NORTHERN IRELAND VALUATION TRIBUNAL

THE RATES (NORTHERN IRELAND) ORDER 1997 (AS AMENDED)

AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007

CASE REFERENCE NUMBER: 31/17

PAUL McGAUGHEY - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

NORTHERN IRELAND VALUATION TRIBUNAL

DATE OF HEARING: 17 OCTOBER 2018

Chairman: Stephen Wright

Members: Mr Tim Hopkins FRICS and Ms Angela Matthews

DECISION

The unanimous decision of the Tribunal is that the Appellant's appeal is not allowed and the capital Valuation of £62,500 assessed on 211 Lisnaragh Road, Aghafad, Dunnamanagh, Co Tyrone BT82 0SB is correct.

Introduction

1. The Appellant did not attend the hearing. The Respondent did not attend the hearing.

2. The appeal was heard by virtue of rule 11 (1) of the Valuation Tribunal Rules (Northern Ireland) 2007 which states "an appeal may be disposed of on the basis of written representations of all parties that have given their consent in writing".

3. The valuation property that is the subject of the appeal is 211 Lisnaragh Road, Aghafad, Dunnamanagh, Co. Tyrone BT82 0SB. (The subject property). The hereditament under appeal is a privately built detached bungalow situated in a rural location approximately 3.5 miles from the village of Donemana and 10 miles from Strabane. The property is of rubble masonry construction with a pitched slate roof and UPVC windows. The capital value as assessed is £62,500.

4. The Appellants by Notice of Appeal received by the secretary of the NIVT tribunal on 7th March 2018, appealed against this decision of the Commissioner Valuation (COV) issued on the 16th of January 2018 which states that the capital value of the subject property should be £62,500.

5. On the 7th of March 2018 Mr O'Neill, Legal Chairman of the NIVT granted an extension of time to the Appellant (with no object and from the Respondent) pursuant to rule 9(2)(d) and Rule 26 of the Valuation Tribunal Rules (Northern Ireland) 2007 to 7th March 2018.

6. The following documents have been considered by the tribunal:-

(a) The Notice of Appeal against Valuation for rating purposes (form 3) was received on 7th March 2018 accompanied with a letter from John Fahy and Company Solicitors dated 6th March 2018.

(b) The order of the NIVT extending the time for appeal dated the 7th of March 2018

(c) Valuation Certificate, issued on the 16th of January 2018.

(d) Presentation of Evidence by Ms Sarah Cunningham MRICS on behalf of the COV with appendix 1 detailing additional photographs and schedule of comparisons.

(e) Letter from NIVT tribunal regarding the hearing date.

(f) Letter from John Fahy and Company solicitors dated the 20th of September 2018 with an attached copy of contract for the sale of this property and other lands at Lisnaragh Road which his client recently disposed of.

(g) Email from NIVT to Ms Bennett dated 26th of September 2018.

(h) Response to Appellants comments by the Respondent forwarded by email of the 26th of September 2018.

(i) Notice of hearing to the Appellants solicitors dated the 27th of September 2018.

(j) Letter to the COV from the NIVT Tribunal dated 18 October 2018.

(k) Letter of Response from COV to the NIVT dated 24 October 2018.

The Law

7. 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.

8. 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".

Background to the Appeal

9. On the 29th of July 2014 an external application was made. Mr Paul McGaughey submitted an application to the District Valuer (DV) on the grounds that the "property was derelict or demolished." The property was inspected on the 15th of October 2014, the decision of the DV was to retain the property in the Valuation List. However a 17% allowance was applied to reflect the difficult access reducing

the capital valuation (CV) to £70,000. The district valuer certificate issued accordingly on the 28th of October 2018.

10. On the 10th March 2015 the Appellant submitted an application to the DV requesting a revision of the Valuation List on the ground that the valuation was too high. The subject property was inspected on the 26th of November 2015 and the decision of the DV was to retain the property in the Valuation List however, a further 12% allowance was applied to reflect difficult access reducing the CV to £62,500.The District Valuer's certificate issued accordingly on the 9th of December 2015.

11. On 7th September 2016 Mr Declan McAleer MLA submitted an application on behalf of his constituent Mr Paul McGaughey on the grounds the valuation was too high the decision of the DV was to retain the property in the valuation list and no changes made to the CV. A District Valuer's certificate issued accordingly on 13th December 2016.

