursuant to Marks & Spencer PLC v Commissioner of Valuation [1990] VR/30/1986.

17. It is, therefore, the appellant's primary contention that the NIVT has erred in treating the date of the appeal as the relevant or material date. It is submitted that the relevant or material date is in fact the date of the District Valuer's Certificate, namely 5th October 2020. It is therefore submitted that matters and circumstances which postdate the District Valuer's Certificate are irrelevant and ought to be disregarded.

(ii) Grounds of Appeal

18. The primary limb of the appeal therefore rests on the appellant's contention that the state and circumstances of the reference property are to be taken at the date of the District Valuer's Certificate, as opposed to the date of the respondent's appeal to the NIVT i.e. on 5th October 2020 rather than 9th November 2020. Hence the appellant advances a general assertion that "various facts and issues referred to in the NIVT decision have arisen in the passage of time since the relevant date and do not reflect the state and circumstances which existed on 5th October 2020".

19. It is asserted in particular that the decision in the High Court in McAteer v Keeley & Ors [2021] NI Ch 15, to which the NIVT referred and based its decision, making a finding that the respondent did not intend to commence building works to action the 2020 planning permission until 30th November 2020, is irrelevant. This is almost two months after the relevant date and it is therefore submitted that this factor is of no relevance to the subject reference. Indeed, at that date, the respondent had not yet commenced work to effect the 2020 planning permission.

20. Moreover, the respondent filed for an interim injunction on 4th December 2020 and was granted this on 11th December 2020. It is understood that his objective was to deal with an issue regarding access, so as to permit construction to commence. This application was also made after the relevant date and it is submitted it is therefore irrelevant and cannot cause the planning permission to have become "legally engaged", as has been determined to be the case by the NIVT.

21. Additionally, the NIVT's determination that "the older structure was legally entitled, under the 2020 planning permission, to be used as ancillary storage only" fails to account for the crucial factor that construction of the replacement dwelling had not yet commenced at the relevant date and therefore the planning stipulation that the reference property could no longer be used or adapted for the purposes of human habitation upon occupation of the new

replacement dwelling had not yet been engaged. Therefore, even if the planning permission was a factor at the relevant date, it is not relevant. Consequently it is submitted that the planning permission and the respondent's ability to implement it was not a relevant feature of the state and circumstances of the reference property at the relevant date.

(iii) The Overarching Framework

22. It is submitted that the following stages in considering rateability are distinct and separate:

    (a) Is the property a rateable hereditament i.e. does it pass the hereditament test?

    (b) If so, what is its Capital Value for the purposes of the Valuation List i.e. taking into account the statutory presumptions under Schedule 12 to the Rates (Northern Ireland) Order 1977 ("the Rates Order").

(iv) The Hereditament Test

23. It is the appellant's contention that upon a proper application of the "hereditament test" the reference property was properly rateable at the relevant date and ought to be included in the Valuation List. In view of the foregoing analysis, the appellant contends that the 2020 planning permission is irrelevant to this determination (hereinafter referred to as "the listing issue").

24. However, as is apparent from the documents considered by the NIVT, in summary it was the respondent's contention that the reference property was not capable of beneficial occupation due to internal works that had been carried out on foot of an earlier planning permission. It was his contention that, therefore, the reference property failed to satisfy the test in Newbigin v Monk and ought to be removed from the Valuation List. The respondent also argued that the valuation ought not to have been based on an assumption as to the state of its internal repair, as stipulated under Schedule 12 of the Rates Order.

25. Article 2(2) of the Rates Order defines a "hereditament" as a "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 on a valuation list".

26. In Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin), in the High Court of England and Wales, Singh J (as he then was) clarified that the question be considered in cases such as this, where the question of disrepair arises and when considering whether the reference property is a hereditament, is as follows:

> "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?"

Singh J distinguished between a "truly derelict property" which is "incapable of repair" to make it suitable for its intended use and those repairs which it would be "economic to undertake or uneconomic to undertake".

