

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

CASE REFERENCE NUMBER: NIVT 6/13

JULIE MORRIS – APPELLANT
AND
COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 3rd October 2013

Chair: Nessa Agnew

Members: Tim Hopkins and Robert McCann

DECISION AND REASONS

The Hearing

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). By a Notice of Appeal received on 19 April 2013 the appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) dated 12 March 2013 in respect of the valuation of a hereditament situated at 32 Nendrum Gardens, Belfast BT5 5 LZ (“the subject property”). The appellant, Ms Morris was present at the tribunal. The respondent was represented by Mr Michael McGrady and Mr Andrew Magill.
2. The respondent’s Presentation of Evidence describes the subject property as an inter war semi-detached house of brick construction with a standard slate pitched roof located in the suburbs of Belfast. It has a Gross External Area (GEA) of 96.46m².
3. The respondent has assessed the capital value (“CV”) of the property as £140,000. The appellant in her Notice of Appeal stated that the subject property be removed from the Valuation list on the basis that the house has no heating and is in need of substantial repair. There is dampness in the front wall, to the rear of the lounge and in the rear wall. There is wet rot in the wood in the front room. The appellant further said that the two issues further aggravate each other and would cause health problems to live there. There is also no heat available. The Commissioner of Valuation Certificate issued on

12th March 2013 and the decision was to retain the property in the Valuation List as it was capable of beneficial occupation. The valuation was maintained at £140,000. The explanation in the Valuation Certificate stated:

No change to capital value at £140,000. Property still considered to be a hereditament capable of beneficial occupation.

4. There are two issues in this appeal. The first is whether the subject property should be retained on the Valuation List being a property which is or may become liable to a rate within the definition of a hereditament set out in Article 2(2) of the 1977 Order. The second issue is whether, if the property is properly included on the Valuation List, the capital valuation is correct.
5. The appellant appeals against that decision under Article 54 of the Rates (Northern Ireland) Order 1977, as amended (hereinafter the 1977 Order).

The Evidence

6. The following documents were before the tribunal;
 - appellant's Notice of Appeal to the Tribunal undated and received on 19 April 2013;
 - Commissioner's Decision on Appeal dated 12 March 2013;
 - respondent's Presentation of Evidence dated 19 July 2013;
 - undated letter from Appellant enclosing Inspection report for evidence of damp at subject property dated 8th August 2013 (received by Tribunal Unit on 30th September 2013);
 - correspondence between the appellant and tribunal;
 - caselaw:
 - Wilson v Josephine Coll(Listing Officer) [2011] EWHC 2824 (Admin) ("*Wilson v Coll*")
7. At the outset of the hearing Ms Morris had become upset as she had arrived late for the hearing and was distressed. The tribunal rose to allow the appellant some time. Ms Morris was then asked by the tribunal whether she was seeking an adjournment of the matter. The appellant indicated that she would prefer to proceed. The tribunal heard evidence and submissions from the appellant, Ms Morris and from Mr McGrady and Mr Magill.
8. The tribunal reserved its decision. This notice communicates the tribunal's decision and contains the reasons for the decision in accordance with Rule 19 of the Valuation Tribunal (NI) Rules 2007.

The Law

9. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter the 2006 Order). The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The tribunal, as is customary, does not intend in this decision to fully set out 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 decisions of this tribunal, which are readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter.
10. Further relevant legislation for the purposes of this appeal is Article 2(2) of the 1977 Order which defines a ‘hereditament’ as follows;

“hereditament” means 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 in a Valuation List
11. Article 25A and Schedule 8A of the 1977 Order provide that rates are payable on unoccupied properties which fall within a class prescribed by Regulations. The Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (“the 2011 Regulations”) came into force on 1 October 2011. These prescribe that, subject to the exceptions set out in the schedule to the Regulations, unoccupied domestic properties are liable to rates.
12. Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown.

The Tribunal’s Findings

13. As set out at paragraph 4, there are two issues before the tribunal in this appeal. The first is whether the subject property is a hereditament “which is or may become liable to a rate” within the definition of a hereditament set out in Article 2(2) of the 1977 Order or an unoccupied property which falls within the category of exceptions set out in the 2011 Regulations. The second issue is whether, if the property is properly included on the Valuation List, the capital valuation is correct.

Is the subject property liable to rates?

14. The respondent indicated at the outset that the appellant was seeking that the property be out of the Valuation List. Mr Magill had carried out an inspection of the premises in March 2013 and he stated that at ground level at the front of the house there is loose brickwork which is allowing rainwater to penetrate causing wet rot to the floor of the living room.