12. An appeal was submitted to the COV on the 23rd of December 2016 by Mr Paul McGaughey appealed the DV's decision to the COV on the grounds of difficult access to the property. Although there is a legal right of way to the property, the lane is overgrown and impassable. The property is accessed via another lane but Mr McGaughey has no right of way for this access. The decision of the COV was to retain the property in the valuation list and no change was made to the CV. The certificate of valuation was issued accordingly on 16th January 2017.

13. On the 5th of December 2017 the Appellant submitted an application to the District Valuer requesting the revision of the CV on the ground that the property had deteriorated was uninhabitable and should not be rateable. The subject property was inspected on the 5th of December 2018. The decision of the DV was to retain the property in the Valuation List and no change was made to the CV on the basis that the property had not materially changed since previous revision. A certificate of valuation was issued accordingly on 7th December 2017.

14. On 21st December 2017, the Appellant lodged an appeal to the COV against the District Valuer's decision. On behalf of the COV Sarah Cunningham MRICS inspected the subject property on the 15th January 2018. The COV upheld the DVs decision and no change was made to the Capital valuation of £62,500 which was considered to be fair and reasonable in comparison to similar properties reflecting the subject's difficulty of access. The Certificate of Valuation was issued accordingly on16th January 2018 and on 7th March 2018 the Appellants appeal against the Commissioner's decision to the Northern Ireland Valuation Tribunal.

Appellant's Grounds of Appeal

15. The Appellant is seeking to have the valuation reduced on the grounds that the property has been offered for sale for one year and he has received just one offer of £21,000 which has been received. This is with McCullagh Valuers and Auctioneers at Plumbridge.

16. The Appellant states that he believes that the low price is due to the isolated location and that there is no proper access to the property. The Notice of Appeal states that he believes the actual valuation should be £21,000.

17. On 21st September 2018 the NIVT received a letter from John Fahy and Company Solicitors dated the 20 September 2018, (after his client had received the presentation of evidence). Attached to the letter was a copy of the contract for sale of the subject property and other lands at Lisnaragh Road which the Appellant client recently disposed of. His solicitor comments :-

"*there are three lots contained in the contract and our instructions are the lot were apportioned as follows:-*
The house valued at £21,500, the lands and outbuildings £18,000.
In the circumstances our client contends that £21,500 is the actual market value of the property and this should be reflected in the capital value." The tribunal has considered this documentation.

Representations of the Respondent

18. Sarah Cunningham on behalf of the COV in her Presentation of Evidence makes the following comments.

19. Ms Cunningham states that she inspected the subject property on behalf of the COV on the 15th of January 2018. She referred to the photographs which are set out in Appendix 1 of the report. A summary of the repair issues identified during her inspection were as follows:-

External repair issues

"The property is dilapidated and in a poor state of external repair reflective of its age and lack of maintenance.

- *From ground level the roof appears to be of average repair with no obvious defects.*
- *Moss growth to roof covering*
- *Damage and rot noted to soffit, fascia and barge boards*
- *Rainwater goods are in place but blocked by vegetation.*
- *UPVC windows and door of average repair.*

Internally the accommodation is in a poor state of repair typical of a house of its age which has not benefited from heating or regular maintenance".

Internal repair issues

- *"The interior of the property is dated and required redecoration.*
- *Evidence of damp to internal walls, peeling and bubbling paint and wallpaper and staining in a number of rooms".*

Access

"Access to the property is via a long rough shared laneway of approximately 0.4 miles and which is very steep in places. The access is very difficult and is in poor repair. An allowance of 15% has been awarded to reflect this".

20. The Appellants grounds of appeal centre on contention that the subject property (which has been vacant for approximately 10 years) is uninhabitable in its current state and that the property does not have a legal right of way. Ms Cunningham has sought to explain that the issue of the right of way cannot be taken into account in a statutory valuation as assumption 11 of Schedule 12 part 1 of the Rates (Northern Ireland) Order 1977 states; "the hereditament is sold free from any rent charge or other encumbrance". However, it should be noted that whilst there is no right of way via the laneway currently in use, the original laneway has a right of way, but is now overgrown and not passable. Ms Cunningham also considers that the existing allowance adequately reflects these circumstances.

21. The Respondent states that where a property has deteriorated and been vacant for a number of years, one must determine whether or not a hereditament still exists.

22. Mrs Cunningham refers to the hereditament test by reference to the High Court decision of *Wilson v Coll* (Listing Officer),in which Mr Justice Singh clarified the legal position when he found the questions to be asked is whether:-

"*Having regard to the character of the property and a reasonable amount of repair works being undertaken could the premises be occupied as a dwelling".*

23. This is clarified later in the judgement when he states:-

" *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 being occupied for the purposes for which it is intended*." And

"the crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake."

