

**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: 07/16**

**HEATHER LINDSAY - APPELLANT**  
**AND**  
**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

**Northern Ireland Valuation Tribunal**

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

**Member: Mr T Hopkins FRICS**

**Hearing: 12 November 2018, Belfast**

## **DECISION**

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

### **REASONS**

#### **Introduction**

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, by Notice of Appeal (Form 3) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 12 May 2016 in respect of the capital valuation of a hereditament situated at number 40 Aughnabrack Road, Belfast, County Antrim BT14 8SP ("the subject property"). By Order made by the President dated 29 September 2016 time was extended to the appellant to deliver a Notice of Appeal in the matter.

2. The appellant, in making her appeal, indicated that she wished to have an oral hearing. On account of the appellant's state of health, it was arranged that any hearings of the matter would be conducted on the basis that the appellant appeared before the tribunal and participated by teleconferencing and the respondent Commissioner's representatives appeared in person before the tribunal. The tribunal initially sat to hear the matter on 5 July 2017. On that date, the tribunal panel included the Ordinary Member, Dr Wardlow. On account of certain issues arising in the course of that hearing, the matter was adjourned in order to enable the appellant or her representative to provide further information and evidence to the tribunal. The tribunal then reconvened on 12 November 2018, with the respondent being represented by Mr David Barton MRICS, accompanied by Ms Gail Bennett MRICS. On that hearing date, regrettably, the Ordinary Member of the tribunal panel was unavoidably unable to attend. The tribunal explained to the parties, including materially to the appellant, the statutory provisions regarding panel composition and the role and function of each member of the Valuation Tribunal panel, including the provisions stating that it was permissible for the hearing to proceed in the absence of one Valuation Tribunal member other than the chairman, in this case the Ordinary Member, if both parties agreed to that course of action. These are the provisions contained in Rule 4 (3) of the Valuation Tribunal Rules (Northern Ireland) 2007, as amended. Having had the matter explained to her in some detail at the outset of the hearing, the appellant consented to the hearing proceeding with a Valuation Tribunal panel composed of the President as chairman, sitting with the Valuation Member, in the absence of the Ordinary Member. The respondent's representatives also concurred with this procedure and with the composition of the panel as required under Rule 4(3). Accordingly, on the foregoing basis, the matter proceeded with an oral hearing held on 12 November 2018.

### **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"). As is now the case in all determinations of this nature, the tribunal does not intend in this decision fully to set out the detail of 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 previous decisions of the Valuation Tribunal, 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 statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The legislation, at Schedule 12, paragraph 7 of the 1977 Order provides that the Capital Value of a hereditament shall be the amount which, on the assumptions mentioned (materially paragraphs 11 and 12 of Schedule 12, the summary details of which are mentioned below), 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. The relevant paragraphs of Schedule 12 include the following statutory assumptions, which provide that –

- The hereditament is sold free from any rentcharge or other incumbrance;
- 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,
- The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

The tribunal shall further allude to some case law authorities which, whilst not binding upon the tribunal, are nonetheless persuasive. These latter provided in this case a measure of assistance in the decision-making of the tribunal.

### **The Issue to be Determined and the Evidence**

4. The central issue in this case relates to the state and condition of the subject property, 40 Aughnabrack Road, Belfast, County Antrim BT14 8SP, at the material time. The tribunal, at the outset, specifically addressed a fundamental issue of some importance with the appellant, with the concurrence of the respondent's representatives. The tribunal sought to establish definitively with the appellant that the appellant agreed, without reason for any doubt, that the proper focus of the tribunal ought to be placed upon the state and condition of the subject property at the

