

**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: 21/11

MARTIN DUFFY - APPELLANT  
AND  
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

**DECISION OF PRESIDENT OF THE NORTHERN IRELAND  
VALUATION TRIBUNAL ON APPLICATION FOR LEAVE TO  
APPEAL TO THE LANDS TRIBUNAL**

I do not grant leave to the appellant to appeal to the Lands Tribunal for the reasons set out below.

**REASONS**

**Introduction**

1. The appellant, by Notice of Appeal received by the Office of the Tribunal on 14 November 2011, appealed against the decision of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) dated 11 October 2011 on appeal in respect of the valuation of a hereditament situated at 347 Glenelly Road, Plumbridge, Cranagh, County Tyrone BT79 8LX (“ the property”).
2. The matter was dealt with at an oral hearing before the tribunal on 9 November 2012. By decision with reasons promulgated by the tribunal on 3 December 2012 (“the Decision”) the tribunal’s unanimous determination as set forth in the Decision was that the appeal should be dismissed, for the reasons stated.

3. On 17 December 2012 the appellant applied to the tribunal for a review of the Decision, under the statutory provisions in that regard. By Decision on Review dated and issued on 28 December 2012 (“the Review Decision”), the tribunal's unanimous determination was that no proper grounds had been made out by the appellant to enable the tribunal to review the Decision and thus the appellant's application for review was dismissed and the tribunal's Decision was affirmed.
4. The appellant has now requested leave to appeal. By attachment to an e-mail sent to the office of the tribunal on 19 February 2013 (“the appeal letter”), the appellant has applied to the President of the Northern Ireland Valuation Tribunal for leave to appeal the Decision (and by implication the Decision on Review) upon the grounds therein stated. A copy of the appeal letter is appended to this leave determination.
5. After receipt of the appeal letter, the appellant indicated that he was seeking further information and documentation in the matter and it appeared that the appellant perhaps wished to add to his grounds of appeal, dependant upon the outcome of his further enquiry. The appellant thereafter indicated that he was content to rely upon such grounds as were stated in the appeal letter. Accordingly, I am now in a position to proceed with a determination of the matter, with reference to the appeal letter grounds as stated, the matter having been accordingly referred to me as President of the Northern Ireland Valuation Tribunal to determine whether or not to grant leave to appeal to the Lands Tribunal under the statutory provisions which are mentioned below.
6. The appellant's appeal letter sets forth particulars of the grounds upon which such a request for leave to appeal is made. Upon reading the appeal letter, in summary I draw from the content thereof the following points made in submission in regard to the granting of leave to appeal in the matter:-
  - (a) The Decision of the tribunal has improperly disregarded material evidence regarding damp proofing.
  - (b) The Decision of the tribunal has improperly disregarded material evidence from a damp proofing specialist regarding rising damp issues. Issues concerning dampness and its effect on the property have been improperly

assessed. Rising damp cannot be cured, whereas it has been portrayed as a “minor repairs” issue. The tribunal is in error in respect of these issues.

- (c) The Decision of the tribunal has improperly disregarded material evidence concerning the cost incurred by the appellant in taking electricity to the property and that there is actually one bedroom only in the property.
- (d) The Decision of the tribunal has improperly disregarded material evidence that there was no mains water supply and that the property was served by an unsatisfactory well water supply. It is contended that the tribunal panel did not think that the appellant had taken all necessary steps to resolve the water issue, whereas the appellant had taken all the necessary steps.
- (e) The Decision of the tribunal has improperly given consideration to an English court case as a precedent, whereas the appellant's case should have been judged upon its own merits.
- (f) The issue of “dereliction” is not the material consideration and the tribunal ought to have assessed the matter upon the basis of whether the property was safe to live in or not.
- (g) There is a presumption that the property was not capable of occupation and this has been ignored by the tribunal.

