

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 27/19

MR ROBERT HENRY ARMITAGE - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Francis J Farrelly Esq

Members:

Ms Noreen Wright (lay)
and
Timothy Hopkins Esq (Valuer).

Date of hearing: 26th July 2021

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. Mr Armitage, the appellant, attended the appeal hearing held in the Royal Courts of Justice accompanied by Ms Parry. He had earlier asked about recording of the proceedings and was advised that audio or visual recording would not be permitted. Ms Parry would be entitled to maintain a written or typed note of the evidence. Mr Gerard Fitzpatrick who prepared the submission entitled 'Presentation of Evidence' on behalf of the respondent appeared via video link. There were no technical difficulties in relation to the proceedings.
2. The appellant purchased 32 Belfast Road, Ballynahinch in or around June 2017. He bought it as an investment, intending to rent it out as a private dwelling. It is a

- semi-detached house with an outbuilding constructed in the 1930s. The respondent calculates its external area at 88.5 m², with the outbuilding measuring 7.6 m².
3. On 29 June 2017 the appellant advised Land and Property Services (LPS) he was intending to carry out building works and wanted to discuss the liability of the property for rates.
 4. On 21 September 2017 the District Valuer advised of no change to the capital valuation and that the property would continue to be classified as a hereditament liable for rates. At that stage there was no sign of works having started.
 5. On 20 October 2017 the appellant again made contact with LPS about the liability of the property for rates pointing out that work had begun, and that the floors had been removed.
 6. In the submission from the respondent entitled 'Presentation of Evidence' it is recorded that LPS staff encountered difficulty in contacting the appellant to arrange an internal inspection of the property. It was decided on 15 January 2018 that the properties liability for rates remained unchanged.
 7. On 15 August 2019 the appellant made a third application to LPS in respect of the property and complained about the respondent's failure to internally inspect the property. He indicated that the flooring was in the process of being replaced
 8. On 5 December 2019 the property was inspected by Mr Fitzpatrick on behalf of LPS who maintained that the property was subject to rates as assessed. He had been advised by the appellant that the downstairs floor was in the process of being removed to install a damp-proof course. On inspection this work appeared to be partially completed. He observed that the property was in need of modernisation and that the external fabric of the building was intact with no evidence of disrepair. In considering liability for rates, he referred to the hereditament test set out in the decision of Wilson -v- Coll.
 9. Wilson v Coll (LO) dealt with whether a hereditament exists or continues to exist: Mr Justice Singh stated:

39. In answering that question correctly the respondent submitted to me that what in fact should be asked is a question which is posed for Listing Officers to consider in a practice note to the Council Tax Manual, practice note number 4. The question 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?"

40. I accept the respondent's submission as a general matter in that respect. I accept that as a general matter of law the crucial distinction for the purposes of deciding whether there is, or continues to be, a hereditament should focus upon whether a property is capable of being rendered suitable for occupation (in the present context occupation as a dwelling) by undertaking a reasonable amount of repair works. The distinction, which is correctly drawn by the respondent, in my view, is between a truly derelict property, which is incapable of being repaired to make it suitable for its intended purpose, and repair which would render it capable again of being occupied for the purposes for which it is intended.

41. The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake. As I have already indicated, that submission, and my conclusion in accepting it, draws force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present legal regime, whereas it is present in the legal regime which governs non-domestic rating.

10. A valuation certificate dated 17 December 2019 was issued, valuing the property at £97,500.
11. On the 22 January 2020 the appellant's Notice of Appeal dated 17th January 2020 was received in the office of the Valuation Tribunal. On 29 January 2020 a legal member of the appeal tribunal agreed to extend the time for appealing further to rules 9(2) and 26 of the Valuation Tribunal Rules (Northern Ireland) 2007.
12. In the notice of appeal, the appellant complained of the delay on the part of the respondent in inspecting and contended that the property should not have been liable for rates whilst the building works were ongoing. He also claimed a loss of rental income which he estimated at £10,000.

