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: 43/15

ERIC MCCOMBE – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr David McKinney FRICS and Mr Patrick Cumiskey

Date of hearing: 5 October 2016, Belfast

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). The appellant Mr Eric McCombe attended the hearing assisted by his son Andrew McCombe. The respondent was represented by Mr Gareth Neill and Ms Sonia McIntyre.

2. The appellant by Notice of Appeal appealed against the decision of the Commissioner (on appeal) dated 6 January 2016.

3. This appeal is in respect of the valuation of a hereditament situated at 20 Ardilea Road, Clough, Downpatrick, BT30 8SL ("the subject property").

The law

4. 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 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 earlier decisions of this tribunal.

5. An issue in this case arises in relation to the listing of the property as a hereditament in the capital value list. Article 2(2) of the 1977 Order states;

> " "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".

6. In relation to unoccupied property, the Rates (Unoccupied Heredit aments) Regulations (NI) 2011 ("the 2011 Regulations") provide that domestic dwellings and parts of buildings for the purposes of the 1977 Order are to be subject to rating (subject to certain statutory exceptions). Therefore rates are payable on an unoccupied domestic property at the same level as if the property were occupied. These provisions came into force on 1 October 2011.

7. Reference will be made later in this decision to the relevant case law to which the tribunal was referred by the parties.

The evidence

8. The matter was listed for hearing on 5 October 2016. The appellant appeared in person accompanied by his son Andrew McCombe and the respondent was represented by Mr Gareth Neill and Ms Sonia McIntyre BSc (Hons) MRICS. The tribunal is grateful to all the parties for the time and attention given to the presentation of the evidence to the tribunal. The tribunal had before it the following documents:

   (a) The Commissioners Decision dated 6 January 2016;

(b) The appellant's Notice of Appeal dated 6 February 2016;
(c) A report from James Wilson & Sons, auctioneers, valuers and estate agents dated 21 January 2016
(d) A report from Gregory Architects dated 5 February 2016.
(e) A document entitled 'Presentation of Evidence' dated 25 May 2016, prepared on behalf of the respondent Commissioner by Ms Sonia McIntyre BSc (Hons) MRICS and submitted to the tribunal for the purposes of the hearing;

The facts

(1) The property is a privately built, 3 bedroom detached house built pre 1919. It has rubble masonry walls and a pitched slate roof. It has a gross external area of 176m2 and a garage of 24m2. It has single glazed windows. The capital value has been assessed at £100,000.

(2) The appellant contends that the property is no longer habitable and should not be retained in the valuation list.

The appellant's submissions

9. In relation to the issue as to whether the property should remain in the list as a hereditament, the appellant states that the house is no longer habitable.

10. The appellant states that the property has not been occupied for approximately 12 years. The property is very damp, has rotten window frames, no heating and has only an open fire in the living room. He states that Wilsons estate agents value the property at £30,000 which is site value only and that it would be uneconomic to renovate it. Also the subject property has no rental value. The appellant also staes that no services are received from the local council for bin collection. The appellant also made reference in the notice of appeal to the hardship his rates bill in respect of the property was causing him.

11. The letter from the agents, James Wilson & Son states "Internally the building is in very poor condition with a lot of damp. The kitchen and bathroom are entirely inadequate and the window frames are rotting." The report goes on to state

"Externally the render of the dwelling exhibited defects in various areas…. It is undoubtedly the case that the property could not be rented to anyone at present. … further the condition of the property is such that it is not considered that it would be suitable for mortgage purposes thus limiting any potential sale and consequently the value. Additionally the condition of the dwelling is such that really only site value can be ascribed to the property." It is the opinion of the agent that the property is worth £30,000.

