

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 55/14

MR CHARLES P McMANUS - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Eric Spence MRICS and Dr Peter Wardlow

Hearing: 17 February 2016, Belfast

DECISION

The unanimous decision of the tribunal is that the appeal succeeds to the extent that the decision of the Commissioner of Valuation in this appeal is not upheld. The tribunal determines that the capital value of the subject property in the Valuation List is properly to be amended to a figure of £56,000 and the tribunal Orders the Valuation List to be amended accordingly.

REASONS

Introduction

1. This is a reference under the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant indicated that he was content for the appeal to be disposed of by written representations.
2. The appellant, Mr Charles P McManus, by Notice of Appeal (in Form 3) appealed to the Tribunal. The appeal was stated to be against the Certificate of Alteration (date unspecified in the appeal form) issued in the matter. The appeal was in respect of a hereditament situated at, 195 Coa Road, Lissan, Enniskillen, County Fermanagh BT74 4AU ("the subject property").

The Background to the Matter and Issues Raised on Appeal

3. The factual background to the matter, available from the Presentation of Evidence dated 7 August 2015 prepared by Ms Karen Grimley BSc (Hons) MRICS on behalf of the respondent, which as regards these primary facts was not controverted by the appellant, was that the subject property was entered into the current Valuation List with an unadjusted capital value of £85,000. A 20% allowance was applied at the time as the subject property was deemed occupied by a farmer, thereby adjusting the capital value to £68,000 by application of what is termed an “agricultural allowance”. An application was made to the District Valuer by Mrs Teresa McManus in April 2011. Whilst no further details were provided to the tribunal, that is presumed very possibly to have been an application for removal of the subject property from the Valuation List. The subject property was duly inspected on behalf of the District Valuer on 5 October 2011. It was deemed capable of beneficial occupation as a result of that inspection and thus was retained in the Valuation List. The further adverse consequence of that inspection (as far as the ratepayer was concerned) was that, as the subject property was found to be vacant, the “agricultural allowance” was removed and the unadjusted capital value of £85,000 was re-instated, that being at the time deemed to be fair and reasonable. However, the further (this time beneficial) consequence (as far as the ratepayer was concerned) was that a 20% allowance was applied to account for the perceived negative impact of the proximity of the subject property to adjoining agricultural buildings.

4. A further application was then made, this time by Mr Cahal McManus, on 6 January 2014. The application asserted that the subject property was not worth the capital value, that the dwellinghouse was condemned and unliveable in and that it was used, at that time, for farm storage. The subject property was again inspected on behalf of the District Valuer on 6 January 2014. It was concluded, as a result of this inspection, that the subject property had not further deteriorated since it had been last inspected in 2011. No alteration to the rating status or to the capital value was made.

5. An appeal was then made by the present appellant, received on 15 December 2014. Ms Karen Grimley inspected the subject property and a determination was made as a result of this inspection that the subject property existed as a hereditament and that it should be retained in the Valuation List. However the outcome of this inspection was that the proper (unadjusted) capital value of the subject property was determined to be £80,000. Applying the 20% allowance that had been applied previously, the revised Capital Value (as adjusted) was consequently determined to be a figure of £64,000. It is against that latter capital value figure that the appellant now appeals. However, further to that, as is relatively clear (if not from the appeal form then from the written submission made by the appellant to the tribunal) the appellant also seeks to assert that the subject property is not in a habitable condition. Whilst it might be concluded that there arises an inherent contradiction between the assertion made by the appellant (which there is contained expressly within the appeal form) that the capital value ought to be £15,000 and the appellant seeking also to assert that the subject property is not in a habitable condition and thus (it must be presumed) seeking to argue that the subject property ought not to be included in the Valuation List, nonetheless the tribunal is prepared to treat this

appeal as encompassing both of these arguments. The tribunal shall address both of these points in its determination of the matter.

6. A Valuation Certificate issued 12 January 2015 (effective date 1 April 2013) and signed by the Commissioner of Valuation, the respondent to this appeal, which certifies the updated capital valuation to be £64,000. Accordingly, the tribunal has to determine this appeal from the Commissioner's Valuation Certificate, taking account of the written evidence and other material adduced in this written representations case and by the application of the relevant law to the facts.

