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 30/19

MRS CATHERINE STEWART– APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Francis J Farrelly Esq

Members: Brian Reid Esq and Ms Noreen Wright.

Reconsideration 6th August 2024

Appearances:

Mrs Catherine Stewart, Appellant.

Mrs Gail Bennett for the Respondent.

Introduction

1. This review relates to the appellant's home at 2 Downshire Road, Bangor BT20 3TW. There is no dispute that when she acquired this property it required a substantial amount of work to its structure, both internally and externally. The respondent in the original appeal submission accepted that the property required substantial repairs but maintained that it continued to be a hereditament and thus liable for rates. The respondent issued a valuation certificate on the 25th of October 2019 giving a domestic valuation of £380,000.

2. The Appellant unsuccessfully appealed the capital value and consequent rates bill to the Valuation Tribunal. She then requested a review of the Tribunal's decision.

3. This is provided for in Rule 21 of the Valuation Tribunal Rules (NI) 2007. It states as follows:

   21. —(1) If, on the application of a party or on its own initiative, the Valuation Tribunal is satisfied that—
   (a) its decision was wrong because of an error on the part of the Valuation Tribunal or its staff; or

(b) a party, who was entitled to be heard at a hearing but failed to be present or represented, had a good reason for failing to be present or represented; or
(c) new evidence, to which the decision relates, has become available since the conclusion of the proceedings and its existence could not reasonably have been known or foreseen before then; or
(d) otherwise, the interests of justice require, the Valuation Tribunal may review the relevant decision.

4. The power or ability to request a review is different from the appeal to the Lands Tribunal, pursuant to Article 54(a) of the Rates (NI) Order 1977, as amended. The review procedure is not intended to supplant the appeal procedure and is not intended to be a second chance for an appellant to have their appeal heard again. The review procedure is designed to correct obvious and fundamental flaws which arose because of human error, errors which when pointed out, are self-evident, patent and objectively, clearly erroneous.

Consideration.

5. The Tribunal considered the appellant's review in the context of Rule 21 as a whole and proceeded on the basis the four grounds (a) to (c) referred to in Rule 21 are not contentious. We find the appropriate provision is the generic 'the interests of justice' provision in rule 21 (d).

6. Central to our decision and to the challenge by way of review, is the application of the decision oft quoted by the respondent of Wilson -v- Coll. This is a decision of Mr Justice Singh dated 13th October 2011 in the High Court in England and Wales (Administrative Court). Whilst not binding upon us by any doctrine or precedent, it is persuasive and must be respected. The statutory regime in England is different, but for practical purposes the issues arising are the same, viz, whether the property should be excluded from the valuation list because of its condition.

7. Mrs Stewart has not focused upon the valuation placed upon her property, bearing in mind the statutory scheme of assumptions and comparators. Rather, she has argued that her property should be excluded from the valuation list for a finite period. She accepts that the property is now liable for rates as the work has been completed.

8. Mr Justice Singh in his decision refers to the Court of Appeal decision in Post Office v Nottingham Council[1976]1 WLR 624 on the definition of hereditament. In the domestic context the legislation is such that there is no provision to exclude repairs considered to be uneconomic. Such a conclusion considerably reduces the scope of any appeal in respect of properties in a poor state of repair. It is not uncommon for such properties to be bought with a view to their

repair. We accept that at the relevant time the appellant's property was not reasonably capable of occupation. However, it was capable of repair for occupation as evidenced by the fact this is precisely what she did. For rating purposes, the issue is not whether the property is capable of occupation but whether it ceases to be a hereditament because of its state of disrepair.

9. Mr Justice Singh considered the economics of repair and refers to the question posed by the original tribunal, namely, although a property is capable of repair `at what price?' There was a distinction made between a property in need of repair and a property so derelict it is incapable of repair. This however is distinct from the economic issue. It really means that the property is in such a state that it no longer continues to exist as a property.

