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 24/22E

Between:

GERALD McCORMICK – APPELLANT

and

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Keith Gibson B.L

Members: Mr Christopher Kenton FRCS and Mr Robert McCann

Date of hearing: 9 May 2024

DECISION

The unanimous decision of the tribunal is that the Decision of the Commissioner of Valuation for Northern Ireland is upheld, and the appellant's appeal is dismissed.

REASONS

INTRODUCTION:

1. This is an appeal by Mr Gerald McCormick in respect of the capital assessment of premises situated at 109 Moorfields Road, Tully, Ballymena, BT42 3HJ. The appeal is made pursuant to the relevant provisions as set out in the Rates (Northern Ireland) Order 1977, As Amended.

2. For the purposes of this appeal the relevant capital valuation date is the 1st January 2005 (see Schedule 12, paragraph 7(4) of the Rates Order). The other point in time which is often referenced in the context of these appeals is the 1st April 2007 which is the date upon which the valuation lists for domestic properties became operative. What this means, in practice, is that for the purposes of any appeal the Tribunal can only consider whether or not the capital valuation was correct as of the 1st January 2005.

3. Self-evidently, this can cause a number of problems both for homeowners and valuers alike. The most obvious practical difficulty is in respect of properties which are built or constructed or substantially renovated post the 1st January 2005 valuation date. In those instances, the valuer, using his or her skill and expertise, must try and assess the value of the new property with reference to similar properties already built and valued earlier (those similar properties are often referred to in valuation term as "the comparables").

4. For homeowners, they face two significant problems in advancing their appeals; one is an evidential problem; the other, a legal one (what is known as the 'tone of the list' statutory presumption). In respect of the evidential problem, homeowners have to seek to establish to the satisfaction of the Tribunal (and the onus and burden is on them as Appellants) that other properties sold or agreed for sale at the relevant time (the 1st January 2005) demonstrate that their 1st January 2005 valuation was wrong. Gathering that evidence is often very difficult, even for professional valuers.

5. The second difficulty faced by Appellants is that contained at paragraph 7 of Schedule 12 to the Rates Order which states, in a fine example of legalese:

> *"In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditaments whose capital value has been revised."*

6. This is what valuers know as the "*tone of the list"* or the "*tone of the comparables*"*.* What this means in practice is that if within a relatively short period of time in a particular area (which in an urban setting, might well stretch only to one street, but in a rural setting may stretch to many miles) there are no or limited challenges to a number of valuations or, if challenges are abandoned or ultimately unsuccessful, then a point can be reached within a relatively short space of time although it would have to be said that a reliable tone of the list for the hereditaments (basically the buildings) in a location or category has been settled - see **A-Wear Limited –v- Commissioner of Valuation VR/3/2001**.

7. Whilst the presumption, as it pertains to the tone of the list, is not to be followed slavishly, if it can be established to the Tribunal's satisfaction that the tone has settled and has been settled for a considerable period of time (measured in years not months) then the prospects of displacing the presumption are significantly diminished.

8. In addition to the issues pertaining to comparables, this appeal also raises a separate issue, namely whether or not it could be said that the property was used for agricultural use. The 1977 Order provides for the definition of "agricultural land" and "agricultural buildings" which are exempt from rates. Schedule 1, 2 (1) provides as follows: -

> **2. –(1) in this Order, "agricultural buildings"-**
>
> **(a) means, buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon, or buildings being or forming part of a market garden and used for the purposes of thereof; ….**

9. The property had initially been assessed with a capital value of £92,500 on or about the 1st July 2020. This was challenged by the Appellant and following that

challenge the capital value was amended downwards from £92,500 to £70,000, reflecting, in the District Valuer's opinion, the evidence of poor external repair. On the 22nd September 2022, the Appellant appealed again with the assessment remaining unchanged. It was out of this decision of the 22nd September 2022 that the Appellant appealed to the Commissioner of Valuation, however, that appeal was rejected also. That led, in turn, to this appeal which came via the Appellant's Notice of Appeal dated the 10th November 2022 in which he sought to appeal matters on the basis that:

(a) The house was not fit to be lived in on the grounds the roof had caved in, the windows and doors were rotten, the floors and walls were damp and crumbling, the property was not wired for electric or heating and there was no mains water.
(b) That it was being used to store sheep feed and agricultural equipment and offer shelter for newborn lambs.
(c) To make the house habitable would take in the region of £90,000 to £100,000.
(d) There were inadequate foundations.
(e) That the house was only "*fit for knocking down"* and rebuilding to which the Appellant expressed an intention.