The Law

In regard to that part of the appeal which might properly to be deemed an appeal against the subject property being included in the Valuation List, it is only necessary to refer, in summary detail, to the specific statutory provisions which concern the rating of empty homes which are included in the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 ("the 2011 Regulations"). On account of the statutory remit of the 2011 Regulations, from 1 October 2011 domestic buildings and parts of buildings (as well as non-domestic buildings or parts of buildings) for the purposes of Article 25A of the 1977 Order became subject to rating. This is subject to certain statutory exceptions, which do not apply in this case. Accordingly, rates are levied upon an unoccupied domestic property at the same level as if the property were to be occupied. Such an unoccupied property is, by this means, included in the domestic rating list and is thus liable to rating.

The statutory provisions generally concerning the capital value issue are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The tribunal does not intend in this decision to 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, as these provisions have been fully set out in many earlier decisions of this Tribunal. However, some specific provisions will nonetheless be further mentioned below, as these provisions persist in causing a number of misunderstandings which are apparent and which are perpetuated in appeals to this Tribunal. Accordingly, it is felt that some further clarification in this decision might be beneficial and might thus serve to reduce the propensity for these misunderstandings and might serve to clarify the statutory provisions as these are applicable to capital value matters and consequent appeals to the Tribunal.

The Evidence and Submissions

7. The tribunal examined the following documents placed in evidence, in addition to the appellant's appeal form (Form 3): -

1. Presentation of Evidence dated 7 August 2015 prepared by Ms Karen Grimley MRICS on behalf of the respondent.
 2. A document with attachments entitled "Written statement on behalf of the appellant", submitted by the appellant, together with eight appendices, including the following: (1) copy signed appeal form; (2) location plan of the subject property and numbers 2 and 29 Lissan Road; (3) auction sale particulars in respect of number 2 Lissan Road; (4) auction sale particulars in respect of number 29 Lissan Road; (5) valuation report from Messrs Smyth & Leslie, Estate Agents and Valuers; (6) schedule of costing regarding works from Unique & Antique Construction Ltd; (7) letter from Michelle Gildernew MP; and (8) copy colour photographs of the subject property.
 3. Valuation Certificate issued 12 January 2015 (effective date 1 April 2013) and signed by the Commissioner of Valuation.
8. The appellant, in his appeal form and in his "Written Statement" together with appendices, set forth in some detail his grounds of appeal. These may be briefly summarised as encompassing the following arguments:-
- (a) The Capital Valuation of £64,000 does not reflect the market conditions. Recent sales information available from two property sales in the locality of the subject property and a recent professional valuation provides evidence to support that proposition.
 - (b) The location of the subject property, located as it is within a working farmyard complex and at the end of a 0.25 mile long shared laneway which is accessed by others for both farming and residential purposes, has not been properly taken into account in the determination of the capital value.
 - (c) The subject property is not in a habitable condition and it would require considerable renovation, at correspondingly considerable cost, to render it habitable. It is here presumed that the appellant seeks to argue that the subject property ought not to be included in the Valuation List.

The Facts Determined by the Tribunal

9. The following facts were evident from the documentation and are for the most part not in contention. The tribunal based its decision upon these material findings of fact. The subject property is a detached, rurally-located, cottage built in the early part of the 20th century in a traditional style, with a pitched slate roof. It appears, from the photographs and other evidence, that there was some improvement work conducted in the early 1950's, when the subject property (which apparently did not have these facilities before then) was renovated to include electricity and plumbing and a small single story extension was constructed. The subject property has, it seems, been vacant for approximately 7 years. It measures 117m² in Gross External Area (GEA) and the accommodation comprises a living room, a kitchen/dining room, a pantry area and a small ground floor reception. On the first floor are located two bedrooms and a bathroom. PVC double glazed windows have been installed and there is a