15. Mr Magill referred the tribunal to the case of *Wilson v Coll*. In relation to the question as to whether a hereditament exists the tribunal should take account of Mr Justice Singh's judgment in *Wilson v Coll*. A property which requires a reasonable amount of repairs continues to be a hereditament. The case of *Wilson v Coll* was a decision in relation to a judicial review decided in the High Court of England and Wales. Whilst this decision is not binding on the tribunal, as it relates to legislation applicable in England and Wales, it provides useful guidance on the interpretation of similar provisions in the 1977 Order. He referred to Schedule 12 paragraph 12 (1) and the assumption that the property is in an average state of internal repair and fit out. He stated that he valued the property in March 2013 and considered it to be in the same state and circumstances which he might have expected the property to be in and on that basis there was no change to the capital valuation of £140,000.
16. In respect of the defective central heating system, which the respondent acknowledged to be inoperative, Mr Magill submitted that in his opinion it was a reasonable repair issue and in light of the *Wilson v Coll* case, the subject property does not cease to be a hereditament.
17. The appellant then made submissions. She stated that the subject property was not vacant by choice but that she was at present trying to sell a former matrimonial home where she currently lives but that it remained unsold and as a consequence the subject property is vacant. In relation to the subject property there are a number of issues. The appellant's evidence was that the house had been "wrecked" during a recent winter when due to the adverse weather the pipes had all fractured and the garden had to be dug up. The boiler was no longer working and neither were the radiators in the house. The radiators and boiler need to be replaced. The appellant estimated that those works would cost approximately £5,000. There had been an insurance policy in place in respect of the building but not the contents. Certain works had been carried out but the appellant stated she cannot afford to carry out any further works.
18. Externally, the appellant gave evidence that the roof was in reasonable order but that the pointing needs to be redone. The appellant referred the tribunal to problems with the plaster work under the bay window. She stated that the side gable wall was bulging with damp and that damp had come through the chimney pot causing damp patches on the internal chimney breast wall. There was also a crack on one of the window sills.
19. The tribunal also took into account the submissions in the appellant's letter and the damp report which did set out three recommendations. The report did not set out the costings of the recommendations.
20. However the correct test as Mr Justice Singh highlighted in paragraph 41 of the *Wilson* judgment is not whether repairs are economic,

"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.”

21. The test for deciding whether a property is a hereditament is set out in the *Wilson* case, and was specifically set out in the Presentation of Evidence by Mr Magill.

“40 ... 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.”

22. There are certainly works that could be carried out to the premises to improve it. The appellant in her evidence did highlight problems with the property. The tribunal, from the photographs and all of the evidence, both written and oral, is of the view that if certain repairs were carried out the subject property could be occupied as a dwelling and on that basis the tribunal finds that it is not truly derelict. The tribunal accepts the respondent’s evidence that the fabric of the property is largely intact and that the dampness which is present would be expected in a property of this age and character, particularly in the absence of a working heating system.
23. Whilst the tribunal has, through all of the evidence, been made aware of the problems in the property the tribunal is of the view that it cannot be said that the extent of disrepair is such that the property is derelict or, with a reasonable amount of repair, incapable of occupation as a dwelling. The problems identified in this property would be expected in a property of this age and type of construction. In these circumstances we are satisfied that the subject property is a ‘hereditament’ and therefore liable to a rate.
24. The appellant has not claimed that the subject property comes within any of the exceptions set out in the 2011 Regulations and the panel is satisfied that none of the exceptions apply.

Capital Value

25. Mr Magill referred to the three comparables contained in the Schedule of Comparable Evidence contained in the Presentation of Evidence. He stated that the three were all fractionally larger. When asked why all properties in the schedule had a capital valuation of £140,000 he commented that it is not an exact science. In his view the subject property is not any better or lesser a property. It did not have any distinguishing characteristics whether positive or negative. With regard to the defects associated with

the property, reasonable repairs could be carried out and Mr Magill stated he was satisfied that it is comparable and in line with the three properties contained in the schedule.

26. The appellant made some submissions in respect of the comparables. The appellant had been in No 24 Nendrum Gardens some years ago and gave evidence that it was kept in good repair and was of a similar style. The appellant had no comments in respect of No 18 and in relation to No 30 which is the semi-detached house adjoining the subject property the appellant stated it was fractionally larger and slightly different. All four properties are on the same street and have the same capital value of £140,000.
27. The panel must apply the statutory presumptions set out in Schedule 12 of the 1977 Order. These include the presumption set out at paragraph 12 of Schedule 12 that the subject property is in an average state of internal repair and fit out having regard to the age and character of the property and its locality. The capital value of the subject property is the amount it might reasonably have been expected to have realised if it had been sold on the open market by a willing seller on 1 January 2005 assuming it was in an average state of internal repair and fit out.
28. As the property must be assumed to be in an average state of internal repair and fit out the tribunal cannot take account of the internal damp problem, the lack of an operating heating system and other internal repairs identified by the appellant and confirmed by the respondent in both the oral and written evidence.
29. The tribunal accepted the respondent's written submission, having had regard to the photographs of the property, that any element of external repair can only be described as minor.
30. We have had regard to the capital values in the valuation list for the comparable properties submitted by the respondent. The panel is of the view that the subject property is in tone with the comparables. In applying Schedule 12 paragraph 7(2) of the 1977 Order, the tribunal is of the view that the comparable properties submitted by the respondent are appropriate. The three properties are in the same state and circumstances as the subject property. The comparables are all on the same street, have a similar GEA and are of a similar style. The tribunal is satisfied that the capital value of the subject property is consistent with the properties put forward as comparables.

Decision

31. The tribunal must take account of the statutory presumption contained in Article 54(3) of the 1977 Order. It states "On an appeal under this article any valuation shown in a 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 the presumption or perhaps for the Commissioner's decision on appeal to be

seen to be so manifestly incorrect that the tribunal must take steps to rectify the situation.

32. The appellant has not discharged the burden upon her to show that the valuation assessed for the subject property is not correct in accordance with paragraph 7 of Schedule 12 of the 1977 Order. The tribunal is of the view that the subject property is in tune with the properties that the respondent has adduced in its Presentation of Evidence. In all of the circumstances and in light of the findings above the tribunal was satisfied that the valuation shown on the Valuation List in relation to the subject property is correct.

33. The unanimous decision of the tribunal is that the appeal is dismissed.

**Ms Nessa Agnew, Chairman
Northern Ireland Valuation Tribunal**

31st December 2013