24. The property under appeal in *Wilson v Coll* was found to be a Hereditament despite the substantial list of repairs required as described in the associated Valuation Tribunal for England (VTE) judgement.

25. Ms Cunningham states that with regard to this appeal the subject property is not, in her opinion, truly derelict. She considers the property capable of being repaired to a standard which is suitable for its intended purpose, without changing the character of the property therefore, a hereditament still exists.

26. As a consequence of deciding that a hereditament exists, Land and Property Services must assume as per schedule 12, paragraph 12 (1) of the Rates (Northern Ireland) Order 1977, 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's and its locality. Given the statutory assumptions, any internal disrepair of the subject property cannot be considered in its assessment of the CV, only external disrepair should be considered.

Assessment of capital value

27. Schedule 12, Paragraph 7 (2) of the Rates (Northern Ireland) Order 1977 directs 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 hereditament's in the same state and circumsta*nces." This concept is also known as "Tone of the List" and in essence confirms that comparability is the cornerstone of the rating system.

28. Details of the comparable evidence has been attached at Appendix 1 of the Presentation of Evidence. These properties are located within the same ward (Dunnamanagh) as the subject property. Whilst the comparable properties noted are similar to the subject property they differ in that some have direct access of the main road, rather than via a long rough shared laneway.

29. Comparable 6 namely 171 Moorlough Road, Dunnyboe, Dunnamanagh, is a similar age of construction it is however, larger than the subject Property, extending to 126m² with an outbuilding at 67m². The property has been granted a 5% allowance to reflect difficult access and has a capital value of £85,000.

30. Comparable 2, namely 235 Lisnaragh Road, Aghabrack, Dunnamanagh, is a similar size, age and construction and like the subject property is situated on the Lisnaragh

Road .The property extends to 116 m² and outbuilding of 21 m² with a capital value of £95,000.

31. Comparable 3-5 namely 201, Duncastle Road, Castlemellan, Dunnamanagh, 283, Lisnaragh Road, Doorat, Dunnamanagh and 281, Lisnaragh Road, Doorat, Dunnamanagh are similar in times of size, age and construction, however, unlike the subject property they benefit from outbuildings of varying size with Capital Values ranging from £80,000-£87,500.

32. Ms Cunningham having considered the comparable evidence, she is of the opinion that, "Tone of the List "supports an unadjusted CV of £85,000. Allowances are warranted to reflect the properties proximity to old agricultural buildings 10% and difficult access 15% she therefore considers that the current Capital Valuation of £62,500 is fair and reasonable.

33. Mrs Cunningham concludes that the valuation has been assessed in accordance with the provision of the rates (Northern Ireland) order 1977. The capital value is, as assessed (£62,500) is considered fair and reasonable in comparison to similar properties.

Further Submissions

34. In response to John Fahy solicitors letter of the 20th of September 2018, (as outlined Paragraph 17 above) Ms Cunningham on behalf of the COV responds as follows by reference to the attached copy of contract for sale in relation to the sale of the subject property;

35. *"The Valuation has been assessed in accordance with the legislation contained in the Rates (Northern Ireland) Order 1977, schedule 12 paragraph 7 defines capital value as… "The amount which on the assumptions mentioned in paragraphs 9-15, the hereditament might reasonably have been expected to realise if had been sold on the open market by a willing seller on the relevant capital valuation date". The relevant capital valuation date in the current case is the 1st of January 2005 (the antecedent valuation date).*

36. Therefore the actual market value of the 6th of May 2018 is not relevant to the capital valuation assessment for rating purposes as that 01/01/05 subject to statutory assumptions, including average internal repair.

37. Further, schedule 12, paragraph 7 (2) of the Rates (Northern Ireland) Order 1977 directs that in assessing the CV of domestic property for rating purposes "regard shall be had to the capital values in the valuation list of comparable hereditament's in the same state and circumstances." The concept is also known as "Tone of the List" and in essence confirms the comparability is the cornerstone of the rating system. A schedule of the comparable evidence is provided in the appendices of the Presentation of Evidence."