PVC external door. There is no central heating system. The subject property is served by mains water and electricity, with a septic tank sewerage system. The subject property is located approximately 4 miles from Enniskillen and access is gained to the subject property along a shared concrete laneway which leads off the Tullyreagh Road, Enniskillen. From the inspection of the subject property conducted on behalf of the respondent, the slated roof was found to be substantially intact, but with a few slates missing to the rear of the subject property. One of the chimney stacks was in poor repair, with damaged rendering exposing brick construction which was cracked, allowing for ingress of water. The rainwater goods were substantially in order. There were some cracks to the external rendering, but nothing, it would appear, of major structural significance apart from the foregoing. Internally, the subject property was very evidently affected by dampness, with photographic evidence showing wallcoverings and paint peeling and mould growth clearly affecting both the downstairs and upstairs rooms. It was observed, from the photographic evidence, that the original fittings and fixtures and some furniture had been left in situ in a number of the rooms, but in one of the rooms metal trestles and wooden pallets had been stacked against one wall. It is noted that the respondent has accepted that, internally, the subject property was in disrepair, with signs of dampness throughout and also that it was conceded that the ground floor bathroom was particularly damp, with mould growth on the floor and around the fittings. The respondent's Presentation of Evidence suggests that this latter condition is as a direct result of lack of heating and ventilation. On behalf of the respondent, it is not conceded that there are significant structural issues causing penetrating external dampness. In terms of any works necessary to bring the subject property into a good state of repair and condition, the appellant had sought to adduce evidence by way of a written quotation for renovation works prepared by Mr. Seamus Beggan of Unique and Antique Construction Co. Ltd. This written quotation was dated 5 February 2015 and it went into some detail, listing various works including external and internal works, some demolition work, electrical works, drainage and plumbing services work and certain other matters. An anticipated costing figure of £90,000 – £115,000 was indicated by Mr. Beggan to undertake and to complete all of these works as described. The tribunal has carefully considered each element of the works described by Mr. Beggan. In the Presentation of Evidence the respondent has commented upon the foregoing as serving to prove the point that the subject property could indeed be made fit for occupation but, in any event, that many of the suggested works could have been considered "cosmetic" and, accordingly, could be regarded as being not necessary to place the subject property into the basic standard of repair required for the purposes of the legislation. These arguments have been noted by the tribunal in the context of the relevant determinations of fact in the case.

THE TRIBUNAL'S DECISION

10. There are a number of elements to the appellant's appeal. The first of these with which the tribunal wishes to deal is the suggestion or contention which the tribunal draws from the appeal papers (although this is not fully clear in the way the appeal is framed) that the subject property should not be included in the Valuation List. If the appellant does indeed seek to present the argument that the subject property is in such a state of poor repair, indeed in such a state of dereliction, that it should not be listed for rating, when the tribunal examines all of the evidence as to the state and condition of the subject property, it quite evident to the tribunal that the subject

property is far from being in a state and condition which could properly be described as “derelict” or “incapable of repair”. Indeed, that point has been made in the respondent’s submissions and the respondent’s argument is accepted by the tribunal, without any difficulty. Quite clearly, the subject property is capable of repair, upon the basis of the evidence presented by the appellant and Mr. Beggan’s estimation. A number of previous decisions of this Tribunal have commented in some detail on this point and the tribunal does not propose to repeat these comments fully in this decision. In summary, the tribunal’s focus in such cases must be upon the issue of whether any property is truly derelict or if it can be repaired. This is the so-called “hereditament test” or “listing issue”, as it is sometimes called. The case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)***, a judgment of the High Court in England upon an appeal on a point of law from the Valuation Tribunal for England, has been followed in this jurisdiction as being a persuasive authority. The applicable test here is essentially a physical, rather than an economic, test in regard to the issue of whether a property is capable (or otherwise) of being rendered suitable for occupation by the undertaking of a reasonable amount of repair work. The material distinction is between a truly derelict property, which is incapable of being repaired to make it suitable for its intended purpose, on one hand, and a property where repairs would render it capable again of being occupied, on the other. Economic factors in relation to the cost of repairs are not normally a material consideration, unless they disclose evidence that any property is truly derelict and incapable of repair, in the true reality of things. Accordingly, taking account of all of the available evidence, the tribunal’s determination is that the subject property is properly included in the Valuation List and, insofar as the appellant seeks to argue the contrary, this argument is rejected by the tribunal.

11. That then brings the tribunal to a consideration of the next issue: the proper assessment of capital valuation in the case. Here, the tribunal must take full account of all of the available evidence and pay full attention to the statutory considerations which must be considered and applied in the case. It is noted that the appellant seeks to adduce evidence of some recent property dispositions, by auction, in the locality of the subject property. He also introduces a recent valuation report prepared by Mr Michael Leslie BSc. (Hons.) MRICS of Smyth Leslie & Co, Chartered Surveyors and Estate Agents, as a result of an inspection of the subject property conducted on 3 February 2015. Whilst noting this evidence, it is appropriate for the tribunal now to make entirely clear the statutory basis upon which capital valuations are assessed under the prevailing statutory regime. In doing so, the tribunal shall explain why this evidence of recent property sales and of a recent valuation of the subject property is not relevant to the tribunal’s determination. As mentioned above, there has been (and regrettably there continues to be) a considerable degree of persistent misunderstanding concerning this issue. Perhaps that is not surprising as the statutory provisions, to the lay-person, may be a little difficult to understand. Hopefully, this decision will assist in clarifying matters.
12. The statutory basis for capital valuation is set forth in the legislation. Schedule 12 to the 1977 Order provides that the assessment of capital value is made (based upon certain statutory assumptions) by assessing what 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. In this case, relevant date is what is known as “the antecedent valuation date” or “AVD”. This date is 1 January 2005. Until there is a domestic revaluation, the AVD remains 1 January 2005 and it is in