### **The Applicable Law**

7. The statutory provisions relevant to my determination in the matter are to be found in the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”) and in the Lands Tribunal (Amendment) Rules (Northern Ireland) 2007 (“the Lands Tribunal Rules 2007”). These are as follows (in respect of the 2006 Order): -

#### **“Appeal from decision or direction of Valuation Tribunal**

**54A.** —(1) Any person who is aggrieved by any decision or direction of the Valuation Tribunal under Article.... 54(2) may, with the leave of—

- (a) the Lands Tribunal; or
- (b) the President of the Valuation Tribunal,

appeal to the Lands Tribunal.“

These are as follows (in respect of the Lands Tribunal Rules 2007): -

“4. In rule A1—

- (a) -

(b) at the end there shall be added the following paragraphs—

- “(4) ..... an appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal shall be instituted by serving on the registrar a notice of appeal in accordance with Form AC within 28 days from the date of the grant of leave of appeal by the President of the Valuation Tribunal.
- (5) A notice of appeal under paragraph (4) shall be accompanied by—
- (a) a copy of the decision or direction of the Valuation Tribunal against which the appeal is made; and
- (b) a copy of the decision of the President of the Valuation Tribunal granting leave to appeal.
- (6) An application for leave to appeal under Article 54A of the Rates Order against a decision or direction of the Valuation Tribunal may be made to the Lands Tribunal only where the applicant has been refused leave to appeal by the President of the Valuation Tribunal. “

### **The Determination**

8. I begin by noting that the Decision runs to some 39 paragraphs set out in eight pages. In the tribunal's findings as set forth at paragraph 12 of the Decision, the tribunal identified two material issues for determination. The first of these issues was whether the property was properly to be deemed a hereditament “which is or may become liable to a rate” within the statutory definition in the Decision mentioned or, alternatively, an unoccupied property and accordingly exempt from rating under the statutory scheme therein referred to. The second issue identified (upon the premise that the property was to be properly deemed a hereditament and thus subject to rating) was whether the capital valuation ascribed to the property was correct.

9. In making this determination, I thus note the identified issues mentioned above and I construe the grounds set forth by the appellant as referring both to the Decision and also to the Decision on Review. Dealing with the appellant's contentions in the appeal letter, as mentioned in the summary listed above, my determination is as follows and this is so for the reasons stated:-

(a) & (b) The first and the second contentions, taken together, are that the Decision has improperly disregarded material evidence regarding damp proofing. I note that in the course of the hearing which resulted in the Decision, the tribunal heard oral evidence and submissions from the appellant and from Councillor Dan Kelly on behalf of the appellant, and also from the respondent's representatives. As the

appellant and his representative appear to have been afforded a fair and proper opportunity to provide evidence to the tribunal and to adduce arguments at hearing, and as there is nothing mentioned in the appellant's grounds asserting otherwise, nothing material appears to arise in that regard or to suggest that the oral hearing was in any manner procedurally unfair or improperly conducted. The issue thereafter emerges, for this has been expressly raised by the appellant, as to whether or not the tribunal has taken proper account of the evidence and submissions in reaching a determination of the identified issues, both in the Decision and also in the Decision on Review. In respect of the dampness issue, I note that the tribunal has recited the subject matter of the appellant's evidence and his contentions in paragraphs 14 –16, and elsewhere, in the Decision. The tribunal has included specific reference to the dampness issue in paragraphs 14 and 16 in leading to the determination as to whether the property was properly to be deemed a hereditament for the purposes of inclusion in the rating list, or otherwise. Further to that, in the discussion concerning the capital valuation issue, the tribunal has referred to the dampness issue in paragraph 26 of the Decision. I accordingly conclude that the tribunal, in its decision-making, was alert to the dampness issue and that the tribunal did not disregard the issue in the context of any evidence or submission put forward in respect of that specific issue. There are accordingly discernable no proper grounds upon which to grant leave to appeal in regard to this specific matter.

(c) The third contention is that in the Decision the tribunal has improperly disregarded material evidence concerning the cost incurred by the appellant in taking electricity to the property and, further, that there is actually one bedroom only. In examining the Decision there appears to be no reference to this specific issue, nor in the Decision on Review. There is a reference in the Decision to the property having mains electricity. I am not in a position to assess whether or not such evidence was indeed adduced in the course of the original hearing but improperly disregarded. I note that it is not expressly mentioned in the appellant's appeal form submitted to the tribunal dated 10 November 2011. However, I do not see any case satisfactorily or persuasively made out by the appellant that the tribunal has disregarded or otherwise improperly dealt with material evidence in respect of this issue. In regard to the issue of whether or not the property had one bedroom, or otherwise, I conclude that this issue has been addressed by the tribunal in the Decision in the context of the statutory considerations to be applied in regard to the property and the

evidence, and as otherwise is stated. The tribunal has reached the conclusion determined in the Decision and arising from this there are no proper grounds upon which I can discern a proper basis upon which to grant leave to appeal.