The legislation

13. The statutory provisions are to be found in the 1977 Order as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). This is a reference under Article 54 which enables a person who is dissatisfied with the Commissioner’s valuation as to capital value to appeal to this tribunal.
14. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms that “On an appeal under this Article, any valuation shown in the valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.” It is therefore up to the appellant in any case to challenge and to displace that presumption, or perhaps for the Commissioner’s decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.
15. The general rule as to the basis of the value to be taken into account is contained in article 7(1) of the 1977 Order (as amended) in that
 - “(a) Subject to the provisions of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, 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 capital valuation date.
 - (b) 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 hereditament whose capital value is being revised.”

Consideration.

16. The respondent has used four properties as comparators. One of the properties is number 34 Belfast Road which is very similar in appearance to the appellant’s property. Its external dimensions are 99 m² with the garage measuring 12 m. It has been valued at £105,000. The respondent has also referred to number 65 Belfast

Road which again is a similar house on the other side of the road. It has been measured at 96 m externally.

17. The respondent's bundle also contains photographs of work being carried out to the floors.
18. The appellant submitted a letter dated 2 March 2021 including for the photographs which show works being carried out to the yard. The date of the photographs is 17 May 2017. He states that some of the damp had been caused by the backyard being above the damp proof course of the house. He points out that when the respondent had attempted to contact him, they had not used correct telephone number but they did have his postal address.
19. In the appellant's letter he does not dispute the valuation placed upon this property. He states that his complaint is against the way the matter has been dealt with LPS and the delay, which included the appellant having to attend Downpatrick court in respect of a rates demand. The property has been rented out since February 2021. He states he was aware there was an issue with dampness when he bought the property and this was reflected in the price. He refers to various other works which had to be carried out.
20. The respondent referred the appellant's complaints to its internal services. In a written response dated 19 July 2019 it was accepted that the service provided fell below the standards expected. Reference is made to the respondent not having the appellant's correct telephone number and of failure to communicate as promised. The appellant then responded to the points made in a further letter dated 26 July 2019. There was then further correspondence between the parties.
21. A complaint was made to the Ombudsman by the appellant. In a letter dated 29 October 2019 that office indicated that the complaint could not be accepted where the person had a right of appeal to a tribunal.
22. At hearing the appellant confirmed he did not dispute the valuation placed upon his property. His grievance lay in the service from LPS. He said the live issue in the appeal was whether or not the property as it then was should have been considered a hereditament. Mr Fitzpatrick again apologise for the poor service the appellant received but maintained the property was liable to rates.

Conclusions.

23. It is obvious that the appellant feels very strongly about the way he has treated by LPS. They have investigated those complaints and acknowledge there had been failures on their part. The appellant had suggested he should receive compensation from them and that there should be a period of grace when rates were not payable. We have no jurisdiction however in relation to the appellant's justifiable complaint about the treatment he received nor have we any jurisdiction over compensation.
24. The appellant does not dispute the valuation placed on his property. For our part we find the comparators used by the respondent are appropriate and supportive of the valuation made. There is no dispute as to the size of the respective properties.
25. The only remaining issue therefore is whether or not the property, as it was, could be considered a hereditament. We appreciate the property suffered from dampness and that remedial works had to be carried out. We have had regard to the photographs provided. We have also had regard to the case law.
26. It is our conclusion that the property, notwithstanding the works required, remained a hereditament and was properly in the valuation list. We do not see how the property could be described as derelict. It was necessary to carry out works to reduce the level of the ground outside and then to reinstate the flooring on the ground floor after a damp-proof course had been installed. Such works should have been capable of completion within fairly short period of time. We appreciate the appellant may have deferred completing the works whilst he awaited an inspection by the respondent which did not happen in a timely manner. Nevertheless, our conclusion is that the property remained subject to rates.
27. Undoubtedly our decision will be a disappointment for the appellant. We do appreciate that he has been caused distress, inconvenience and loss of rental income due to this ongoing issue. However, these are matters beyond our remit.

Chairman: Francis J Farrelly Esq

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 15 September 2021