

**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: 32/12**

**MARY HORISH – APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mrs Barbara Jemphrey**

**Members: Mr Brian Sparkes FRICS and Mr Hugh Mulholland**

**Date of hearing: 9 January 2013**  
**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"). There was no appearance before the tribunal by or on behalf of the appellant and the respondent, both parties being content to rely on written representations.
2. The appellant by Notice of Appeal received in the Tribunals office on 6 August 2012 appealed against the decision of the Commissioner (on appeal) dated 16 July 2012.
3. This appeal is in respect of the valuation of a hereditament situated at 12 Tullycorker Road, Tullycorker, Clogher, BT76 0DW ("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. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in this matter.

**The Evidence**

5. The tribunal heard no oral evidence the parties being content that the case be heard on the basis of written representations. The tribunal had before it the following

documents:

- (a) The Commissioners Decision on appeal dated 16 July 2012;
- (b) The appellants' Notice of Appeal received in the tribunal office on 6 August 2012 (with attachment);
- (c) A document entitled 'Presentation of Evidence' dated 20 November 2012 and prepared on behalf of the Commissioner by Ms Karen McCullagh and submitted to the tribunal for the purposes of the hearing;
- (d) Correspondence between the tribunal office and the parties.

### **The Facts**

6. On the basis of such information as was before it, the tribunal determined upon the balance of probabilities the following facts:
  - (a) The property consists of a detached cottage situated at 12 Tullycorker Road, Tullycorker, Clogher, BT76 0DW ('the subject property'). The property was constructed approximately 1930 and is of brick construction with pitched slate roof. The property has mains electricity, water and, a septic tank.
  - (b) The property has a gross external area of 100m<sup>2</sup>.
  - (c) The Capital Value was initially assessed at £100,000. The appellant appealed this valuation and it was reduced to £85,000. A second appeal was lodged which resulted in the further reduction of the Capital Value to £80,000. The appellant appeals that decision to this tribunal.

### **The Law**

7. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter the 2006 Order).
8. The relevant legislation for the purposes of this appeal is as follows. Article 2(2) of the 1977 Order 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
9. 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 came into force on 1 October 2011 (the 2011 Regulations). These prescribe that, subject to the exceptions set out in the schedule to the Regulations, unoccupied domestic properties are liable to rates.
10. Schedule 12 of the 1977 Order as amended provides as follows;
  - 7.—(1) Subject to the provisions of this Schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions

mentioned in paragraphs 9 to 15, 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.

(2) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

(4) In sub-paragraph (1) “relevant capital valuation date” means 1st January 2005 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.

### **Capital value – the assumptions**

...

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.

11. 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 appellants’ submissions**

12. The appellant submits that the subject property is only worth its site value due to its poor state of repair. The appellant goes on to state that further damage has occurred to the subject property from flooding and vandalism. Copper piping and the copper cylinder tank have been stolen from the property. There is no water or electric in the property. The appellant further submits that she is unable to secure the building.

13. There are two issues before the Tribunal in this appeal. The first is whether the subject property is a hereditament 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 is an unoccupied property within the exceptions set out in the within the categories of exceptions set out in the 2011 Regulations. The second issue is whether, if the property is properly included on the Valuation list, the capital valuation is correct.

### **Is the subject property liable to rates?**

14. Ms McCullagh in her presentation of evidence refers to the decision of the Administrative Court in England and Wales in *Wilson v Josephine Coll (Listing Officer)* [2011] EWHC 2824 (Admin). She submitted that the relevant question to be asked is whether the subject property is a ‘hereditament’ as defined by the 1977 Order, that is whether it is a 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. She submitted that this meant asking whether the property is a house which is in a state that means that it could be occupied, and whether is wind and weather tight. She submitted that it means asking whether the property is exposed to the elements so much that it is derelict. She submitted that the question is not whether the property is currently occupiable but whether it can be made occupiable. This means looking at whether it is capable of being put back in the condition it was when last occupied having regard to the nature, age and type of property. Although she accepted that the subject property is in some disrepair she did not accept that it is derelict.

### Capital value

15. The case of *Wilson v Coll* was decided in the High Court of England and Wales on foot of a judicial review action. Whilst this decision is not binding as it relates to legislation applicable in England and Wales it provides useful guidance on the interpretation of similar provisions in the 1977 Order.

16. In the case of *Wilson v Coll* Mr Justice Singh highlighted the importance of keeping the question as to whether a hereditament exists separate from the issue of the capital value of the property including the irrebutable assumptions to be made about the property. He said;

“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.

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.”

17. The subject property is of a traditional design and construction having solid brick walls and a slate roof. There is evidence throughout the property of water damage and dampness caused by burst pipes. Light fittings and radiators are no longer attached to the walls. The property has solid floors throughout and there is evidence of a significant decline in floor level inside the front door. Whilst conditions in the property may be below what we expect 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 is a ‘hereditament’ which is liable to a rate.

18. 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.

## Capital value

19. Ms McCullagh submitted that the statutory assumptions mean that the property is assumed to be in an average state of internal repair and fit out. She submitted that the capital value for the subject property had been initially £100,000 reduced to £85,000 and subsequently £80,000. She submitted that this reflected the tone of the list and the comparables in the area.
20. The Respondent put forward evidence of four comparable properties in the area.
21. The Capital Value Assessments of the comparable properties were all unchallenged.
22. The panel must apply the statutory presumptions set out in schedule 12 of the 1977 Order. These include the presumption set out at paragraph 12 of schedule 12 that the subject property is in an average state of internal repair and fit out having regard to the age and character of the property and its locality. The capital value of the subject property is therefore the amount it might reasonably have been expected to have realised if it had been sold on the open market by a willing seller on 1 January 2005 assuming it was in an average state of internal repair and fit out.
23. We have regard to the capital values in the valuation list for comparable properties as submitted by the Respondent. The panel was satisfied that, in accordance with schedule 12 paragraph 7 of the 1977 Order as set out above, the comparables submitted by the Respondent were appropriate being properties in the same area, state and circumstances as the subject property. We take into account the external disrepair of the subject property as identified in the Respondent's Presentation of Evidence at page 8. We are satisfied that the capital value of the subject property is consistent with the properties put forward as comparables taking the external disrepair into account.

## The decision

24. The Appellant has not discharged the burden upon her to show that the valuation assessed for the subject property is not correct in accordance with paragraph 7 of Schedule 12 of the 1977 Order. In all of the circumstances and in light of the findings above the Tribunal was satisfied that the valuation shown on the valuation list in relation to the subject property is correct.
25. The unanimous decision of the Tribunal is that the appeal is dismissed.

**Barbara Jemphrey Chair  
Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to parties: 20 February 2013**