38. In considering the evidence the Tribunal wrote to the COV on the 18th October 2018 and received the following response to the following issues numbered (i) - (iv) raised by the Tribunal:-

(i) "The unadjusted Capital Valuation (CV) for the subject property is £85,000; on the 29th of July 2014 it is stated that an allowance of 17% was allowed on the subject property due to the difficulty of access, reducing the CV to £70,000. On the 10th March 2015 it is stated that a further allowance of 12% was made to reflect difficult access, further reducing the capital valuation to £62,500.However, page 7 states that 15% has been awarded to reflect the fact that the access is very difficult and is in poor repair. This appears to contradict the adjustments stated above; that of 17% and 12% allowances.

Ms Bennett a Senior Valuer on behalf of the COV responded as follows:-

"The allowances referred to of 17% awarded 29th July 2014 and 12% awarded on the 10th March 2015, are provided in the Presentation of Evidence under the heading History / Background. This information is provided to assist the Tribunal by detailing the valuation history of the subject property. Both allowances were awarded by the District Valuer in response to applications submitted by the Appellant, Mr Paul McGaughey.

They do not reflect the opinion of the Appeal Valuer (Expert Witness), acting on behalf of the Commissioner of Valuation.
The reference to a 15% allowance referred to at page 7 (so numbered by the tribunal) was awarded by the Appeal Valuer (Expert Witness), in whose opinion it was warranted "to reflect the fact that the access is very difficult and is in poor repair". As you will be aware, the appeal valuer is not constrained to adhere to any previous allowance that may have been awarded by the District Valuer ie. that of 17% and 12% previously referred to. "

(ii) "At page 9 of the POE the Commissioner concludes "I am of the opinion that, 'Tone of the list' supports an unadjusted CV of £85,000. Allowances are warranted to reflect the property's proximity to old agricultural outbuildings 10% and difficult access 15%. I therefore, consider that the current CV of £62,500 is fair and reasonable". The Tribunal observed that this is the first mention of a 10% being allowed for agricultural outbuildings. There is no reference in the prior submissions."

Ms Bennett replied :-

"Having considered comparable evidence, the expert witness is of the opinion that a further 10% allowance is warranted to reflect the impact of the close proximity of old agricultural outbuildings. This was not previously considered by the District Valuer."

(iii) The other matter that the Tribunal sought clarification on was the calculation. If a 25% deduction is taken from 85,000 this would reduce the CV to £63,750. No explanation has been given as to why alternative adjustments have been adopted or the inconsistency in the calculation.

Ms Bennett replied," *the expert witness is of the opinion that a total allowance of 25% is appropriate. As stated this reduces the Capital Value from £85,000 to £63,750. However, as this is such a precise figure, it is regular practise to round the Capital Value assessment, thus giving an amended figure of £62,500. All entries in the Valuation List would be similarly rounded. "*

(iv) Finally the tribunal expressed concern that the figure of CV assessed at £62,500 is supported by the evidence. For example if an additional 10% is allowed for agricultural buildings should this come off the CV of £62,500?

Ms Bennett replied:

"The 10% allowance for agricultural buildings is not an additional allowance, but included in the 25% total allowance i.e. 15% for difficult access + 10% for proximity to old agricultural outbuildings. Therefore, no further deduction ought to be made to the Capital Value assessment of £62,500."

Decision

39. The Appellant's appeal in essence is that the Capital Value assessment of the valuation on the subject property should be £21,500 not £62,500 on the ground that the actual market valuation was initially £24,000. The Appellant also contends that the subject property has subsequently been sold for £21,500 and the adjoining lands and outbuilding for £18,000. The Appellant contends that because the subject property was sold for £21,500 on the actual market this should be reflected in the Capital Value. The antecedent date of valuation is however 1st January 2005 and not the date of any subsequent sale.

40. The purpose of the tribunal is to consider the evidence and apply the relevant law to the issue of capital valuation. The Tribunal are of the view that the capital value of the subject property has been assessed in accordance with the legislation contained in the Rates (Northern Ireland) Order 1977. Schedule 12, Paragraphs 6 and 7 which sets out the relevant legislation.

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

42. The Tribunal hold that the subject property is a hereditament and further hold that the correct legal approach by the Respondent was followed in relation to the Capital Valuation of the subject property. The correct legal principles were applied in accordance with the jurisprudence and decisions as enunciated by Mr Justice Singh in *F J Wilson (Appellant) and M Webb on behalf of the Listing Officer (Respondent) decision of the Valuation Tribunal for England and in the case of Wilson-v-Josephine Coll (Listing Officer*) [2011] EWHC and subsequently considered and approved and elaborated upon in the context of Northern Ireland. I refer to the judgment of the President of the Northern Ireland Valuation Tribunal in *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland. Case, Ref: 12/12.* In that case which involved a derelict property the President of the NIVT stated:-

"To the material extent, Northern Ireland domestic rating law, likewise, does not include any "economic test" if it could be described as such. The issue accordingly identified by the English court in **Wilson v Coll** could be expressed in the form of a question. That question is - having regard to the character of the property and a reasonable amount of repair works being undertaken, could the premises be occupied as a dwelling?

