

**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: 43/14**

**JAMES CANNING - APPELLANT**  
**AND**  
**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr James V Leonard, President**

**Members: Mr Christopher Kenton FRICS and Mr Patrick Cumiskey**

## **DECISION**

The unanimous decision of the tribunal is that the 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 was content for the appeal to be disposed of by written representations. The matter was listed for hearing at Belfast on 27 April 2016 and was considered by the tribunal on the papers.
  
2. The appellant, by Notice of Appeal received by the Office of the Tribunal on 4 December 2014 appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 16 October 2014 in respect of the valuation of number 58 Loughermore Road, Sistrakeel, Ballykelly, Limavady BT49 9JQ (" the subject property")

## **The Law**

3. 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 fully 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, 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. Antecedent valuation date or "AVD" is the date to which reference is made for the assessment of capital values in the Valuation List. Until a further domestic property revaluation occurs, capital values are, under the regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the statutory domestic rating scheme.
  
4. There is a fundamental definition which is to be found at Article 2 (2) of the 1977 Order in regard to what constitutes a "hereditament" for the statutory purpose. It is accordingly provided 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".  
  
In regard to unoccupied property and the matter of liability to rating, empty properties are now subject to rating if these are deemed to be hereditaments.

## **The Evidence and Submissions**

5. The tribunal noted the papers in the matter and the documentation adduced in evidence, including evidence relating to the comparables (these being potentially comparable properties from which evidence of capital valuation may be drawn for statutory purposes) put forward in the matter. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) and the following:-

5.1 The Valuation Certificate dated 16 October 2014.

5.2 A document dated 13 January 2016 entitled "Presentation of Evidence" prepared on behalf of the Commissioner as respondent by Mr Stephen Stuart MRICS and submitted to the tribunal.

The appellant had made no additional written submissions.

6. The subject property is contended by the respondent to consist of a hereditament located 58 Loughermore Road, Sistrakeel, Ballykelly, Limavady BT49 9JQ. That classification as a hereditament, properly to be included in the Valuation List, is in contention in this appeal. In his appeal the appellant states that the subject property is "unfit for living" and should have a capital value of "£0". The subject property as depicted in the Presentation of Evidence (with which specific details the appellant does not take substantial issue) consists of a pre-1916 semi-detached house with a gross external area ("GEA") of 76m<sup>2</sup>. It has rubble masonry construction and a pitched tiled roof and it has mains water and electricity and is served by a septic tank. It is described in the Presentation of Evidence as having "full central heating"; however the appellant states that, "there is no boiler or heating system". In the light of this the tribunal concludes that there was in all probability, at some point, installed in the subject property a heating system which, due to lack of maintenance, is now inoperative. The subject property has a mixture of both upvc double-glazed windows and also wooden single-glazed windows. The appellant contends that the windows are "smashed", but the tribunal saw no evidence to conclude that this was the case, to any extent. The subject property has one reception room and two bedrooms and a bathroom. It is located four miles from Ballykelly, in a rural location. It is currently unoccupied but the adjoining property is occupied. Photographs were supplied with the Presentation of Evidence to show an aerial view and aspects of the exterior and the interior of the subject property. The rating history of the matter is that on 1 April 2007 the subject property was first valued and was placed upon the domestic Valuation List at a capital value of £70,000. On 9 July 2014 an application was made to the District Valuer for a revision of the Valuation List on the grounds that the subject property was derelict. Following a review the subject property was

maintained in the Valuation List at the figure of £70,000. On 22 September 2014, there was an appeal made against the capital valuation and the subject property was inspected and following a review by the Commissioner of Valuation, being the respondent to this appeal, there was an amended capital value, to a figure of £55,000, to reflect the poor standard of external repair. This is reflected in the Valuation Certificate dated 16 October 2014 in the matter. It is against this that the appellant now appeals to this tribunal.

7. The Commissioner's submissions, as respondent, to the tribunal are, firstly, that the subject property is properly assessed as a hereditament and thus is properly included in the Valuation List. Secondly, the respondent's further submission is that in arriving at the capital value assessment regard was had to the statutory basis of valuation, and reference is made to schedule 12, paragraph 7 (2) of the 1977 Order, as amended and thus it is submitted that regard was had, when valuing the subject property for the purpose of any revision of the Valuation List, to the capital values in the Valuation List of comparable hereditaments in the same state and circumstances as the hereditament. The comparables identified are set out in a schedule to the Presentation of Evidence, with further particulars being given in respect of the comparables, including photographs. There are four comparables presented in total in addition to the subject property, all of these believed to be located in relatively close proximity to the subject property, although regrettably a location map was not provided. It would be helpful if a location plan were to be included in such cases. The respondent's submitted comparables (all assumed to have unchallenged capital valuations, although it would have been preferable if this had been expressly stated in each case) consist of the subject property and, in addition, the following properties, with brief material particulars being provided in respect of each of these:-
- 33 Sistrakeel Road, Ballykelly, Londonderry – a pre-1919 semi detached cottage with GEA of 89 m<sup>2</sup>, MH of 34.8 and OB of 11 m<sup>2</sup>, capital value being £77,500 (presumed unchallenged).
  - 132 Dunlade Road, Greysteel, Londonderry – a pre-1919 semi detached cottage with GEA of 83m<sup>2</sup> and OB of 10 m<sup>2</sup>, capital value being £65,000 (presumed unchallenged).