(d) The fourth contention is that in the Decision the tribunal has improperly disregarded material evidence that there was no mains water supply and that the property was served by an unsatisfactory well water supply. It is further suggested that the panel did not think that the appellant had taken all necessary steps to resolve the water issue, whereas the appellant had taken all the necessary steps, it is suggested. This was an issue which featured substantially in the tribunal's decision-making and accordingly the issue is recognised as a significant matter and is mentioned in quite a number of places in the Decision and also is alluded to in the Decision on Review. It is apparent that the tribunal gave due and proper consideration to the evidence and to the arguments in regard to that issue and the tribunal was at pains to set forth the substance of the evidence and the appellant's contentions. The conclusions stated by the tribunal in the Decision arising from this evidence and the specific findings of fact (for example at paragraph 22 that the well water was currently unsafe to drink without boiling) and the application of the law are clear and relatively comprehensive. From all this, I conclude that this specific issue has been properly addressed by the tribunal in the Decision and the tribunal has given an account of that and the reasons therefor in the Decision on Review. There are no proper grounds emerging from this point upon which to grant leave to appeal.

(e) The fifth contention is that in the Decision the tribunal has improperly given consideration to an English court case as a precedent, whereas the appellant's case should have been judged on its own merits. I have examined the manner in which the tribunal has addressed the case law authority which was put forward by the respondent in submissions, that being the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824(Admin)***. I note that in the Decision on Review the tribunal has made specific mention of the appellant's contentions in that respect and the import of that decision and the influence upon the tribunal's decision-making has been clearly stated in the Decision. In paragraph 17 of the Decision the tribunal makes it clear that the case of ***Wilson v Coll*** is not binding upon the tribunal, but that nonetheless the tribunal regards the case as providing useful guidance upon the interpretation of similar statutory provisions to those provisions under consideration

by the tribunal. Having correctly stated that the case of ***Wilson v Coll*** was a non-binding but, rather, a persuasive authority and having proceeded to take the case into account to that extent, insofar as guiding principles might be extracted from the facts and the law of that case, I determine that that is a permissible approach for the tribunal to have taken in this case in reaching the Decision. This approach does not give rise to any proper ground upon which leave to appeal ought properly to be granted. I do not see any contradiction or inherent unfairness or impropriety in the tribunal taking into account in the manner stated any issues or principles such as where clarified and determined by the High Court in England in the case of ***Wilson v Coll*** and I do not determine that this approach impedes or deflects the tribunal from conducting a proper adjudication of the instant case upon its own merits.

(f) The forgoing issue, to an extent, connects with the next issue whereby the appellant seeks in support of his application for leave to appeal to argue that the issue of “dereliction” is not a material consideration and at that the tribunal ought instead to have assessed the matter upon the basis of whether the property was safe to live in or not. As mentioned in the preceding paragraph, my determination is that the tribunal has followed the proper approach in dealing with the issues which were addressed in the case of ***Wilson v Coll***. My determination is that the tribunal was entitled to form the view that one of the essential issues in the case for determination was whether the property was properly to be deemed a hereditament “which is or may become liable to a rate” within the statutory definition mentioned or, alternatively, an unoccupied property and accordingly exempt from rating under the statutory scheme. Connecting with this essential issue for determination was the matter of whether or not the property was to be deemed properly “derelict” and thus exempt from the rating regime. I do not discern any error of procedure or misapplication of the law in regard to the identification of and the adjudication upon this issue. I do not observe any basis emerging from the tribunal’s decision-making for the contention that the tribunal ought properly to have disregarded that issue and ought to have determined the matter instead upon the basis of whether the property was safe to live in, or not. From all of this, I conclude that this specific issue has been properly addressed by the tribunal in the Decision and that there are no proper grounds upon which to grant leave to appeal upon this point.

(g) The final matter is the appellant's contention that there was properly to be a presumption that the property was not capable of occupation and that this has been ignored by the tribunal. In dealing with this contention, I note the content of the Decision and the fact that the decision has recited the evidence and submissions including those forthcoming from the appellant and has reached a determination based upon the application of the law, clearly and comprehensively set forth in the Decision, to the concluded facts. From all this, I determine that this specific issue has been adequately and properly addressed by the tribunal in the Decision and the tribunal has given account of that in the Decision on Review. The tribunal has reached a permissible conclusion. Arising from this, there are no proper grounds which I can discern upon which to grant leave to appeal in the matter.

10. For these reasons, I do not grant leave to the appellant to appeal to the Lands Tribunal.

Dated this                                  day of March 2013

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