43. The tribunal, as mentioned, is not bound to follow the approach taken in Wilson v Coll and is free to determine the matter in any way that seems proper, in the absence of a precedent or authority of any binding character being cited or drawn to the tribunal's attention. However, in order to depart from the approach taken by the English court in Wilson v Coll, the tribunal would need to identify a proper basis for taking a different approach. The point, of course, in Wilson v Coll is that there was no mention of any "economic test" in the English statutory provisions, and a similar position prevails in Northern Ireland in regard to the rating of domestic property. The determination of this tribunal, accordingly, is that the same general approach ought to be adopted in Northern Ireland, but with the important qualification mentioned below.

44. In determining the issue, it is easy to envisage a truly derelict property that on no account ought properly to be included in the valuation list. At the other end of the spectrum, as it were, there exist many properties which are unoccupied but which

require only very minor works of reinstatement or repair to render these readily habitable. The difficulty, as the tribunal sees it, in the absence of any specific provision expressly enabling the tribunal to take economic factors into account (and in the light of the position as stated in ***Wilson v Coll****) is to adjudge what might be deemed a "reasonable amount of repair works". Clearly, it would be wrong to include a property on the rating list which required an "unreasonable" amount of repair works to render the property in a state to be included in the list. How then is the concept of "reasonableness" to be tested?*

45. *"Reasonableness" is generally regarded as being the standard for what is fair and appropriate under usual and ordinary circumstances - the way a rational and just person would have acted. In discussing this, the tribunal had some difficulty in comprehending how what is reasonable or otherwise could be tested if one entirely disregarded some of the true realities of the situation, including those which most would impact upon decision-making. Obviously a reasonable person would not wish to expend a very substantial amount of money upon the repair of a nearly worthless property. Leaving aside for the moment any statutory considerations, the reality, for any reasonable domestic property owner, must in some manner connect with the issue of potential expenditure and the worth of any property both before and after any repair and reinstatement. To that extent, the tribunal has some difficulty with the judgment of Mr Justice Singh in* ***Wilson v Coll****, for the learned judge as far as can be observed did not proceed to give any account of how the concept of "reasonableness" might otherwise be tested. It is possible to expend an unreasonable sum upon the repair of a nearly worthless property; or, leaving aside monetary considerations, to expend an unreasonable amount of labour or of time in the repair of such a property. Any truly derelict property (in the common perception) might thus, by expending an unreasonable amount of money or an unreasonable amount of time and labour upon repairs, be capable of being placed in a state where it could indeed be occupied as a dwelling, and thus be rated as a hereditament. Of course to do so would be to act irrationally and unreasonably by any normal assessment of things. Having accepted that there is no mention of any "economic test" in the relevant statutory provisions in Northern Ireland (as in England), the tribunal's view is that the only common sense and proper way to look at things is to examine the specific factual circumstances of any individual case and to take all*

material factors into account in taking the broadest and most common sense view of things in addressing the issue of whether or not, having regard to the character of the property and a reasonable amount of repair works being undertaken, the property could be occupied as a dwelling. Accordingly, the tribunal is reluctant to lay down any rigid principle that, in effect, inhibits or prevents the tribunal from taking a proper, comprehensive and broad view " in the round" of all the relevant facts. This is so when conducting an assessment of what is reasonable, or otherwise, in relation to repair works necessary to render any property in a state to be included in the rating list. Tribunals across the broad spectrum of different statutory jurisdictions in Northern Ireland are designed, within the system of justice, to engage in decision-making in an entirely practical and common sense manner, applying the inherent skills and expertise of the tribunal members in the assessment of any material facts and by proper application of the law to any determined facts, and should be enabled to undertake this task in a properly-judged and comprehensive manner, provided that the law is properly interpreted and observed in the decision-making."

