

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 3/15, 4/15 & 5/15

FRANCIS BRADLEY & URSULA BRADLEY APPELLANTS

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 15 August 2015

Chair: Sarah Ramsey

Members: Hugh McCormick (Valuer) and Garry McKenna (Lay)

DECISION AND REASONS

The Facts of the Case

1. This is a series of three separate appeals relating to three flats contained within a three storey terraced building at 28 A, B and C High Street Omagh.
2. The reference is made under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). By a Notice of Appeal dated 13 April 2015 in respect of Flat A, B and C .The appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) in respect of the decision letters of 10 April 2014 in relation to the valuation of the hereditaments situated at 28 A, B and C High Street, Omagh Co Tyrone BT78 1BQ (“the subject properties”) as £45,000, £32,000 and £32,000 respectively.
3. The appellants, Mr. Francis Bradley and Mrs. Ursula Bradley were not present at the tribunal having indicated they would not

attend on their appeal form, the tribunal considered the cases on the papers.

4. The respondent's Presentation of Evidence describes the subject properties as three flats contained within a three storey terraced building, built in or around 1910 the subject properties have been vacant for a number of years.
5. The front façade of the property was found to be in a good state of repair. The roof, rainwater goods and windows were intact and serving their purpose. There is a two-storey return to the rear of the dwelling that has a flat roof with a butyl rubber covering.
6. Internally the properties are in a poor state of repair.
7. Flat A on the first floor is 67m²; Flat B is on the first floor and is 39m² and Flat C on the second floor is 39m²
8. The properties benefit from mains water, mains electricity and mains sewerage. A retail unit is located on the ground floor of the building and is presently occupied.
9. The appellants in their Notices of Appeal indicated that in 2003 the Housing Executive's Statutory Notice deemed the flats unfit for human habitation. As they claimed that since 2003 the properties ceased to be flats, they could not legally be let and were devoid of function. They asserted that the old properties have been vacant and in decline since 2003. Structural damage in winter 2009 caused by burst water tank and pipes had resulted in no water or sanitation since this stage.
10. The appellants further asserted that windows on the first floor blew in in storms in December 2014. The rear sloped roof needs replaced. As the properties are, they are not suitable for any purpose or on any terms. The properties have been on the market for sale since 2004. Mr. Bradley explained his prolonged and life changing illnesses had left the appellants exhausted and unable to intervene except for crisis management.
11. The appellants indicated in the Notices of Appeal that they believed the actual valuations should be nil in respect of each flat.
12. The Subject properties A, B and C 28 High street Omagh were entered into the Capital value list on 1 April 2007 as £50,000, £40,000 and £40,000 respectively. On 21 February 2014 the appellant submitted an application to the District Valuer who completed a revision of the valuation 21 February 2014. The valuations were reduced respectively to £45,000, £37,000 and £37,000 to reflect the poor external repair of the property

13. On 10 April 2014 the appellant appealed the District Valuer's decisions to the Commissioner of Valuation. The Valuer appointed by the Commissioner for valuation was unable to make contact with the appellants and the recommendation was based on external inspection and the previous valuer's inspection report only. Following a full review the valuation of Flat A remained unchanged, Flat B's valuation was reduced to £32,000 and Flat C's valuation was reduced to £32,000.
14. On 13 April 2015 the Appellant's appealed the Commissioner's decision to the Northern Ireland Valuation Tribunal.
15. Although the Appeals were received after the twenty-eight day time limit the Appellants had given Mr. Bradley's health as one reason why the Appeal was lodged out of time. The Commissioner indicated they had no objection to the Appeal being filed late and the Tribunal took a similar view.

The Evidence

16. The following documents were before the tribunal;
 - Appellants' original Notice of Appeal to the Tribunal dated 13 April 2015 in respect of 28 A, B & C High Street Omagh enclosing Housing Executive Statutory Notice to execute works dated 8 January 2003; Correspondence of 27th May 2003 with Housing Executive; Letter from Robert Pollock Estate Agent dated 2 April 2015; Correspondence with L&PS dated 21 March 2015; and 26 March 2015
 - Respondent's written Presentation of Evidence dated 1 March 2016;
 - Letter from the Appellants 20th April 2016 and enclosed written argument for Tribunal Appeal
 - Letter dated 17 November 2005 from Mr. Bradley's GP Dr McMullan and various hospital medical documents setting out Mr. Bradley's medical conditions;
 - Correspondence from the Appellant and his solicitor to Land & Property Services dated 28 October 2013, 11 March 2014, 14 March 2014, 11 April 2014;
 - Roofing Systems Survey & Report dated 3 June 2014; Correspondence from Robert Pollock letting agent, dated 5 November 2008 with attendant invoice;
 - Invoice dated 20 April 2010 from S McCabe and S M Glazing;
 - Invoices dated 31 March 2015 & 5 March 2015 from P McDermott;

- Invoice dated 6 April 2015 Brendan Bowne; Photographs of interior of 1st & 2nd floors at 28 High Street Omagh.
- Respondent's response to Appellants' additional information dated 15 April 2016 from Mr. Stephen Stuart MRICS dated 28 April 2016
- Letter from the Appellant dated 26 May 2016 with enclosed photographs of the rear yard of the subject property;
- Copy Ulster Herald advertisements,
- Extracts from plans to Omagh Housing Executive, Letter of 31 May 2016 from William Reilly FRCIS,
- List of internal & external defects dated 31 May 2016

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

17. 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.
18. 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.
19. 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.