12. The report from Gregory architects, dated 5 February 2016 concludes that the property is presently in a very poor state of disrepair and is currently not in a condition suitable for habitation. The report states that the following works are required to be undertaken:
    (a) Carry out repairs to existing roof, replacing all displaced/missing slates. Replace existing leadwork to chimneys. And provide lead abutment flashing to ground floor return. While the above works will prevent further water penetration it is recommended that the roof be stripped and new underlay lath and slates fitted as a long term solution,
    (b) Provide roof insulation,
    (c) Clear away existing vegetation over-growth to front of dwelling,
    (d) Existing external render/dry dash needs to be stripped externally with new breathable lime based render applied to deal with current water penetration through the walls,
    (e) Replace all existing windows with new frames and double glazed units to meet current Building Regulations for thermal performance and ventilation. Provide emergency escape windows to all first floor bedrooms.
    (f) Replace existing rear door. Strip out and replace all existing skirtings, architraves and internal doors,
    (g) Decontaminate all internal spaces,
    (h) Strip all plaster internally, treat all walls with anti-fungal spray, re-plaster and redecorate,
    (i) Strip out existing ground floors and provide new concrete floor slabs with insulation and screed.

(j) Strip out all existing ceilings and provide new plasterboard ceilings with skim and paint finish,
(k) Repoint existing chimneys. Clean out existing flues and fit new flue liners.
(l) Strip out existing kitchen and provide new fitted units including appliances, sink and mechanical ventilation,
(m) Strip out bathroom and provide new sanitary ware. Provide mechanical ventilation.
(n) Rewire and re-plumb property throughout,
(o) Provide new oil fired central heating system to current standards
(p) Dry line and insulate all external walls to achieve U-value requirements of current Building Regulations.
(q) Provide new floor finishes throughout,
(r) Carry out asbestos survey. Any asbestos discovered should be removed by a suitably licensed asbestos removal contractor.

The report concludes:

> "A very substantial level of repair work and refurbishment of the property is required in order to bring the dwelling to a condition whereby it would be fit for habitation and to meet current NI Building Regulation standards. We would advise that it is unlikely that the work listed above will be economically viable solution when compared to the cost of demolition and building a new dwelling on the existing site."

13. At the hearing the appellant indicated that the property had been tenanted until about 2002. He had some time later asked a builder to look at the property. At that stage the builder had indicated that the appellant would be "throwing good money after bad" if he spent more on it. The appellant stated that he had heard nothing further from the respondent until he received a large rates bill.

14. The appellant was asked by the tribunal as to the cost of the works required to be undertaken to the subject property. He indicated that he was not a professional and this would be hard to reconcile but that the cost would be greater to do the work than to demolish the property.

15. It was clarified that the estimation of value of the property provided for the appellant was in 2016.

The respondent's submissions

16. The respondent contends that the correct approach as to whether a hereditament exists is as outlined in *Wilson* v *Coll (Listing Officer).* The Presentation of Evidence goes on to outline some extracts from the judgment of Mr Justice Singh in that case.

17. In relation to the present appeal the respondent states that the fabric of the building is intact. The property did not appear to require any significant reconstruction and is largely wind and water tight. It was noted that on inspection by a representative of the respondent the property had the following defects: some displaced/missing slates, rotten window frames with some broken glazing and cracking in the external render. Internally it was considered that the property is in poor state of repair with evidence of damp, condensation, cracking to internal plaster, missing water tank, missing copper piping and evidence of birds nesting in the property. It is considered by the respondent that there are repairs and improvements required but the property remains a recognisable hereditament. The respondent referred to a previous decision of the Northern Ireland Valuation Tribunal in *Trodden* v *Commissioner of Valuation* in which it was stated that the bar was set fairly high for the conclusion that a property was truly derelict.