10. Mr Justice Singh highlighted the distinction between the value of a hereditament and whether a hereditament exists. Applying that to Mrs Stewart's property we were satisfied whilst it was in need of substantial repair it nevertheless remained a hereditament.

11. At the review hearing Ms Bennett outlined the previous practice of the respondent. Some of this was anecdotal and other aspects overlap with issues of public law, which is beyond our scope of inquiry. The first point is that there is provision in certain circumstances to exclude empty homes from valuation and for the owner to obtain 100% rate relief. However, none of these benefit Ms Stewart. They include, for instance, a listed building which is unoccupied.

12. There was an earlier provision effective from the 1st of October 2011 up to 2016 giving a wider discretion, for instance, where a property was being renovated and was unoccupied. This however came to an end in 2016. The respondent exercised some discretion, allowing an exemption for a fixed period, whilst building works were being carried out. Whilst this may have been a very reasonable approach it does not accord with the respondent's current practice, no doubt influenced by the decision in Wilson -v- Coll.

13. We were referred to a modern apartment block fronting Chichester Street in Belfast which has been the subject of group litigation. The information we have is anecdotal, but it would appear there was an issue about the construction of the building, with a view that it was so unsafe the occupants had to evacuate. Ms Bennett advised us that the Department is currently not seeking rates from the owners of the individual apartments. A distinction was made in that, for the repairs to be effective, structural work is required to the entire block and so this is outside the control of the individual apartment owners.

14. Mrs Stewart has referred us to other case law including Newbigin -v- Monk [2017] UKSC 14 where the Supreme Court in 2017 supported the principle of

reducing rates during refurbishment. However, this related to a commercial building. The Upper Tribunal held that the property had been stripped out beyond reasonable repair and should be considered a building undergoing reconstruction. The Court of Appeal allowed the valuation officer's appeal on the basis the legislation affecting the decision created an assumption that repairs would return the premises to their former state provided they were economic. The Supreme Court overturned this and reinstated the Upper Tribunal decision. The Supreme Court referred to the reality principle as being the valuation of a property as it existed on the material day. There was reference to the statutory presumption that the property was in a reasonable state of repair for the occupation listed on the rating list. However, the Supreme Court said this did not displace the reality principle. It guided that evaluation called for an assessment of whether a property is undergoing reconstruction and therefore incapable of occupation rather than simply being in a state of disrepair.

15. This decision does support Mrs Stewart to an extent. The Supreme Court at paragraph 12 of its judgement refers to the principle of rating law that a hereditament is to be valued as it existed at the material day. This is referred to as the principle of reality. However, we are mindful of Mr Justice Singh's distinction between the value of a hereditament and whether a hereditament exists. At paragraph 23 the Supreme Court raised the question of whether premises are undergoing reconstruction or whether they are in a state of disrepair. This calls for an objective assessment of the physical state of the property. In that case the premises were incapable of beneficial occupation because as an objective fact they were in the process of redevelopment and no part of them was capable of beneficial use. The issue is not straightforward because whilst Mrs Stewart home was being repaired rather than redeveloped it was not capable of occupation or beneficial use by the family.

16. Whilst there are arguments in support of Mrs Stewart's point, we are cautious in applying Newbigin -v- Monk [2017] UKSC 14 out of context. It is dealing with a different statutory regime and relates to commercial property. We have not been referred to any authorities in relation to domestic properties on the meaning of hereditament which displaces the rationale of Wilson -v- Coll. Mrs Stewart's challenge has been most impressive, but we find ourselves in agreement with the respondent on the law.

CONCLUSION

17. Having reviewed its previous decision, the Appellant has not made out any of the grounds justifying relief pursuant to Rule 21 and this Tribunal's original decision remains unaffected.

F J Farrelly

Chairman

Northern Ireland Valuation Tribunal
Date decision recorded in register and issued to the parties: 8th January 2025