20. 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.
21. The issue before the tribunal in this appeal is whether the subject properties are hereditaments “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 unoccupied properties which fall within the categories of exceptions set out in the 2011 Regulations.

Is the subject property liable to rates?

22. The respondent in the Presentation of Evidence 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 and local NIVT decisions of Fletcher –v- COV 9/12, Whitehead Properties –v- COV 12/12* and *Anne O’Hare –v- COV 88\12*. A property which requires a reasonable amount of repairs continues to be a hereditament. In Mr. Stuart’s presentation of evidence he stated that the property could not be described as truly derelict and it is clearly repairable. He referred to the Housing Executive Certificate issued under Art 80 of the Housing (Northern Ireland) Order 1992. The indication from the Housing Executive in this correspondence suggest the works required to bring the properties to a suitable standard for tenant’s occupation was four months. He emphasized that the conditions making a property suitable to let has no influence over whether the properties are hereditaments under rating law. He further submitted that an average state of repair should be assumed and this related to internal repair and water supply. Mr. Stuart indicated that as the shop unit on the ground floor is occupied the envelope of the building must be in fair condition as regards structural damage from water penetration from adjoining properties.

23. Whilst the Appellants asserted the properties could not be lived in without major works, no empirical evidence has been advanced to support this.
24. Mr. Stuart concluded that the fact the appellants had been unable to dispose of the site since 2004 was not a relevant factor for assessing the Capital Value for rating purposes.

The Tribunal's Findings

25. 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. Mr. Stuart referred to Schedule 12 paragraph 12 (1) and the assumption that the property is in an average state of internal repair and fit out.
26. In respect of the property's shortcomings as set out above, Mr. Stuart submitted that in his opinion they were issues of reasonable repair and in light of the *Wilson v Coll* case, the subject property does not cease to be a hereditament.
27. The respondent produced eight comparables in support of his assertion regarding the tone of the list:
 - Comparable 1- Flat 3, 59 High Street Omagh had a Net Internal Area of 54m². It was on the same street as the subject properties and had a value of £50,000
 - Comparable 2 - Flat 2, 59 High Street Omagh had a Net Internal Area of 39m². It was on the same street as the subject properties and has a value of £40,000
 - Comparable 3 - 7B Georges Street Omagh has a Net Internal Area of 44m². It was some short distance from the subject properties in Omagh Town Centre. It has a value of £40,000
 - Comparable 4 - 3C Castle Place Omagh has a Net Internal Area of 66m² some further distance away from the subject property still in the town centre. It has a value of £45,000.
 - Comparable 5 - 3B Castle Place in Omagh has a Net Internal Area of 39m² and is in the same location as comparable 4. It has a value of £45,000
 - Comparable 6 - 8A James Street Omagh has a Net Internal Area of 41m². It was furthest from the subject property though still within Omagh town and has a value of £45,000

- Comparable 7 - 1B James Street Omagh has a Net Internal Area of 35m² and was on the same street as comparable 6. It has a value of £40,000
 - Comparable 8 - Flat B, 5 Castle Place Omagh has a net internal area of 71m². It is a similar distance from the subject properties as comparable 6. It has a value of £55,000.
28. The appellants submissions were contained in their notices of appeals, correspondence and enclosures of 20th April 2016 and enclosed written argument for Tribunal Appeal 26 May 2016
29. They made the case that the properties are currently uninhabitable. They referred to the requirements of Omagh Planning Office and the Housing Executive notification in 2003 relating to fire precautions. A schedule of issues and photographic evidence was produced by the appellants relating to the internal repair and the issue with the blocking of right of way escapes. They produced evidence relating to their attempts to market the properties for sale. They indicated that they were unable to undertake repair works. They produced a letter from Mr Reilly FRICS dated 31 May 2016 suggesting the property may be beyond economic repair. No evidence was produced to quantify this assertion.

Decision

30. However, the correct test as Mr Justice Singh highlighted in paragraph 41 of the *Wilson* judgment is not whether repairs are economic,
31. *“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.”*
32. The test for deciding whether a property is a hereditament is set out in the *Wilson* case:
33. *“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.”

34. There are certainly works that could be carried out to the premises to improve it. The respondent in his evidence did highlight problems with the properties. The tribunal, from the photographs and all of the evidence, is of the view that if certain repairs were carried out the subject properties could be occupied as a dwelling. The tribunal finds that the properties are not truly derelict. The tribunal accepts the respondent's evidence that the fabric of the property is largely intact. The Tribunal accepts the photographic evidence from the Appellant's as to the poor internal repair of the three properties. Whilst the tribunal has, through all of the evidence, been made aware of the problems in the properties 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. In these circumstances we are satisfied that the subject property is a 'hereditament' and therefore liable to a rate.
35. 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.
36. The appellant in their correspondence to the Tribunal made no reference to the comparables, nor did they seek to challenge their valuations.
37. 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.
38. The appellants have not discharged the burden upon them to show that the valuation assessed for the subject properties is not correct in accordance with paragraph 7 of Schedule 12 of the 1977 Order. The tribunal is of the view that the subject properties are appropriately on the Valuation List in accordance

with tone with evidence the respondent has adduced in its Presentation of Evidence. The appellants chose not to challenge the comparables proposed by the respondent in the presentation of the evidence. In all of the circumstances and in light of the findings above the tribunal was satisfied that the valuations shown on the Valuation List in relation to the subject properties is correct and that the Tone has been established.

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

Ms. Sarah Ramsey - Chair

Northern Ireland Valuation Tribunal

Dated this the 12th day of September 2016