18. In relation to the capital value of the property, reference was made in the Presentation of Evidence to a list of comparable hereditaments in the same state and circumstances. Details of these comparable properties were set out in a schedule to the Presentation of Evidence dated 25 May 2016. These were capital value assessments, the details of which are as follows:

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	Address	Description	Gross external area	Capital value
1	24 Downpatrick Road, Clough.	Privately built pre 1919 detached 2	GEA 205m2 OB 22m2	£160,000.

		storey property with rubble masonry walls and a pitched slate roof.		
2	44 Ballybannan Road, Ballybannan,Castlewellan.	Privately built pre 1919 detached 2 storey property with rubble masonry walls and a pitched slate roof.	GEA 117m2. OB	£115,000.
3	34 Moneycarragh Road, Clough.	Privately built pre 1919 detached 2 storey property with rubble masonry walls and a pitched slate roof.	GEA 147m2. OB	£120,000.
4	22 Moneylane Road, Moneylane, Dundrum.	Privately built pre 1919 detached 2 storey property with rubble masonry walls and a pitched slate roof.	GEA 192m2 OB	£165,000.

The Tribunal's Decision

19. There are two main issues to be considered in relation to this case. These may conveniently be referred to as the listing issue and the capital value issue. Each of these will be considered in turn. It is to be noted that it is not within the purview of the tribunal to comment on the appropriateness of any individual rates account but merely to consider the capital value of the subject property.

The listing issue

20. The tribunal has considered the recent judgment of the Northern Ireland Valuation Tribunal in *Whitehead* v *Commissioner of Valuation* in which the tribunal considered the question as to whether the subject property was a hereditament for the purposes of the rating list. In that case the President of the Northern Ireland Valuation Tribunal helpfully considered the case of *Wilson* v *Coll* and its applicability to Northern Ireland. The relevant parts of the judgment in *Whitehead* v *Commissioner of Valuation* are as follows:

> "23. To the material extent, Northern Ireland domestic rating law, likewise, does not include any "economic test" if it could be described as such. The issue accordingly identified by the English court in ***Wilson v Coll*** could be expressed in the form of a question. That question is - 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?
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> 24. The tribunal, as mentioned, is not bound to follow the approach taken in ***Wilson v Coll*** and is free to determine the matter in any way that seems proper, in the absence of a precedent or authority of any binding character being cited or drawn to the tribunal's attention. However, in order to depart from the approach taken by the English court in ***Wilson v Coll***, the tribunal would need to identify a proper basis for taking a different approach. The point, of course, in ***Wilson v Coll*** is that there was no mention of any "economic test" in the English statutory provisions, and a similar position prevails in Northern Ireland in regard to the rating of domestic property. The determination of this tribunal, accordingly, is that the same general approach ought to be adopted in Northern Ireland, but with the important qualification mentioned below.
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> 25. In determining the issue, it is easy to envisage a truly derelict property that on no account ought properly to be included in the valuation list. At the other end of the spectrum, as it were, there exist many properties which are unoccupied but which require only very minor works of reinstatement or repair to render these readily habitable. The difficulty, as the tribunal sees it, in the absence of any specific provision expressly enabling the tribunal to take economic factors into account (and in the light of the position as stated in ***Wilson v Coll***) is to adjudge what might be deemed a "reasonable amount of repair works". Clearly, it would be wrong to include a property on the rating list which required an "unreasonable" amount of repair works to render the property in a state to be included in the list. How then is the concept of "reasonableness" to be tested?
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> 26. "Reasonableness" is generally regarded as being the standard for what is fair and appropriate under usual and ordinary circumstances - the