10. As set out in the introductory remarks pertaining to the legal test regarding the state of the property and unsuitably in the list, there is no doubt that the property is in poor condition. A number of photographs were attached, both in the Respondent's response to the appeal and by the Appellant himself. In order to demonstrate the state of the property, colour copies of the front elevation, rear elevation and site elevation are attached to this decision at Appendix A. These hopefully should be of some assistance in respect of precedent.

11. The Respondent Valuer, Mr Mark Duffy, conducted a site inspection on the 21st October 2022 when he found that the property was indeed in a poor state of external repair with missing roof tiles to the rear and that both the windows and doors required replacement. He did, however, note that, whilst some of the areas within the house were and could potentially be used in conjunction with farm activities such as storage, the majority of the dwelling was vacant, and the internal areas remained identifiable as habitable space. This, to a large extent, was confirmed by the Appellant's own photographs which showed both the electrical fittings and sanitary ware, albeit not in a state which would ever be considered acceptable in a modern context. However, the photographs largely confirmed what the Appellant contended for in regard to the state and condition of the property.

12. When it came to comparables, the Respondent was able to identify four comparables. The fourth comparable, namely premises at 56 Craigadoo Road, Ballymena, was rejected on the basis that it was of average external repair whereas the three comparables which the Tribunal favoured were all of poor repair and a similar size. The subject property had habitable space of some 132.2m² in comparison to the three aforementioned favoured comparables, namely:

(a) Number 84 Craigadoo Road, Ballymena – a property built circa 1910, of poor external repair with a habitable space of 128.40m² and a capital value of £70,000.
(b) 9 Craigadoo Lane, Ballymena – a property built in or around 1910, again of poor repair with a habitable space of 138.6 m² and a capital value of £75,000.

(c) 16 Tully Road, Ballymena, BT42 4RR – again, a property of poor repair with a capital value of £76,000.

13. All of the comparables were in a rural location similar to the subject property, some two storeys in size and built in a similar period.

14. The Appellant produced no comparables.

15. In the circumstances, the Tribunal had no hesitation in confirm that the capital value of £70,000 was appropriate.

16. In respect of the habitable condition of the property, the Respondent points to the decision in England and Wales of **Wilson –v- Coll** [2011] EWHC 2824. The decision of Mr Justice Singh and the previous decisions of this Tribunal are of persuasive, if not binding authority, but the bar which is set is a fairly high one for any Respondent, for he or she must prove that the property is truly derelict. Implicit within the notion of a truly derelict property is a property which will be extremely difficult, if not impossible, to return to its status as a dwelling house.

17. The Tribunal as a matter of fact finds that this is patently not the case in this particular instance, for photographs of the property indicate that, whilst in poor repair, it is still immediately recognisable as a dwelling house and whilst there are issues with decoration, maintenance and repair the property still exists as a recognisable hereditament.

18. The Tribunal also draws comfort from **Allastair Baron –v- The Commissioner of Valuations for Northern Ireland** 41/21. Very briefly, that appeal concerned whether or not Mr. Baron's property passed the "hereditament test". The property itself was a detached 1.5 storey chalet which had defective foundations occasioned by back-filling on top of made ground and soft natural bearing soils. The Structural Engineer appointed by the Appellant had indicated that underpinning was required and cost approximately £115,000 to complete. Notably, in that case, despite the difficulties with the foundations, the property had not been occupied and it remained in a shell state.

CONCLUSION:

19. The property is not used solely for agricultural purposes and is not recognisable as such. It is a dwelling house in need of repair and with a reasonable amount of repair it could be occupied as a dwelling. The tone of the list is settled and the Capital Value of £70,000 in keeping with that tone.

20. The Appeal is dismissed.

Chairman: *Mr Keith Gibson*
Northern Ireland Valuation Tribunal
Date decision recorded in register and issued to the parties: 30th August 2024