- 12 Dunlade Road, Greysteel, Londonderry – a pre-1919 semi detached cottage with GEA of 91m<sup>2</sup>, capital value being £72,500 (presumed unchallenged).
- 53 Nedd Road, Ballykelly, Londonderry - a pre-1919 semi detached cottage with GEA of 99m<sup>2</sup> and OB of 81.9 m<sup>2</sup>, capital value being £77,500 (presumed unchallenged).

8. The appellant in his appeal has essentially raised two issues. Firstly, he contends that the subject property is not properly assessed as a hereditament and thus that it ought not to be included in the Valuation List. Secondly (and this is more implied than stated expressly) the appellant challenges the issue of proper comparability. The appellant contends that the capital valuation of the subject property ought to be "£0". He contends that the house is in "dire condition" and has not been lived in for over 10 years, that plumbing and electricity are not working, that the windows are smashed, that the walls are damp and there is fungus growing in places, that a ladder to the upstairs would not pass health and safety provisions and that he is trying to gather money to knock it down as it is of no benefit to anyone.

### THE TRIBUNAL'S DECISION

9. Addressing, firstly, the issue of whether the subject property has been properly assessed as a hereditament and ought to be included in the Valuation List, the tribunal notes the evidence and the submissions. In particular the tribunal was referred by the respondent's representative to the case of *Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)*, a judgment of the High Court in England. In the case of *Whitehead Properties Limited v Commissioner of Valuation [NIVT 12/12] (27 March 2013)* this issue was explored in some detail by the tribunal. The point mentioned was that in *Wilson v Coll* there was no mention of any "economic test"; that is also the case in Northern Ireland in regard to the rating of domestic property. The tribunal in *Whitehead Properties Limited* considered this matter in some detail and determined that the same general approach ought to be adopted in Northern Ireland, but that this approach ought to be qualified as mentioned. Put briefly, the tribunal in *Whitehead Properties Limited* identified that it was comparatively easy to envisage a truly derelict property that on

no account ought properly to be included in the Valuation List, whereas, at the other end of the spectrum there existed many properties which were unoccupied but which required only relatively minor works of reinstatement or repair to render these readily habitable. The difficulty (in the absence of any specific provision expressly enabling the tribunal to take economic factors into account) was to adjudge what might be deemed a "reasonable amount of repair works". In this case, however, there is no clear and compelling evidence to enable a fair and proper conclusion to be made that the subject property is truly derelict and thus that the subject property is incapable of repair on account of dereliction. To conclude otherwise, the tribunal would need a considerable amount of compelling evidence. However, that is absent in this case. Accordingly, the subject property is appropriately included in the Valuation List as a hereditament.

10. Article 54 of the 1977 Order enables a person to appeal to this tribunal against the decision of the Commissioner, being the respondent to this appeal, regarding capital value. Such an appeal may be heard "on the papers" in which case it is incumbent upon the parties to any appeal to put forward sufficient evidence effectively to establish any case sought to be made. In this case, the capital value at AVD of the subject property has been assessed at £55,000. The appellant contends that that figure ought properly to be £0. On behalf of the respondent it has been contended that this figure of £55,000 is fair and reasonable in comparison to other properties taking into account the particular circumstances of the subject property. The statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order in arriving at that assessment.
11. The tribunal notes the statutory presumption contained within the 1977 Order, Article 54(3). Thereby, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal, the appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by this tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure.

12. 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 is provided for in Schedule 12 of the 1977 Order.
13. The tribunal examined the essential issue of whether or not the appellant had put forward sufficient challenge to the respondent's schedule of comparables and sufficient evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation.
14. Noting the arguments made on behalf of the appellant and the response thereto, the statutory provisions specify that the capital value of the property shall be the amount which (on the statutory assumptions) the property 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. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the subject property. The tribunal thus gave full consideration to all of the evidence and argument including an analysis of the appropriateness of selection and the weight to be attached to the properties put forward as comparables. It is noted that the appellant, in making his case, has not provided to the tribunal specific details of any other identifiable and assessable comparables. There is thus before the tribunal no evidence from the appellant upon which to base a proper comparative exercise. The tribunal is tasked with determining the appeal upon the evidence placed before it, in the light of any submissions and the proper application of the law.
15. The tribunal examined in detail the four stated comparables that have been put forward in evidence on behalf of the respondent. The tribunal conducted an analysis of the specific state and circumstances in respect of each of these contended comparable hereditaments, with reference to any material evidence emerging which might assist in the scrutiny of the assessment of the proper capital valuation of the subject property.
16. All of the selected comparables introduced into evidence on behalf of the respondent have some degree of comparability to the subject property, some being more useful than others. There is certainly a degree of usefulness and corresponding weight to be attached to the evidence emerging from the comparables selected on behalf of

the respondent which was helpful to the tribunal. The adjustment allowance for the subject property's external condition is noted and has been taken into account by the tribunal in conducting that exercise. In respect of the endeavour to challenge these comparables, without more, the tribunal is unable to uphold the appellant's contention that the capital value of subject property ought to be "nil", when applying the statutory principles of assessment of capital value. Accordingly, the tribunal's unanimous decision is that the appellant has not put forward sufficient evidence and argument effectively to displace the statutory presumption of correctness in respect of the capital valuation applied to the subject property. For that reason, this appeal cannot succeed and the appeal is dismissed by the tribunal, by unanimous decision.



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

**Date decision recorded in register and issued to parties: 20 June 2016**