time of issue of the Commissioner's Certificate of Valuation, dated 12 May 2016, with the appellant's subsequent Notice of Appeal against that Certificate being made on 6 July 2016. In this regard, it is clear from the uncontroverted evidence of the appellant that, after this time, the subject property deteriorated in condition, including as the result of what the appellant has very clearly depicted to the tribunal as being repeated incursions upon the subject property by persons yet unknown and acts of wanton vandalism and destruction which indeed have been reported by the appellant on a number of occasions to the Police Service. For this reason, and with the concurrence of all parties, the tribunal's focus in this determination shall be confined to any available evidence concerning the state and condition of the subject property at the date of the Commissioner's Certificate of Valuation against which this appeal is made, in other words the relevant or material time here is mid-May 2016. For this reason, any instances or events of destruction, vandalism or theft, or other loss or damage, which occurred after that time, whilst indeed very regrettable, do not form any direct part of the tribunal's consideration in this appeal. With this specific and agreed focus in mind, the tribunal considered any documentary evidence emerging from the available papers and documents, including any photographic evidence adduced. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) dated 6 July 2016 and the documents also included the following:-

- The Valuation Certificate dated 12 May 2016.
- A document dated 5 December 2016 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Mr David Barton B.Sc. (Hons) MRICS and submitted to the tribunal.
- A document entitled "Visual Inspection Report" dated 5 February 2015 commissioned on behalf of the appellant by Robert Logan RIBA, chartered architect.
- A document entitled "Quotation", undated but in accordance with the appellant's evidence prepared approximately 2 years ago, from R McIntyre & Son, building contractor, providing a list of works ("to repair dwelling at the above address and

leave it in a fit and habitable state”) concerning the subject property, with a stated cost figure of £56,000.00 plus VAT at 20%. This document was received by the Tribunal from the appellant on 6 April 2017.

- Additional evidence provided by the appellant consisting of photographs of the subject property, both interior and exterior, including some photographs provided on 4 October 2017.
- Copies of various emails to the Tribunal from the appellant and on behalf of the respondent and emails from the Tribunal Secretary and copies of letters from the appellant to the Tribunal respectively dated (or undated and received by the Tribunal on these dates) 18 December 2016, 13 and 15 February 2017, 25 April 2017 and 2 October 2017.
- Copy of a letter dated 22 August 2017 from the appellant’s Solicitors, Messrs Thompson Crooks.

5. The subject property has been further described in Mr Barton’s Presentation of Evidence dated 5 December 2016 arising from an inspection conducted by Mr Barton on 4 May 2016. The appellant does take issue with some of the details provided in this document as far as the condition and characteristics of the subject property are concerned. The tribunal will focus upon specific points of issue, which are mentioned below. What is not in issue is that the subject property is a two-story privately-built house (constructed about 1910 according to the respondent, but believed by the appellant to be older) located in a rural location on the outskirts of Belfast. After initially differing assessments, Mr Barton’s concluding assessment, as at the date of his (May 2016) inspection was that the subject property had a habitable space (gross external area (or “GEA”)) of 138.00 m<sup>2</sup> with outbuildings of GEA 193.00 m<sup>2</sup>, double glazed windows, full central heating, mains electricity, septic tank, well water supply and the subject property was classified on inspection by Mr Barton as having “average external repair”.