27. Wilson v Coll was considered in detail in the NIVT decision Whitehead Properties Ltd v Commissioner of Valuation 12/12 and cited with approval:

> "25. In determining the issue, it is easy to envisage a truly derelict property that on no account ought properly to be included in the valuation list. At the other end of the spectrum, as it were, there exist many properties which are unoccupied but which require only very minor works of reinstatement or repair to render these readily habitable. The difficulty, as the tribunal sees it, in the absence of any specific provision expressly enabling the tribunal to take economic factors into account (and in the light of the position as stated in Wilson v Coll) is to adjudge what might be deemed a 'reasonable amount of repair works'. Clearly, it would be wrong to include a property in the rating list which required an 'unreasonable' amount of repair works to render the property in a state to be included in the list. How then is the concept of 'reasonableness' to be tested?
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> 26. 'Reasonableness' is generally regarded as being the standard for what is fair and appropriate under usual and ordinary circumstances – the way a rational and just

person would have acted… Having accepted that there is no mention of any 'economic test' in the relevant statutory provisions in Northern Ireland (as in England), the tribunal's view is that the only common sense and proper way to look at things is to examine the specific factual circumstances of any individual case and to take all material factors into account in taking the broadest and most common sense view of things in addressing the issue of whether or not having regard to the character of the property and a reasonable amount of repair works being undertaken, the property could be occupied as a dwelling. Accordingly, the tribunal is reluctant to lay down any rigid principle that, in effect, inhibits or prevents the tribunal from taking a proper, comprehensive and broad view 'in the round' of all the relevant facts. This is so when conducting an assessment of what is reasonable, or otherwise, in relation to repair works necessary to render any property in a state to be included in the rating list. Tribunal's across the broad spectrum of different statutory jurisdictions in Northern Ireland are designed, within the system of justice, to engage in decision making in an entirely practical and common sense manner, applying the inherent skills and expertise of the tribunal members in the assessment of any material facts and by proper application of the law to any determined facts, and should be enabled to undertake the task in a properly-judged and comprehensive manner, provided that the law is properly interpreted and observed in the decision-making."

28. In McGinn v Commissioner of Valuation 14/20 the NIVT have extracted the following key principles from the judgment in Coll:

    (a) Each case should be determined on its own facts and circumstances;.
    (b) The "reasonable amount of repair" required to place any property into a proper state of habitation must be determined by the application of sound common sense, and in an entirely practical and realistic manner.
    (c) The individual and financial circumstances of the "occupier" are irrelevant in reaching the determination at (b) above.

29. In this particular case, the following factors are submitted as relevant:

(a) Although the interior of the reference property had already been the subject of interior works by the relevant date, the said works were aimed at making disabled adaptations and alterations to the reference property, pursuant to planning permission LA07/2018/0644/F, (as opposed to redevelopment works on a commercial property – such as in Newbigin v Monk) and were to facilitate the respondent's domestic needs and preferences.

(b) The reference property had nevertheless been used for storage purposes at the relevant date – storing garden tools, equipment and bicycles, amongst other things – notwithstanding the internal works that had been carried out and the respondent was therefore in actual and exclusive beneficial occupation of the reference property at the relevant date.

(c) The structural element of the reference property remained intact.

(d) The reference property was not undergoing any works or reconstruction at the relevant date.

(e) At the relevant date the respondent had the benefit of the 2020 planning permission, however, as has been detailed previously this is irrelevant for the reasons set out therein. The respondent had not yet and did not intend to start works to convert the reference property to a garage until after the relevant date and therefore there was no legal impediment to its occupation as a dwelling. The 2020 planning permission was not engaged.

(f) Whilst the respondent sought to argue that it was uneconomic to complete development pursuant to the earlier planning permission, this was an irrelevant factor.

30. Indeed, applying the hereditament test as previously outlined, and given the fact that the reference property retains an average state of external repair, it cannot be considered a truly derelict property. It is therefore submitted that, when assessed objectively, the reference property retained the character of a domestic property. Indeed, even if the Tribunal were to take the view that the reference property was in need of repair in order to render it habitable it is submitted that with a reasonable amount of repair works being undertaken it could be

occupied as a dwelling, thus satisfying the Coll test. It is therefore submitted that in view of the factors identified above, the reality is that the respondent was in permanent, exclusive, actual and beneficial occupation of the reference property at the relevant date and therefore the reference property comprised a rateable hereditament capable of occupation and ought to be included in the Valuation List.

(v) The Capital Valuation

31. Furthermore and for completeness, any argument that the property is uninhabitable due to internal factors is ill-founded. Paragraph 7 of Schedule 12 to the Rates Order provides that the Capital Value shall be the amount which, on the statutory assumptions prescribed therein, the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant valuation date. Those assumptions are not displaced. Therefore, in its assessment of the capital value of the reference property the Tribunal is prevented from taking account of its internal state of repair, pursuant to paragraph 12 which operates to presume that:

> "The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality."