reference to that key date in 2005 that all capital valuations are made, upon a comparative basis as between one hereditament and another. In carrying out this exercise, one accordingly assesses the current situation and circumstances of any domestic property and then, in effect, one projects the capital valuation back to the deemed AVD value. The comparative method employed in conducting this task, examines the capital values of hereditaments which are comparable to the subject property. These are ideally properties located in relatively close proximity to the subject property and having, insofar as possible, similar characteristics and circumstances. Certain statutory assumptions are applied in the exercise. The legislation provides that the capital value of a hereditament shall accordingly be the amount which, on the assumptions mentioned (materially in paragraphs 11 and 12 of Schedule 12 below), 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. The relevant paragraphs of Schedule 12 include the following statutory assumptions, providing that:-

11. The hereditament is sold free from any rentcharge or other incumbrance.

12.—(1) The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.

(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

This, perhaps, appears to be a slightly artificial or abstract exercise or concept. It makes the statutory assumption that the hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality. That assumption must be applied. It does not, in its very nature, direct attention to recent sales evidence in the property market and to any values emerging from that. In contrast, the process, as it is required to be conducted under the applicable statutory provisions, examines the capital values of properties which are comparable to the subject property in the Valuation List, in reference to the AVD values. At all times it is a process of making comparisons. However, these comparisons must be made and any evidence emerging must be assessed, upon the statutory basis that is mentioned above. Explained in this way, once the process is properly understood, it will be apparent that the values which might have been achieved in two relatively recent auction sales of neighbouring properties and the relatively recent valuation conducted in respect of the subject property by Mr Leslie, an Estate Agent and Valuer, do not provide useful evidence bearing upon the determination which the tribunal must make in this case.

13. Instead, the tribunal must direct its proper focus upon the evidence available from the properties selected as comparators, which are reported upon in the Presentation of Evidence. It is noted that in his appeal, the appellant has not sought directly to challenge the capital valuations of these identified comparables. He has not introduced into evidence any alternative comparables, with associated evidence of any alternative capital values. The tribunal's consideration must therefore be directed (before paying attention to any possible allowances or abatements) to the proper capital value to be ascribed to the subject property, taking account of the statutory considerations.
14. The comparables set out in the respondent's Presentation of Evidence all had unchallenged capital valuations, save for the subject property and the final

comparable mentioned below. Brief particulars, including those of the subject property, are as follows:

- (1) 195 Coa Road, Lissan, Enniskillen, County Fermanagh BT74 4AU. Detached chalet cottage built circa. 1910. Grade D, average repair. Mains water; mains electricity; septic tank; GEA 117m²; no rateable outbuildings; 3 bedrooms; 1 bathroom; no central heating – the subject property – capital value £64,000 (before adjustments £80,000). (It is noted that there is an apparent error in the Presentation of Evidence which states that the unadjusted capital value is £85,000, which figure is presumably meant to read “£80,000”) ;
 - (2) 21 Ballylucas Road, Lisbellaw, County Fermanagh BT74 4HB. Detached chalet built circa. 1910. Grade D, average repair. Mains water; mains electricity; septic tank; GEA 122m²; no rateable outbuildings; 4 bedrooms; 1 bathroom; no central heating – capital value £82,500 (believed unadjusted);
 - (3) 74 Ballylucas Road, Lisbellaw, County Fermanagh BT74 4HB. Detached cottage built circa. 1910. Grade D, average repair. Mains water; mains electricity; septic tank; GEA 123m²; no rateable outbuildings; 3 bedrooms; 1 bathroom; no central heating – capital value £87,500 (believed unadjusted);
 - (4) 28 Cleenish Road, Bellanaleck, County Fermanagh BT92 2EZ. Detached chalet cottage built circa. 1910. Grade D, average repair. Mains water; mains electricity; septic tank; GEA 92m²; no rateable outbuildings; 2 bedrooms; 1 bathroom; no central heating – capital value £62,500 (believed unadjusted);
 - (5) 67 Old Enniskillen Road, Enniskillen, County Fermanagh BT74 4PT. Detached house built circa. 1910. Grade D, average repair. Mains water; mains electricity; septic tank; GEA 138m²; no rateable outbuildings; 4 bedrooms; 1 bathroom; full central heating – capital value £85,000 (adjustment of 10% applied indicating capital value £94,444 unadjusted);
 - (6) 16 Foxhill Road, Enniskillen, County Fermanagh BT74 4DU. Detached cottage built circa. 1910. Grade D, average repair. Mains water; mains electricity; septic tank; GEA 144m²; no rateable outbuildings; 4 bedrooms; 1 bathroom; no central heating – capital value £85,000. (It is remarked, on behalf of the respondent, that this valuation was challenged in November 2011 and that the property appears slightly out of tone when compared to the rest of the comparables and that it was proposed to add less weight to this comparable);
15. Article 54 of the 1977 Order (as amended) enables a person to appeal to the Tribunal against the decision of the Commissioner on appeal regarding capital value. In this case the capital value has been assessed at a figure of £80,000 (unadjusted) and a 20% allowance has been applied to reflect proximity to farm buildings, thereby arriving at a capital value of £64,000. That figure has been upheld on appeal to the Commissioner. On behalf of the respondent it has been contended that this figure is fair and reasonable in comparison to other properties. This assessment is challenged by the appellant.
16. The tribunal notes, as it does in all such cases and as a matter of fundamental significance, the statutory presumption which is contained in the 1977 Order, at