6. The material rating history of the subject property is that on 5 October 2015 an application was made to the District Valuer for a revision of the Valuation List for the reason that the subject property was claimed to be, "semi derelict due to massive flood damage." The factual position underlying this emerges from the evidence of the appellant who states that at some time in 2010 the subject property (which at that time and since then appears to have been unoccupied) was severely damaged due to flooding arising from theft and attempted theft of a copper cylinder located on the first floor and of associated pipework. It seems that the appellant instituted a claim in respect of any consequential damage to the subject property with her insurance company. Regrettably, this insurance claim seems to have been the subject of an ongoing and extremely protracted dispute with the insurers. It further appears that the appellant, notwithstanding the foregoing, has not to date instituted any formal legal proceedings against the insurers through the courts. It is not necessary or appropriate for the tribunal in this decision to provide any further details of this dispute with the insurers, save to mention that such a dispute exists and indeed appears to be still an ongoing matter. On account of this dispute, the appellant informs the tribunal that the necessary funding to effect repairs to the subject property has not been available to her; she states that she is of very limited means to fund any repairs to the subject property herself, in the absence of this insurance funding. From the Presentation of Evidence, it is clear that following the October 2015 application the subject property had an external inspection on 12 January 2016 and the District Valuer determined to retain the subject property in the Valuation List. However, at the time of this latter inspection it was noted that the subject property was vacant. For this reason agricultural allowance was removed, with effect from 5 October 2015. The Capital Value was thus revised from £96,000 £120,000. The District Valuer's Certificate issued accordingly on 25 February 2016.
7. Also on 25 February 2016 a new case was entered to reflect certain observed alterations to the subject property which had been identified during the course of the inspection. These observed alterations included a revision of the subject property's habitable space and the addition of outbuildings to the side and rear. On the basis of these alterations, the District Valuer revised the Capital Value to £145,000 with effect from (note: this is post-dated) 1 April 2017. The corresponding District Valuer's certificate issued on 22 April 2016.

8. On 25 April 2016 the appellant lodged an appeal to the Commissioner of Valuation against the District Valuer's decision to revise the valuation of the subject property. On behalf of the Commissioner, Mr Barton then proceeded to inspect the subject property on 4 May 2016. As a result of this, the habitable space was the subject of a revision to the currently-assessed figure of 138.00 m<sup>2</sup> and the outbuildings were revised to 193.00 m<sup>2</sup>. The Commissioner of Valuation subsequently upheld the District Valuer's decision: no change was made to the Capital Value of the subject property at the figure of £145,000. That assessment of Capital Value is contended on behalf of the Commissioner to be "in tone" with similar, comparable, properties. A Certificate of Valuation was accordingly issued on 12 May 2016. It is against that Certificate that the appellant now appeals to this tribunal.

### **The Submissions of the Parties and the Tribunal's Consideration of the Issues**

9. On behalf of the respondent, the Presentation of Evidence (with the submissions therein further echoed by Mr Barton in his oral submissions to the tribunal at hearing) provides a clear and comprehensive statement of the respondent's position in respect of this appeal. The fundamental contention on behalf of the respondent is that the subject property, at the material date, was properly rateable and included in the Valuation List. Whilst the appellant might argue that the subject property is and was then truly derelict and ought not to have been included in the Valuation List, the respondent's contention is that all of the evidence suggests that the subject property falls into a category of hereditaments which, whilst in some state of disrepair, are nonetheless capable of being repaired and are, accordingly, properly to be included in the Valuation List. The respondent's submission relies upon what is referred to as the test established in the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and the judgement of (as he then was) Mr Justice Singh in that case. The Presentation of Evidence, for that reason, cites portions of that judgement and also alludes to the fact that ***Wilson v Coll*** has been considered, in the Northern Ireland jurisdiction, in several appeals to the Valuation Tribunal, most notably in the case of ***Whitehead Properties Ltd v Commissioner of Valuation (Case Ref. 12/12)*** and also more recently in the case of ***John Trodden v Commissioner of Valuation (Case Ref. 38/15)***. The tribunal will return further to these decisions and to the principles enshrined in these, in its determination below. In essence, in this case the respondent seeks to argue that the subject property could not be considered as being truly derelict: it is capable of being repaired in order

to make it suitable for its intended purpose. When that point is established and a hereditament is deemed to exist, capable of being included in the Valuation List, the respondent's further submission is that the statutory provisions of Schedule 12, Paragraph 12 (1) of the 1977 Order are applicable. These provide for certain statutory assumptions concerning Capital Value. At Paragraph 12 (1) is stated the statutory assumption that the subject property is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality. Given this specific statutory assumption, it is submitted for the respondent that any internal disrepair of the subject property cannot properly be considered in the assessment of Capital Value, but rather that only external disrepair, if any, should be taken into consideration. A slight elaboration upon this latter proposition was helpfully provided to the tribunal by Ms Gail Bennett who accompanied Mr Barton at hearing, whereby she explained to the tribunal that the view taken on behalf of the Commissioner was that the only proper basis upon which internal repair and condition could be taken into account, given the foregoing statutory assumption, would be if something affecting the internal condition of any property had a material external effect and thus that latter was entitled to be taken into account in the assessment of the external condition. It was further submitted that, whilst the appellant advised that she had been unable to repair the subject property as no insurance monies had been received, it was regrettable that personal financial circumstances were not an issue which could be reflected in the assessment of Capital Value for rating purposes. It was, further, remarked that quantifying any possible structural damage to the subject property due directly to the episode of flooding was difficult without a full building survey.

10. On inspection, Mr Barton had found the subject property to be in average external repair, bearing in mind its age and character and as such, given the statutory assumption of average internal repair, it was considered on behalf of the respondent that no allowance was warranted for poor repair. Appendix 1 to the Presentation of Evidence includes some colour photographs of the exterior and interior of the subject property which are submitted to support the respondent's argument in this regard. In Appendix 2 of the Presentation of Evidence are included details of the subject property and also brief particulars of six other properties which are stated to be comparable to the subject property. Whilst the appellant did not seek to challenge the comparability issue in respect of these six properties individually, there was a



general assertion made by her concerning this issue. Accordingly, the tribunal carefully considered any evidential material available from these.

11. The appellant seeks in this appeal to mount a direct challenge to the inclusion of the subject property in the Valuation List. In her Form of Appeal, the appellant states that she believes the actual valuation should be, "£0?". The appellant asserts that the subject property is, as she states in the Form of Appeal, "... *in a dangerous condition as the walls are compressing (fieldstone and rubble) as rubble washed out after severe flooding - tiles missing so open to all elements; wet and dry rot on stairway, prone to collapse; all upstairs prone to collapse. Fungal Spores hazard. Letting rain in via roof, stolen tiles and caving roof*". The appellant further states that the house is in a dangerous condition from a physical and medical viewpoint and that it is dangerous. She states that the roof tiles have fallen off due to the roof collapsing and that it is open to the elements. Accordingly, the appellant seeks to argue that the subject property has been so seriously damaged by the initial flooding episode (in 2010 - which she attributes to intentional theft and destruction) and by subsequent and recurring acts of theft and vandalism, that the subject property is truly derelict and that it is thus not properly to be included in the Valuation List.
  
12. In support of the appellant's submission, which stands fully at variance with Mr Barton's observations on behalf of the respondent, the appellant has introduced into evidence the report of a chartered architect, dated 5 February 2015, which she states was personally commissioned by her (i.e. not by her insurer) from Robert Logan RIBA. Whilst noting all of the observations contained in that report from Mr Logan, concerning the specific issue asserted by the appellant: that the subject property has sustained serious structural damage, the tribunal particularly noted the remarks of Mr Logan who states on the third page of his report: "*A crack has developed (clearly visible on the exterior side of the wall), which likely [sic] be associated with structural failure of the floor behind. The crack should be filled with high-performance filler in strict accordance with manufacturer's details and specifications*". Mr Logan continues, in his concluding remarks in this report, as follows: "*The full impact of the incident [here it is believed he is referring to the flooding] is difficult to measure, particularly beyond the rooms mentioned above. It is likely that the entire property has been impacted upon. It is important that further*

*investigation be completed by a damp proof specialist and structural engineer. There is likely to be significant benefit it [sic] getting heat back into the building, coupled by the use of dehumidifier. This should be done in a controlled manner in accordance with specialist's recommendations."* When questioned further by the tribunal, the appellant indicated that she had not proceeded to obtain a structural engineer's report, notwithstanding Mr Logan's express recommendation to that effect. When asked to explain why that was the case, the appellant endeavoured to indicate to the tribunal that she thought that the builder's estimate alone (which she did obtain from a Mr McIntyre) was what the architect had been recommending, rather than a structural engineer's technical report. The appellant also sought to indicate to the tribunal that there would have been a cost issue regarding obtaining any such technical report. Notwithstanding that indication, the appellant had not endeavoured to ascertain the cost of obtaining any such report. Having listened to the appellant's evidence in that respect, the tribunal's considered assessment is that the appellant had read and had indeed understood the recommendation of her architect but, for whatever reason, she had chosen not to follow that recommendation. Thus she had not availed of the opportunity to obtain expert evidence upon the structural defects issue.

13. The absence of any structural engineer's report, notwithstanding this being the express recommendation of the appellant's architect, is indeed somewhat regrettable. This is especially so in a context where the appellant is endeavouring to argue true dereliction. The fundamental basis of the appellant's argument is an assertion of severe structural issues. She further asserts that these are directly causally connected to the 2010 flooding incident. On account of this, the appellant submits in this appeal that the effect of the 2010 flooding upon the subject property's flooring timbers has been transmitted into the wall structure, thereby rendering the subject property's walls unstable and structurally unsound. Her argument also is that the movement of these walls has caused cracking to appear at roof level, thereby causing gaps and consequent water ingress, leading to a high level of dampness within the property. However, it is noted that the architect's report, notwithstanding being quite detailed, does not bear out any of this contention concerning stated structural damage to the roof. This therefore admits the possibility that, to the extent that this might be so currently, any such problems occurred after the appeal was commenced. Further, this was not observed by Mr Barton upon his 4 May 2016

inspection. For his part, the architect Mr Logan's general conclusion is that, as he puts it, "*the full impact of the incident is difficult to measure.*" His 5 February 2015 report does expressly suggest further inspection and analysis, including by a specialist damp-proofing consultant. However, the appellant's only action after receiving this report, presumably in February 2015, was to obtain a builder's quotation. That latter, of itself and without more, is of little evidential or probative value concerning the issue of any asserted structural defects which might otherwise, as is strongly contended by the appellant, render the subject property, potentially, entirely uninhabitable and incapable, reasonably, of being repaired.

14. There is certainly evidence, emerging from the architect's report (2015) and the photographic evidence (very probably taken after the material date), of an exterior crack affecting one wall and visible (from the photograph) in the roughcast external rendering, but nothing else in terms of compelling evidence, save for the appellant's strenuous assertion of the existence of serious structural defects. The tribunal notes that proper investigation and assessment of this issue was also the subject of comment by Mr Barton in the Presentation of Evidence, Mr Barton stating as follows: "*Without a relevant building survey, quantifying any damage due directly to the flooding is difficult. Due to the age, construction and often a lack of a damp-proof course, it is not uncommon to find similar damp related issues (not related to any flooding) in many dwellings of this era – Pre-1919*". In making the first of these comments, regarding quantifying any damage due directly to the flooding being a difficult matter, Mr Barton entirely concurs with the architect's suggestion of further technical investigation and a report being necessitated; however that suggestion was not pursued by the appellant.
15. In providing her evidence to the tribunal, interestingly, the appellant did provide the information that the subject property was the subject of a mortgage application in 2005, which necessitated a property survey being carried out on behalf of the financial institution which was providing mortgage finance. According to the appellant's evidence, the survey and valuation report at that time found everything to be "sound" and the report did not note or remark upon anything specifically adverse concerning the structure of the property. On account of this, quite helpful, evidence from the appellant, in the absence of negligence it must be presumed that a proper,

professional, report had been provided in 2005 on behalf of the financial situation and that any such report would have observed and noted anything of significance and certainly any significant structural issues. For this reason, the tribunal's conclusion is that the subject property, at least as far as 2005 was concerned, was in a relatively stable and sound state and condition, given its character and age. The appellant's assertion therefore seems to rest upon the proposition that anything adverse, of a structural nature, has emerged consequent to the impact of the flooding, in other words from 2010 and thereafter. The tribunal accordingly considered all of this evidence in reaching a determination and conclusion upon what might be referred to as the "listing issue", in other words whether the subject property was a hereditament properly to be included in the Valuation List.

16. The Valuation Tribunal, in earlier determinations, has made observations at some length, regarding the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and the judgement of (as he then was) Mr Justice Singh, in that case. As mentioned, ***Wilson v Coll*** has been considered, in the Northern Ireland jurisdiction, in several appeals to the Valuation Tribunal. The first of these was the case of ***Whitehead Properties Ltd v Commissioner of Valuation (Case Ref. 12/12)*** where the Valuation Tribunal conducted a detailed consideration and analysis of the principles properly to be extracted from ***Wilson v Coll*** and the appropriate application of these principles in the jurisdiction of Northern Ireland. The tribunal does not intend in this decision to rehearse that detailed analysis, already conducted. A consideration of what the Valuation Tribunal in that case had to say can be gained from a reading of the decision in ***Whitehead Properties***. This topic has, in addition, been the subject of some further cases which have been determined by the Valuation Tribunal, including a case that is alluded to in the Presentation of Evidence, ***John Trodden v Commissioner of Valuation (Case Ref. 38/15)***. (The tribunal also notes the quite recent case of ***Barry McAlpine v Commissioner of Valuation (Case Ref. 6/17)*** which decision again helpfully sets forth a detailed analysis of and commentary upon the issue). In the briefest of summaries only therefore, the principles emerging from these latter cases include, firstly, that in Northern Ireland each case should be determined upon its own particular facts and circumstances. Secondly, that the essential concept of a "reasonable amount of repair" required in order to place any property into a proper state of habitation must be determined by the application of sound common sense and in an entirely practical

and realistic manner, as opposed to by the application of any overly-rigid principle or any slavish application of the narrowest of interpretations of the dicta of Mr Justice Singh in *Wilson v Coll*. Indeed it must be said that a rather colourful (and of necessity extreme – to make the point) illustration of this latter was provided by the Valuation Member in the course of this hearing when the Member cited the hypothetical example of "Dunluce Castle". It is a fact that Dunluce Castle is "capable" (in terms of the proposition that this could physically be done) of being repaired, perhaps, it might be postulated, to provide luxury hotel accommodation on the Causeway Coast. The mere fact that it is "capable", in these terms, of being repaired cannot be disassociated from the extremely high economic cost and the technical issues of doing so. Not upon any reasonable assessment could it be properly said that a "reasonable amount of repair" would be required and thus that (if it were classified as a domestic property) Dunluce Castle ought to be included in the Valuation List. This extreme example hopefully serves to make the point. Thirdly then, the Valuation Tribunal in making this determination is not entitled to take into account the individual circumstances of any appellant, including the personal financial circumstances of that party.

17. The difficulty for the appellant is that one of her fundamental arguments is that, in the absence of her being able to access insurance funding, she does not have the financial means to effect any repairs to the subject property. Consequently, so she argues, the matter ought to be seen in that context. Regrettably for her, the tribunal is entirely in accordance with *Wilson v Coll* in this respect (and thus with *Whitehead* and the other local Valuation Tribunal cases) in that the appellant's own personal financial circumstances cannot properly be taken into account. The tribunal is therefore confined to a consideration of any evidence concerning the state and condition of the subject property as at the material date – not since then - is it truly derelict and incapable, applying the *Whitehead* test of reasonableness, of being repaired? Taking all of the available evidence fully into account, the tribunal's considered assessment is that the subject property was, at the relevant time, reasonably capable of being repaired. For that reason it constitutes a hereditament properly to be included in the Valuation List. Again, it must be emphasised that this assessment applies to the material date of the tribunal's focus. For that reason the appellant's challenge to the "listing issue" does not succeed.

18. This being so, the next issue for determination is whether the assessed Capital Value stated in the Commissioner's Valuation Certificate can be upheld at a figure of £145,000. On behalf of the respondent, in the Presentation of Evidence there are six comparables presented in total, in addition to the subject property (these being numbered from No. 1 to No. 5 – with a number missing from the sixth). These are all located within Antrim & Newtownabbey District Council, Clady Ward. Regrettably there is no location map provided, but the evidence is that, with the exception of the first-listed, the others are between 2 ½ miles to nearly 7 miles from the subject property. This is however a rural, farming, area with low density housing. The appellant challenges these comparables to this extent (in her letter dated 25 April 2017): *"I strongly disagree with Mr Barton's valuations. He has used photographic evidence (for his case) of properties several miles away from my home that were habitable but not in an area of severe blight."* So the appellant seeks to challenge these, firstly, concerning the distance of these (presumably all of these for she does not seek to differentiate) from the subject property and, secondly, upon the assertion that her property exists in a blighted area. In regard to this latter, the tribunal presumes that she seeks to claim that only her property is located in an area which is subject to acts of theft and vandalism and that (presumably all) of the six comparables are better-located in terms of adverse societal issues and criminal behaviour, thereby having a materially adverse effect upon Capital Value. The tribunal accordingly considered this issue and any relevant evidence emerging from the comparables, the appellant herself not have adduced any additional evidence in that regard.

19. The respondent's submitted comparables all are presumed to have unchallenged capital valuations unless expressly stated, for that would have been otherwise stated if any such were to be under challenge. In addition to the subject property, the following six properties, with brief material particulars provided, are stated to be as follows:-

[No.1] 80 Aughnabrack Road, Belfast, County Antrim BT14 8SP – privately built two-storey detached property (pre-1919, built 1910), habitable space of 146.00 m<sup>2</sup>, outbuildings of GEA 15.00 m<sup>2</sup>, average repair, full heating, well water, mains

electricity, septic tank. The Capital Value is £145,000. It is stated to be located circa 0.50 miles SW of the subject property.

[No.2] 15 Umgall Road, Nutts Corner, Crumlin, County Antrim BT29 4UJ – privately built two-storey detached property (pre-1919, built 1910), habitable space of 134.00 m<sup>2</sup>, outbuildings of GEA 64.40 m<sup>2</sup>, average repair, full heating, mains water, mains electricity, septic tank. The Capital Value is £140,000. It is stated to be located circa 2.30 miles SW of the subject property. (It is noted that there is a rating case in progress to check for an extension).

[No.3] 11 Lisnataylor Road, Nutts Corner, Crumlin, County Antrim BT29 4TB – privately built two-storey detached property (pre-1919, built 1910), habitable space of 146.00 m<sup>2</sup>, average repair, full heating, well water, mains electricity, septic tank. The Capital Value is £140,000 (£112,000 with agricultural allowance). It is stated to be located circa 6.50 miles SW of the subject property.

[No.4] 34 Carmavy Road, Nutts Corner, Crumlin, County Antrim BT29 4YU – privately built detached property (pre-1919, built 1910 – it appears from the photographic evidence possibly to be a 1.5 storey cottage type structure and that is also expressly stated), habitable space of 139.00 m<sup>2</sup>, outbuildings of GEA 192.20, average repair, full heating, well water, mains electricity, septic tank. The Capital Value is £140,000. It is stated to be located circa 5.80 miles NW of the subject property.

[No.5] 23 Carmavy Road, Nutts Corner, Crumlin, County Antrim BT29 4TG – privately built detached property (pre-1919, built 1910 – it is stated to be 1.5 storey but from the photographic evidence it appears to be two-storey), habitable space of 143.00 m<sup>2</sup>, average repair, full heating, mains water, mains electricity, septic tank. The Capital Value is £140,000 (£112,000 with agricultural allowance). It is stated to be located circa 6.80 miles NW of the subject property. (It is noted that there is a rating case in progress to value alterations: a glazed conservatory).

[No.6 – number ascribed by the tribunal] 39 Belfast Road, Nutts Corner, Crumlin, County Antrim BT29 4TQ – privately built detached property (pre-1919, built 1910 – stated to be 1.5 - storey but only aerial view from provided photograph), habitable

space of 145.00 m<sup>2</sup>, average repair, full heating, mains water, mains electricity, septic tank. The Capital Value is £140,000 (£112,000 with agricultural allowance). It is stated to be located circa 5.60 miles SW of the subject property.

20. Having disposed of the “listing issue”, it is the task of the tribunal to assess in the light of all the evidence and any objections on the part of the appellant the correctness of the Capital Value stated in the Commissioner’s Valuation Certificate. Accordingly, the tribunal examined the evidence available from the Presentation of Evidence, in the absence of the appellant putting forward any other specific evidence to challenge these stated comparables. The main thrust of the appellant’s objection, insofar as it goes, is that the six comparables are in a more advantaged location than the subject property and thus that all six of these are not subject to the same situational disadvantage as is hers. The difficulty is that there is no evidence to support that broad contention save for the fact that, unquestioningly, subject property itself has been the subject of theft and vandalism. However there is no specific information or evidence supporting the proposition that the indicated situational risk or disadvantage does, or does not, apply to the specific locations in which the six comparable properties are situated. The appellant’s argument rests on the tribunal accepting this stated proposition merely an account of the fact that the subject property has, very regrettably, been exposed to certain acts of theft and vandalism, whilst it was left vacant. For example, there is no information perhaps gained from statistical sources that the subject property appears to be located in what might be termed a “hotspot” for crime, which might possibly affect its inherent Capital Value, in comparison to other properties located relatively nearby, perhaps up to 6 or 7 miles away, which would not be deemed within that “hotspot” and thus not be at such a disadvantage, in valuation terms. Regrettably, there appears to be insufficient evidence to sustain that proposition and to conclude that the property, in itself, is materially disadvantaged thereby affecting the Capital Value.
21. Having therefore left out of the reckoning that particular argument, and in the absence of any specific challenge otherwise by the appellant, the tribunal proceeded to examine the comparables evidence and to reach a conclusion as to whether or not the Capital Value ascribed subject property was, in broad terms, “in tone”. Certainly, there appears to be evidence from the comparables of a relatively narrow and



specific range of values applicable to properties of the same age and roughly the same habitable space as the subject property. There appears to exist from this evidence a consistency, again in necessarily broad terms, between the characteristics of the subject property and the other stated comparables which, of itself, does not lend itself to the suggestion that the Capital Value of £145,000 is "out of tone".

22. That being the case, the only other pertinent matter for consideration is whether any evidence as to the state of external repair ought to detract from the ascribed Capital Value. Again we return to the appellant's proposition that the subject property was so detrimentally affected by the flooding incident that, at the date of the Commissioner's Valuation Certificate, it was externally not in a state of "average repair and condition". The tribunal has carefully examined of the evidence, including the issue of external cracking to the wall. The tribunal's conclusion is that, without more compelling evidence, this cracking is in the nature of something that would apply to many properties from this era and in these circumstances. There is nothing, on balance, to conclude otherwise. It must again, for the avoidance of any doubt, be specifically stressed that the tribunal's focus is upon the material time and not on any events which may have occurred thereafter. With this conclusion upon the evidence, the tribunal now turns to the statutory presumption of correctness, which perhaps requires to be explained at this point.
  
23. As the Valuation Tribunal has often observed in its decision-making, there exists a statutory presumption which is contained within the 1977 Order, at Article 54(3). On account of this, 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, any 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 the Valuation Tribunal to be so incorrect that the statutory presumption must be displaced and the Valuation Tribunal must adjust the Capital Value to an appropriate figure.
  
24. The tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the

prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, 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.

25. 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, in conducting this exercise, 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.
26. 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, the appeal cannot succeed and it is dismissed by the tribunal.

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

**Date decision recorded in register and issued to parties: 30 November 2018**