way a rational and just person would have acted. In discussing this, the tribunal had some difficulty in comprehending how what is reasonable or otherwise could be tested if one entirely disregarded some of the true realities of the situation, including those which most would impact upon decision-making. Obviously a reasonable person would not wish to expend a very substantial amount of money upon the repair of a nearly worthless property. Leaving aside for the moment any statutory considerations, the reality, for any reasonable domestic property owner, must in some manner connect with the issue of potential expenditure and the worth of any property both before and after any repair and reinstatement. To that extent, the tribunal has some difficulty with the judgment of Mr Justice Singh in ***Wilson v Coll***, for the learned judge as far as can be observed did not proceed to give any account of how the concept of "reasonableness" might otherwise be tested. It is possible to expend an unreasonable sum upon the repair of a nearly worthless property; or, leaving aside monetary considerations, to expend an unreasonable amount of labour or of time in the repair of such a property. Any truly derelict property (in the common perception) might thus, by expending an unreasonable amount of money or an unreasonable amount of time and labour upon repairs, be capable of being placed in a state where it could indeed be occupied as a dwelling and thus be rated as a hereditament. Of course to do so would be to act irrationally and unreasonably by any normal assessment of things. Having accepted that there is no mention of any "economic test" in the relevant statutory provisions in Northern Ireland (as in England), the tribunal's view is that the only common sense and proper way to look at things is to examine the specific factual circumstances of any individual case and to take all material factors into account in taking the broadest and most common sense view of things in addressing the issue of whether or not, having regard to the character of the property and a reasonable amount of repair works being undertaken, the property could be occupied as a dwelling. Accordingly, the tribunal is reluctant to lay down any rigid principle that, in effect, inhibits or prevents the tribunal from taking a proper, comprehensive and broad view " in the round" of all the relevant facts. This is so when conducting an assessment of what is reasonable, or otherwise, in relation to repair works necessary to render any property in a state to be included in the rating list. Tribunals across the broad spectrum of different statutory jurisdictions in Northern Ireland are designed, within the system of justice, to engage in decision-making in an entirely practical and common sense manner, applying the inherent skills and expertise of the tribunal members in the assessment of any material facts and by proper application of the law to any determined facts, and should be enabled to undertake this task in a properly-judged and comprehensive manner, provided that the law is properly interpreted and observed in the decision-making."

21. The tribunal notes that the approach taken by the Northern Ireland Valuation Tribunal in the *Whitehead* case is a persuasive authority however it has been adopted in subsequent decisions of this tribunal in cases such as *O'Har*e v

Commissioner of Valuation and *Fletcher* v *Commissioner of Valuation*. Therefore this tribunal determines that the same general approach as espoused in *Whitehead* should be adopted in this case.

22. In relation to the facts of this case in considering the question "having regard to the character of the property and a reasonable amount of repair works being undertaken could the property be occupied as a dwelling", the tribunal prefers the evidence of the respondent that the fabric of the building is intact. It also finds that while there are repairs and improvements required they are such that if a reasonable amount of repair works were carried out the property could be occupied as a dwelling. As to the nature of the works required the appellant has not submitted any figures to support the cost of the work required to be undertaken to the property.

23. The tribunal has considered all the points made by the appellant in his notice of appeal and in the reports submitted by him in evidence and the points made by the respondent in the Presentation of Evidence. Weighing up the arguments advanced and the material considerations the tribunal's unanimous decision is that the subject property as it stands, in the state and condition described in the evidence, is properly to be included in the rating list as a hereditament. The appellant's appeal on that point fails accordingly.

24. The property is a hereditament and is properly to be included in the valuation list.

The capital value issue

25. Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner's valuation as to capital value to appeal to this tribunal. In this case the capital value has been assessed at a figure of £100,000. On behalf of the Commissioner it has been contended that this figure is fair and reasonable in comparison to other properties. The appellant's contentions are as stated above and the appellant was not in a position to state what he considered the capital value of the property would be as at the antecedent valuation date of 1 January

2005 in that he only knew what he considered the value to be in 2016 which was £30,000.

26. 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.

27. In this case the tribunal accepts that the best comparable available is 24 Downpatrick Road, Clough. It is a larger property and is in an average state of repair. The other comparables at 44 Ballybannan Road, Castlewellan and 34 Moneycarragh Road, Clough and 22 Moneylane Road, Moneylane, Dundrum also support the capital valuation of the subject property.

28. The tribunal carefully considered the issue as to whether the appellant had provided sufficient challenge to the Commissioner's schedule of comparables. Taking all matters into account the conclusion of this tribunal is that the appellant has not placed before the tribunal sufficient evidence to displace the statutory presumption as to correctness of the capital value and therefore the appeal is dismissed and the tribunal orders accordingly.

Mr Charles O'Neill – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 4 November 2016