46. The Tribunal find the decision of *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland* a persuasive authority and accordingly determine, that the same general approach ought to be adopted in Northern Ireland as in the case of Coll v Wilson but with the important qualification of the test of "reasonableness" as set out at paragraph 26 of the judgment of Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland. The Tribunal concur with the observation of the President of the Tribunal when he states *"Reasonableness" is generally regarded as being the standard for what is fair and appropriate under usual and ordinary circumstances - the way a rational and just person would have acted. .....Clearly, it would be wrong to include a property on the rating list which required an "unreasonable" amount of repair works to render the property in a state to be included in the list. ……. the tribunal's view is that the only common sense and proper way to look at things is to examine the specific factual circumstances of any individual case and to take all material factors into account in taking the broadest and most common sense view of things in addressing the issue of whether or not, having regard to the character of the property and a reasonable amount of repair works being undertaken, the property could be occupied as a*

dwelling. Accordingly, the tribunal is reluctant to lay down any rigid principle that, in effect, inhibits or prevents the tribunal from taking a proper, comprehensive and broad view " in the round" of all the relevant facts. This is so when conducting an assessment of what is reasonable, or otherwise, in relation to repair works necessary to render any property in a state to be included in the rating list….

47. This ruling has subsequently been applied in a number of cases including *Eric McCombe v Commissioner of Valuation Case Ref: 43/15* and *Alan Fletcher v Commissioner of Valuation Case Ref: 9/12.*

48. The Tribunal hold that the subject property is a hereditament and further that the Commissioner of Valuation has applied the correct legislative provisions in relation to the assessment of this property. As correctly stated Capital Value is the amount which in the legislative provisions contained in Schedule 12 paragraph 7 to 15, of the Rates (Northern Ireland) Order 1977 as amended. Particular reference is made to paragraph 7 (1) by applying the general rule that "the Capital Value of a hereditament shall be the amount which on the assumptions contained in Schedule 12 paragraph 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". The relevant capital valuation date in this instant case is the 1st of January 2005 .Therefore the actual market value as at the 6th of May 2018 is not relevant to the capital value assessment for rating purposes.

49. Having held that the subject property is a hereditament the next issue for the tribunal to consider is the subject property within the "Tone of the List" by reference to the capital values and the valuation list of comparable hereditaments in the same state of circumstances. The COV has provided the schedule of comparisons and has quite properly indicated differences in relation to certain comparable properties with reference to their access to the main road. However the tribunal consider having regard to the habitable space of the subject property namely 115 m², and allowing for the substantial reduction that has been given to the subject property due to its state, compares favourably with other comparable properties. For example property 2, situate at 235 Lisnaragh Road has a habitable space of 116 m², and a CV of 95,000. Properties 3-5 namely 201 Duncastle Road, is a privately built pre-1919

detached cottage with a habitable space of 115 m², an outbuilding 64 m² with a capital valuation of £80,000 ; 283 Lisnaragh Road again a privately built detached cottage with a habitable space of 108 m² with an outbuilding of 28 m² has a capital valuation of £85,000 and 281 Lisnaragh Road is a privately built pre 1919 detached cottage with a habitable space of 127 m² with an outbuilding of 13 m² with a capital valuation of £87,500. It is noted that all the comparable properties have been rated by the same district Council namely Derry City and Strabane District Council.

50. The Tribunal accepts that the original allowances assessed by the DV on the 29th July 2014 and the 9th December 2015 have now been superseded by the allowances made by the expert valuer on behalf of the Commissioner.

51. The expert witness is of the opinion that a total allowance of 25% is appropriate. As stated this reduces the Capital Value from £85,000 to £63,750. However, as this is such a precise figure, it is the regular practise to round the Capital Value assessment, thus giving an amended figure of £62,500. All entries in the Valuation List would be similarly rounded. The Tribunal note that 10% allowance for agricultural buildings is not an additional allowance, but included in the 25% total allowance i.e. 15% for difficult access + 10% for proximity to old agricultural outbuildings. Therefore, no further deduction ought to be made to the Capital Value assessment of £62,500.

52. In relation to allowances the Tribunal refers to the guidance in the NIVT decision of *O'Hare v COV* (Case reference 88/12) which further outlines the NIVT view on the approach taken in *Wilson v Coll*. The case of *O'Hare* states that the range of allowances would be more typically in the range of 10 to 17%. It is considered in this instant case that the allowances made in respect of the subject property come within this range.

53. The tribunals unanimous decision of the Appellants appeal is not allowed on the capital Valuation of £62,500 assessed on 211 Lisnaragh Road, Aghafad, Dunnamanagh, Co Tyrone BT82 0SB is correct.

Stephen Wright - Chairman
Northern Ireland Valuation Tribunal
Date Decision Recorded in Register and issued to Parties: 22nd November 2018