Article 54(3). This is an important matter because, on account of this statutory presumption, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. This means that in order to succeed at appeal, the onus is placed upon any appellant either successfully to challenge and displace that statutory presumption of correctness, or else the Commissioner's determination on appeal, objectively viewed, must be seen to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure. The tribunal saw nothing in the general approach taken to suggest that the matter had been approached for assessment in anything other than the prescribed manner as provided for in Schedule 12 of the 1977 Order, as amended.

17. In the light of the evidence and the submissions, the tribunal examined the essential issue as to whether the appellant had put forward sufficient evidence or argument effectively and successfully to challenge evidence emerging from the comparables, or other sufficient evidence or argument effectively to displace the statutory presumption of correctness or to lead the tribunal to the conclusion that the respondent had misapplied the law to the facts of the matter.
18. The proper approach to be taken is as mentioned above. The tribunal accordingly conducted an analysis of the appropriateness of selection and the weight to be attached to the various comparables, insofar as any evidence emerging from this exercise related to the statutory basis of valuation mentioned above. The comparables identified and listed in the Presentation of Evidence were not specifically challenged by the appellant. Instead, he chose to introduce in this appeal evidence concerning relatively recent auction sales of alternative properties, but without mentioning the capital valuations of these. As there was no direct challenge expressly made by the appellant to the comparables evidence, the tribunal's task was to assess whether the comparable properties selected were appropriate and the proper weight to be attached to any evidence emerging.
19. Examining the specific characteristics and circumstances of the subject property, and comparing this evidence to the evidence emerging from five other selected properties, as listed above, the tribunal was able to draw some useful comparisons, with some of the comparators carrying more weight than others on account of a number of different factors. In comparing "like with like", that exercise had to be conducted by a direct comparison of any capital values, before adjustments, and accordingly the capital value of the subject property was taken to be a figure of £80,000, for the purposes of this exercise. Having carefully considered all of the evidence, the tribunal's conclusion and the tribunal's consequent determination is that the unadjusted capital value of the subject property is not correct in that it appears to be too high. A more appropriate figure, in the determination of the tribunal, would be a figure of £70,000 (unadjusted).
20. The appellant has endeavoured to make the case that the tribunal should attach considerable weight to the fact that the subject property shares a private access road and that it exists in an agricultural location. For the respondent, the argument is made that these issues have already been taken into account in the adjusted capital valuation, with an adjustment of 20% having been applied. The tribunal concurs with the respondent's position in this regard. An appropriate adjustment to take account of these specific factors is 20%. When that adjustment is applied to the unadjusted capital valuation of £70,000, the resultant figure is a capital valuation of £56,000.

That is the proper capital valuation for the subject property, in the unanimous determination of the tribunal.

21. Accordingly the appeal succeeds to this extent and the decision of the Commissioner in this appeal is not upheld. As a consequence, the tribunal determines that the capital value of the subject property in the Valuation List is properly to be amended to a figure of £56,000. The tribunal Orders the Valuation List to be amended accordingly.

**James V Leonard, President
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties: 9 March 2016