

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

CASE REFERENCE NUMBER: NIVT 79/12

BOLAND REILLY HOMES LTD – APPELLANT
AND
COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 2nd 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 dated 21 May 2012 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 December 2012 in respect of the valuation of a hereditament situated at 49 Green Road, Conlig, Newtownards, Co Down, BT23 3PZ (“the subject property”). The appellant company had a director, Mr Alcorn, present and the company was represented by its solicitor, Mr Reginald Rankin. The respondent was represented by Mr Michael McGrady and Ms Collette Harte.
2. The respondent’s Presentation of Evidence describes the subject property as a 1966-1996 detached two-storey property in poor external repair. It has a Gross External Area (GEA) of 210m². It has been lying vacant since 2008. The dwelling is of brick construction with a tile roof. It has a mains water supply and electricity supply both of which are disconnected. It is connected to the mains sewerage.
3. The respondent had originally assessed the capital value (“CV”) of the property as £220,000. The appellant in January 2012 submitted an application to the District Valuer that the subject property be removed from the Valuation List on the basis that it was said to be derelict or demolished. When the property was inspected on 10 September 2012 it was found not to be demolished. On contacting the appellant the respondent

was told that the property would be demolished by 14 September 2012. The property was still standing on 17 September 2012. On that basis the respondent did not change the valuation. This decision was appealed to the Commissioner. Mr Alcorn indicated to Collette Harte that the demolition should be complete within 3 to 4 weeks. The inspection of the property was delayed following a further conversation. Mr Alcorn informed the respondent that the property should be demolished by the end of the week of 7 December 2012. On 6 December 2012 the property was still standing when visited by Collette Harte. The site was fenced off and therefore a full inspection could not be carried out. The property according to the respondent appeared to be structurally sound with walls and roof intact. The respondent did reduce the capital value to £200,000 as there was a lack of windows and doors at the property-they had been boarded up. This outcome was communicated to Mr Alcorn and he was further advised to contact the respondent when the property was demolished. This took place on 21 December 2012 and the property was removed from the Valuation List on that date.

4. There is only one issue in this appeal- whether the subject property should have been retained on the Valuation List as 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 between the original Notice of Appeal in January 2012 and the date of demolition of 21 December 2012. The valuation certificate was dated 28 September 2012.
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 dated 7 January 2013;
 - Valuation Certificate dated 28 September 2012
 - papers submitting Notice of Appeal dated 25 October 2013 to the Commissioner of Valuation;
 - Commissioner's Decision on Appeal dated 12 December 2012;
 - respondent's Presentation of Evidence dated 8 April 2013;
 - correspondence between appellant and NIVT regarding listing of appeal;
 - case,
Wilson v Josephine Coll(Listing Officer) [2011] EWHC 2824 (Admin) ("Wilson v Coll")

On the morning of the hearing Mr Rankin provided the tribunal with a document entitled, "Asbestos Survey Report demolition at Pig Shed Green Road Conlig BT23 7PZ" as well as photographs of the subject property.

7. The Tribunal heard evidence and submissions from Mr Rankin and Mr Alcorn on behalf of the appellant and from Mr McGrady and Ms Harte on behalf of the respondent.
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 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 is one issue before the Tribunal in this appeal. The subject property is now demolished and is no longer a hereditament. The issue is whether the subject property was on the date of the Valuation Certificate-which was 28 September 2012 - a hereditament, the definition of which is set out at paragraph 10 above, or an unoccupied property which falls within the categories of exceptions set out in the 2011 Regulations. The appellant stated at the outset of the appeal that he was not challenging the capital valuation itself which had been reduced to £200,000 on 6

December 2012 and was set out in the Commissioner's decision on appeal dated 12 December 2012.

Is the subject property liable to rates?

14. Ms Harte made submissions on the *Wilson V Coll* case. She submitted that it is a useful case and that the key question in deciding whether there is a hereditament is to ask is the property capable of being repaired. In answer to the question posed, Ms Harte stated that she could see no reason and could see no evidence to suggest the subject property was, pre-demolition, incapable of being repaired. Her evidence was that the walls and roof appeared sound and that the property did not appear to be a truly derelict property and that is why its entry on the Valuation List is correct. She added that it was a relatively modern house that had been occupied until 2008. Ms Harte further submitted that any disrepair or problem was capable of being remedied. She had carried out the visit to the subject property on 6 December 2012 and gave evidence on behalf of the respondent as to the condition of the property. A colleague, Mr Iain Lyons had carried out the initial inspection on 10 September 2012 and follow up on 17 September 2012 had given a capital value of £220,000 - see Valuation Certificate dated 28 September 2012.
15. Mr Rankin referred the Tribunal to the earlier inspection of the subject property which had been carried out by Iain Lyons on 10 September 2012. He asked whether Mr Lyons had noted outhouses in close proximity to the subject property. Mr Rankin stated that the adjacent property had asbestos sheeting on the roof and on the sides and that through storm damage, the sheets blew off and broke up and came to rest in or around the subject property. The outbuildings are not connected to the subject property. Indeed they form part of a separate property at Green Road.
16. Mr Rankin then referred the Tribunal to the inspection on 6 December 2012 by Ms Harte and the photograph taken of the subject property which shows the subject property completely fenced off. Mr Rankin submitted that Ms Harte had no opportunity to inspect it at all. Ms Harte stated that it appeared sound and that the walls and roof were intact. Mr Rankin questioned how Ms Harte could have made such an assessment. Ms Harte submitted that based on her visit and the photos of the previous inspection and on the basis that the average internal assumptions applied. She added that the disrepair within the house does not come into the valuation.
17. Mr Rankin brought the panel through the timeline. The appellant purchased the subject property in 2006. The outhouses on adjacent ground were purchased slightly before. He added that the tenants left the subject property in 2008. At that stage the appellant's evidence was that the market was in turmoil and that the house had been neglected. The appellant did not see anybody else coming along who would be interested in renting the property. In January 2012 the appellant made an application for revaluation. During the period between 2008 and 2012 teenagers broke into the house, pulled it apart and tried to burn it down. They smashed windows, lit fires and generally vandalised the