32. Moreover, it is submitted that the mere existence of planning permission cannot be taken into consideration, when assessing capital value, pursuant to Schedule 12. It is therefore submitted that the reference property ought to remain in the Valuation List and retain its capital value of £105,000.

(vi) Conclusion

33. In view of the foregoing, it is submitted that the decision of the NIVT, to remove the reference property from the Valuation List, was made on the basis of irrelevant information, not reflective of the state and circumstances of the reference property at the relevant date. It is further submitted that when the relevant state and circumstances are taken into consideration, these demonstrate that the reference property was a rateable hereditament

capable of beneficial occupation and therefore it ought to remain in the Valuation List and retain its capital value of £105,000.

The Tribunal

34. It is evident from the NIVT decision that they considered the date of the appeal, 9th November 2020, to be the relevant date with regard to the state and circumstances of the reference to be taken into account in its assessment for rates liability.

35. The Tribunal, however, agrees with Ms Maguire BL the NIVT erred in law in reaching this conclusion. The correct date is the date of the District Valuer's Certificate, 5th October 2020, which gave rise to the appeal. The state and circumstances of the reference property are to be taken at that date. This is well established law and practice in Northern Ireland since the Marks & Spencer decision (page 10):

> "It is admitted by the Commissioner that as a general rule the District Valuer's Certificate must reflect the state and circumstances of the hereditament at the date the Certificate is issued. The Tribunal has in fact so held on many occasions. It is supported in that view by Lord Justice Scott's words in the English Court of Appeal case of Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee [1937] 2 KB 445 at page 468:- 'The hereditament to be valued … is always the actual house or other property for the occupation of which the occupier is to be rated, and that hereditament is to be valued as it in fact is – rebus sic stantibus'.
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> Also the City of Sheffield v T B and W Cockayne Ltd and Donmail (Valuation Officer) [1958] 4 RRC 258 where, inter alia, it was held that the valuation office had no power to agree, nor the local valuation court to direct, the insertion in the valuation list of any figures which did not represent the true gross and net annual figure of the hereditament at the date of the proposal. Barratt v Gravesend A C was applied."

36. On the basis that the relevant date is 5th October 2020, the Tribunal also agrees with Ms Maguire BL:

(i) The NIVT made a finding that the respondent did not intend to commence building works to action the 2020 planning permission until 30th November 2020. This is almost two months after the relevant date and is irrelevant.

(ii) The respondent filed for an interim injunction on 4th December 2020 and it was granted on 14th December 2020, to address access issues to the site. This application is irrelevant as it was made after the relevant date and could not cause the planning permission to have become "legally engaged", as the NIVT determined.

(iii) The NIVT found that "the older structure was legally entitled, under the planning permission, to be used as ancillary storage only". At the relevant date construction of the replacement had not yet commenced. This planning stipulation is not, therefore, a relevant factor at the relevant date.

(iv) Under the "hereditament test" the reference property was properly rateable at the relevant date as it was not a "truly derelict property" (Singh J) and it was capable of repair thus satisfying the Coll test.

(v) At the relevant date the reference property was being used for storage purposes and the respondent was therefore in actual and exclusive beneficial occupation.

(vi) There was no legal impediment to the reference property being occupied as a dwelling house at the relevant date.

(vii) The respondent was in permanent, exclusive, actual and beneficial occupation of the reference property at the relevant date. The reference property therefore comprised a rateable hereditament capable of occupation as a dwelling house at that date. On that basis it should be included in the Valuation List.

(viii) Pursuant to paragraph 7 to Schedule 12 of the Rates Order the Tribunal must assume that the hereditament was in an "average state of repair and fit out" at the relevant date.

Conclusion

37. The Tribunal finds that the NIVT decision to remove the reference property from the Valuation List was based on irrelevant information that did not reflect the state and circumstances of the reference property at the relevant date, 5th October 2020.

38. The Tribunal directs that the reference property should be re-entered in the Valuation List.

39. The Tribunal directs that, as per Ms Maguire BL's submissions, the reference property should be re-entered in the Valuation List with a Rates Capital Value of £105,000.

5th June 2024

Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland