

**NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NI) ORDER 1997 (AS AMENDED)
AND THE VALUATION TRIBUNAL RULES (NI) 2007**

CASE REF: 32/15

**LINDSAY MARTIN - APPELLANT AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND –
RESPONDENT
NORTHERN IRELAND VALUATION TRIBUNAL
DATE OF HEARING: 20th JUNE 2016**

CHAIRMAN: STEPHEN WRIGHT

MEMBERS: MR HUGH McCORMICK MRICS AND MR DAVID ROSE

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 not allowed.

REASONS

Introduction

1. The appellant Mr Lindsay Martin attended the Hearing and was represented by Alderman John Smyth from Trevor Clarke MLA's Office who also attended the Hearing, the respondent was represented by Mr David Barton.
2. The property subject of the appeal is 188 Glenravel, Road, Cargan Ballymena, BT43 6RB ("the subject property").
3. The appellant's property is a privately built two storey terraced house. The subject property has been split into two residences Nos. 188 and 188A Glenravel Road Ballymena. The size of the property has a gross external area (GEA of 100m²).
4. The subject property was inspected on the 11 September 2015 and certificate of valuation was issued on the 23 September 2015.
5. The appellant by Notice of Appeal dated the 1 October 2015, appealed against the decision of the Commissioner of Valuation on Appeal dated 23 September 2015. This decision determined that the non-exempt domestic capital value was £65,000. The Commissioner commented that the capital valuation of £65,000 is considered to be fair and reasonable in comparison with similar properties.

6. The appellant in his Notice of Appeal stated that he believed the subject property should be temporarily removed from the Valuation List for the period between April 2013 to July 2014 due to the fact that the property was uninhabitable due to extensive work being carried out on the property.
7. The Respondent asserts inter alia that he has no power to grant retrospective temporary removal from the valuation list and that the current valuation in accordance with the Statutory Assumptions is correct.
8. The following documents have been considered by us:-
 - (a) The Notice of Appeal against Valuation for Rating Purposes (Form 3) sent on the 1 October 2015 and received in the Valuation Tribunal Office on the 12th October 2012.
 - (b) An original Letter and Revised Letter by S. & J. Building with reference to the subject property both dated the 29th September 2015.
 - (c) A letter dated 26 October 2015 from Trevor Clarke MLA.
 - (d) A Valuation Certificate from Land and Property Services issued on the 23 September 2015 and effective from the 1 April 2015.
 - (e) A document entitled "Presentation of Evidence" by David Barton BSc MRICS on behalf of the Commissioner for Valuation with attached Appendices of photographs of the subject property and a list of valuations of comparable properties. Dated the 6th April 2016.
 - (f) Hearing Notice dated 19th May 2016.

THE LAW

9. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (the 2006 Order"). Article 54 of the 1977 Order enables a person to appeal to this Tribunal against the decision of the Commissioner on appeal regarding the capital value.
10. Schedule 12 of the 1977 Order as amended states 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 9-15, the hereditament might reasonably be 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...

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

(7) Article 54(3) of the 1977 Order provides that on appeal any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. Thus, any appellant must successfully challenge and displace the presumption of correctness otherwise the appeal will not be successful.

THE EVIDENCE AND SUBMISSIONS OF THE RESPONDENT

- 11.1 The Respondent referred to his presentation of evidence and attached schedule of comparable evidence and the photographs of comparable properties...
- 11.2 A brief history of the recent rating cases on the subject property as follows:
- 11.3 On the 12th February 2015 a rating case was registered to split the former 188 Glenravel Road, Martinstown to create Nos 188 and 188A Glenravel Road, Martinstown. This split took effect from 1st October 2014 for rating purposes (LPS Ref: 6346152).
- 11.4 On the 31st March 2015 the Appellant submitted an application to the District Valuer for a revision of the Valuation List on the grounds that the subject property should be temporarily removed from the Valuation List for the period between February 2013 and July 2014. The work on the property had already been completed by the date the application was received. The District Valuer declined to change the valuation. A certificate confirming this decision was issued on 28/07/15 (LPS Ref: 6397874).
- 11.5 On the 7th September 2015, Mr Martin lodged an Appeal against the District Valuer’s decision. On behalf of the Commissioner of Valuation Mr Barton inspected the property on 11th September 2015. The Commissioner of Valuation upheld the decision taken in the previous rating case, and no change was made to the subject’s Capital Value of £65,000, which was found to be in line with similar properties. A certificate of valuation confirming this decision was issued 23 September 2015. (LPS Ref: 7016531-1).
- 11.6 In commenting on the Appellants grounds of Appeal as set out in the Notice of Appeal Mr Barton comments as follows:

- 11.7 Mr Martin is seeking a retrospective temporary incapable period of between April 2013 and July 2014 and believes that between these dates, the subject property was incapable of beneficial occupation due to renovation works. Mr Martin has provided a letter from his Builder, 'S&J Building' in support of his appeal.
- 11.8 Mr Martin contends that the subject property should be temporarily removed from the Valuation List from the period between April 2013 – July 2014, reflecting the fact that during this time, the property was the subject of renovation works and was, in his view, incapable of occupation.
- 11.9 At the date of Mr Barton's inspection (11/09/15), he found that the property had been refurbished and was capable of beneficial occupation. Mr Barton informed Mr and Mrs Martin that on appeal, the Commissioner of Valuation cannot retrospectively award a temporary incapable period and that my assessment of the subject property must reflect the property as it stands at the date of inspection.
- 11.10 It is an accepted principle that the District Valuer's Certificate must reflect the state and circumstances of the hereditament at the date the Certificate is issued. This is supported in the English Court of Appeal Case of *Robinson Brothers (Brewers) Ltd* [1937] in which Lord Justice Scott states, "The hereditament to be valued ... is always the actual house or other property for the occupation of which the occupier is to be rated, and that hereditament is to be valued as it in fact is – rebus sic stantibus."
- 11.11 The same issue was also addressed in *Marks and Spencer plc v Commissioner of Valuation* VR/30/1986 which confirmed that a District Valuer's certificate must reflect the state and circumstances of the subject hereditament at the date of issue of the certificate. The District Valuer's certificate had, therefore, to reflect the state and circumstances as at 24th August 2015 at which point the work had been completed.
- 11.12 The Respondent further commented that Mr Martin's request for a removal from the Valuation List was not made until 31st March 2015; some 8 months post completion of the works. There is no statutory basis for the awarding of a retrospective temporary removal of a property from the Valuation List.
- 11.13 Mr. Martin's NIVT appeal application includes a letter supplied by 'S&J Building' which outlines the following works (which took place between April 2013 – July 2014);
- Roof work and lead work to valleys, drainage (due to water damage).
 - Repair and replace guttering and provide roof lights.
 - New ceilings plus insulation, replacement due to water damage. Repair and replace flooring.
 - Fit stairs in both properties
 - Fit bathrooms in x 2 houses.
 - Fit kitchens x 2 houses.
 - Repairs to ground floors and installed DPC x 2 houses.

- Repair and re-plaster all water-damaged plasterwork to both houses.
- 11.14 Mr Barton comments that these works relate to both the subject property (188 Glenravel Road) and the neighbouring 188A Glenravel Road. The letter provided by 'S&J Building' does not provide a time line specific to the subject, the specific dates on which each element of the works took place, photographic evidence or a costing of the works. The Tribunal does note however that S&J Building did state in their revised letter of the 29th September 2014" that they commenced work in April 2013 and completed it by July 2014 so to this extent there was a timeline given.
- 11.15 The Respondent further contended that the Domestic Rating valuations are bound by the Rates (Northern Ireland) Order 1977 and, therefore, Land & Property Services must assume, as per Schedule 12, Paragraph 12(1) 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.
- 11.16 The Respondent further contended that on the grounds that the subject property is a rateable hereditament and that the Commissioner of Valuation has no powers to grant a retrospective temporary removal from the Valuation List, it remains only to ensure that the current Capital Value assessment is correct. Schedule 12, Paragraph 7 (2) of the Rates (NI) Order 1977 directs that in assessing the Capital Value of a domestic property for rating purposes, "regard shall be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances." This concept is also known as 'Tone of the List' and in essence confirms that comparability is the cornerstone of the rating system.
- 11.17 In line with the above, the respondent contends that the subject's current Capital Value of £65, 000 is fair and reasonable and in line with the comparable properties as set out within Appendix 2 of his report.
- 11.18 The valuation has been assessed in accordance with the provisions of the Rates (Northern Ireland) Order 1977. The Commissioner does not have the power to deal with a retrospective application to amend the Valuation List.
- 11.19 The Respondent's Capital Valuation, of £65,000, as assessed on the subject property, is considered fair and reasonable in comparison to similar properties.

THE EVIDENCE AND SUBMISSIONS BY THE APPELLANT LINDSAY MARTIN

Alderman Smyth appeared on behalf of the Appellant made the following submissions:-

- 12.1 The subject property was bought by the Appellant and split into 2 residences 188 and 188A. During the period April 2013 and July 2014 extensive work was carried out on the property during the said period. The Tribunal were referred to the revised letter from S. & J. Building in which he states that during the relevant period that he commenced work in April 2013 and July 2014 he had been “asked to carry out all necessary works so as to leave each property habitable and for possible sale”. Alderman Smyth contended that during this period the subject property could not be deemed as a dwelling and therefore it could not come within the statutory definition of a hereditament and should have been removed from the Valuation List during this period. The Appellant therefore contended that the assessment of capital value should be backdated and that during this period no rates should be paid on the subject property.
- 12.2 Mr Martin further explained that he had bought the property for £44,000. There was no bathroom and it had no kitchen. He brought in S&J Building to refurbish the building and during the period of their works this building was not habitable. Therefore it should have been temporarily removed from the list. He emphasised that he had paid his rates in full.
- 12.3 The Tribunal note from the Appellants Notice of Appeal that he states that the subject property had “been unoccupied and had extensive work carried out where the roof was removed along with the stairs, there was severe water damage and the house had been uninhabitable as per the letter from the contractor”

DECISION OF THE TRIBUNAL

- 13.1 The Assessment of the Valuation of property is based on Statute as particularly set out in Schedule 12 of the Rates (Northern Ireland) 1977 Order. Article (7) (2) states, “in estimating the capital value of the hereditament for purposes of any revision of a valuation list, regard shall be had for the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.”
- 13.2 The Statutory basis for treating the subject property, as a hereditament and including it within the valuation list is found in the Rates (Northern Ireland) Order 1977. Within the Order is as follows;
- 13.3 Article 2 of The Rates (Northern Ireland) Order 1977 defines the word “hereditament” as meaning “property which is or may become liable to a rate, being a unit of such property which or would for to be shown as a separate item in the valuation list.”

- 13.4 The terms ‘rate’ and ‘valuation list’ are also defined within the same paragraph. It is apparent that the subject property falls into the category of hereditament, as it clearly was a unit of property, which *is or would for to be shown as a separate item in the valuation list.*
- 13.5 The Tribunal holds that that the District Valuer’s Certificate must reflect the state and circumstances of the hereditament at the date the Certificate is issued, in accordance with the English Court of Appeal Case of *Robinson Brothers (Brewers) Ltd v Chester-le Street Assessment Committee* [1937] 2 KB 445 at page 468 in which Lord Justice Scott states, “The hereditament to be valued ... is always the actual house or other property for the occupation of which the occupier is to be rated, and that hereditament is to be valued as it in fact is – rebus sic stantibus.”
- 13.6 The Tribunal further note that the case of *Robinson Brothers (Brewers) Ltd v Chester-le Street Assessment Committee* is supported by the ruling of Marks and Spencer plc v Commissioner of Valuation VR/30/1986 by the President of the Lands Tribunal for Northern Ireland Judge Gibson QC. This decision confirmed that a District Valuer’s certificate must reflect the state and circumstances of the subject hereditament at the date of issue of the certificate. Judge Gibson stated, “Each of the District Valuers Certificates must of necessity conform with the general principle (agreed by the M&S and the Commissioner that the Certificate must reflect the state and circumstances of the revised hereditament at the date of that Certificate). As the Lands Tribunal stated in VR/12/1982 *Northern Ireland Transport Holding Co Ltd v The Commissioner of Valuation for Northern Ireland* “Under the rule (i.e. rebus sic stantibus) it is not permissible to assume the circumstances differ from actualities, relating to natural or physical facts or to legal rules and rights.”
- 13.7 On the 31st March 2015 the Appellant submitted an application to the District Valuer for a revision of the Valuation List on the grounds that the subject property should be temporarily removed from the Valuation List for the period between February 2013 and July 2014. The work on the property had already been completed by the date the application was received. The District Valuer declined to change the valuation. A certificate confirming this decision was issued on 28/07/15 (LPS Ref: 6397874). The Tribunal find that Mr Martin’s request for a removal from the Valuation List was not made until 31st March 2015; some 8 months post completion of the works. The District Valuer assessment was correctly made on the subject property as in fact was at the time of the assessment.
- 13.8 The question that remains is was that assessment correct? For the purposes of assessment the relevant capital valuation date is the 1st April 2005. Paragraph 7(2) of the 1977 Order makes clear that, 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 has been revised (“the tone of the list”).

- 13.9 It is noted that the subject property situate at 188 Glenravel Road, Cargan and 188A Glenravel Road, Cargan with a GEA (Gross Estimated Area) of 100.00 m² pre 1919 Terrace had a capital value of £65,000. 195 Glenravel Road Cargan with a GEA of 95.00m² had a capital value of £65,000 and that 203 Glenravel Road, Cargan with a GEA of 101.00m² pre 1919 terrace £70,000. The subject property is well within the tone of comparable hereditaments.
- 13.10 In relation to the appellant's submission that the subject property should be taken out of the valuation list between April 2014 and July 2014 retrospectively, the Tribunal express the view, (whilst strictly obiter, as the case is decided for other reasons set out above), that Commissioner for Valuation has no such statutory power available to grant retrospective temporary removal from the valuation list and that the remit of the Valuer is to assess capital Valuation within the ambit of the Statutory framework of the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (the 2006 Order"). If this view is not correct then in terms of capital valuation the subject property would fall to be considered in accordance with the recent Judgment of the President of the Northern Valuation Tribunal Mr Leonard, in the case of *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland*, Case, Reference Number 12/12 in which the Tribunal considered the question whether a property in a similar state as that of the subject property considered "whether or not the subject property ought to be included in the rating list as a hereditament". In that case the President helpfully considered the case of *Wilson-v-Josephine Coll (Listing Officer)* [2011] EWHC delivered on the 13th October 2011 by Mr Justice Singh and its applicability to Northern Ireland and concluded that the said property should be included in the Valuation list.
- 13.11 Mr Justice Singh stated, "*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 on whether a property is capable of being rendered suitable for occupation (in the present context occupation of 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 of being occupied for the purpose for which it is intended.*" The Tribunal consider that if the applicability of *Wilson-v-Josephine Coll (Listing Officer)* and *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland* were applied that the subject property of the Appellant would fall into the latter category namely a property in which "repair which would render it capable of being occupied for the purpose for which it is intended" and the subject property would thus remain with the Valuation List.

DECISION

14. The Tribunal is very grateful to the appellant and the respondent for the time and effort they have expended in preparing their submissions both in written evidence and in the oral presentation of their respective cases. In this case the Tribunal did not find that the appellant had produced sufficient evidence to displace the statutory presumption that, “any valuation shown in the valuation list with respect to a hereditament shall be deemed to be incorrect until the contrary is shown”. The Tribunal’s unanimous decision is that the Commission for Valuation decision is correct and the appellant’s appeal is dismissed

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Signed: Stephen Wright (Chairman of Northern Ireland Valuation Tribunal)

Date Decision Recorded in Register and issued to Parties: 13 October 2016