property. Following this vandalism the appellant boarded up the property and erected CCTV signs. The appellant then carried out health and safety reports and asbestos reports and appointed a contractor to have the materials removed. The appellant stated that he had the pig sheds at the adjacent premises demolished after carrying out a full asbestos survey. In 2008 vacant properties did not attract rates. When the legislation changed the property became subject to rates. The appellant was asked whether there had been any impediment to taking the property down earlier than December 2012. The appellant replied that the property was sealed and boarded up at this stage. The property was a substantial burden and once secured it seemed safe enough and the appellant let it sit there. In relation to demolishing the subject property the appellant had been through the demolition process with the pig sheds in mid-September 2012. The appellant gave evidence that he was aware of the arrangements necessary to physically demolish a property and that it was the same process of tendering for contractors to recycle material and to ensure the waste matter is separated. There is only a certain number of contractors who can do that. Similarly with asbestos removal. The tribunal was informed that the appellant from the end of September/early October time was at the mercy of the contractor and was awaiting a date for demolition. It was finally demolished on 21 December 2012.

18. Evidence was then given to the Tribunal on behalf of the appellant as to the state of the property. It was boarded up and this included all windows and the external doors. When asked whether there was a mains electricity supply the Tribunal was informed that because of a realignment of the Green Road, the mains service cable had been removed as had the mains water supply - this was either at the beginning of 2012 or possibly at some time in 2011. The waste sewerage system no longer worked and all sanitary ware had been removed from the property. The appellant submitted that there was asbestos lying around the subject property.
19. The respondent was asked by the appellant whether it had been aware that the services had been physically removed from the subject property. The respondent's view was that unless it prevented reconnection to the various services in the future that it did not prevent the property from being in the list. Equally a property which does not have access to all mains services is not a reason in itself for removing a property from the list. In the *Wilson v Coll* case there was no kitchen or bathroom.
20. The appellant submitted that the property was going to be demolished and this had been communicated to the respondent but that the appellant was at the mercy of contractors regarding demolishing the subject property.
21. Mr Rankin referred to the recent *Wilson v Coll* case. The case of *Wilson v Coll* is 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. In particular he drew the Tribunal's attention to paragraph 40 where Singh J states "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. Mr Rankin emphasised the phrase “a reasonable amount of repair works”. When the property was inspected by the District Valuer in September 2012 there were no windows or doors in the property and it was without mains water, electricity or sewerage. Mr Rankin referred the case of Blackburn NIVT 39/11 and sought to distinguish the property in that case as it was occupied by that appellant. In the case of the subject property it had not been occupied since 2008. In applying *Wilson v Coll* Mr Rankin submitted that no reasonable amount of repair work would make the property suitable for occupation and in his view the property was a truly derelict property.
23. Mr McGrady for the respondent submitted that it came down to issues of repair and that in relation to services one could still get services to the site. He submitted that many occupied properties do not have services and that that does not stop them being a hereditament.
24. The Tribunal is of the view that a truly derelict property could not be repaired without changing the character of the property. The subject property could have been repaired without changing the character - by undertaking a reasonable amount of repair works. The Tribunal looked to paragraph 40 of the *Wilson v Coll* case, “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.”
25. The repairs necessary to the property had it not been demolished were not minor repairs and may well have been expensive to carry out. The property would have to be connected to mains services.
26. 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.”
27. The test for deciding whether a property is a hereditament is set out in the *Wilson* case,

“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.”

28. The Tribunal, from the photographs and all of the evidence, is of the view that if the services were reconnected and new windows and external doors were installed and certain other repairs were carried out the subject property could have been occupied as a dwelling and on that basis the Tribunal finds that it was not truly derelict at the date it was inspected in September 2012.
29. The Tribunal accepts the respondent’s submission that the repairs necessary will not alter the character of the subject property and that it can be repaired. It is not necessary to reconstruct or replace the subject property.
30. Whilst conditions in the property may have been below what is expected in a modern dwelling 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. In these circumstances we are satisfied that the subject property was a ‘hereditament’ when inspected in September 2012 and was therefore liable to a rate.
31. The appellant has not claimed that the subject property comes within any of the exceptions set out in the 2011 Regulations and the Tribunal is satisfied that none of the exceptions apply.

Decision

32. The issue before the Tribunal is whether the subject property should have remained on the Valuation List as 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 up until the date of demolition of 21 December 2012. The relevant inspections took place on 10 September and 17 September 2012 with the District Valuer’s Certificate issued on 28 September 2012.
33. In all of the circumstances and in light of the findings above, the Tribunal is satisfied that a hereditament existed on 28 September 2012. There is no challenge to valuation and the Valuation Certificate which issued on 12 December 2012 gave a capital value of £200,000.

34. The unanimous decision of the Tribunal is that the appeal is dismissed.

Ms Nessa Agnew, Chairman
Northern Ireland Valuation Tribunal

18th December 2013