

NORTHERN IRELAND VALUATION TRIBUNAL

**THE RATES (NORTHERN IRELAND) ORDER 1977 (AS
AMENDED) AND THE VALUATION TRIBUNAL RULES
(NORTHERN IRELAND) 2007**

CASE REFERENCE NUMBER: NIVT 15/13

JOHN McGIVERN – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 14 March 2014

Chair: Sarah Ramsey

Members: David McKinney and Garry McKenna

DECISION AND REASONS

The Hearing

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). By a Notice of Appeal dated 24 June 2013 the appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) in respect of the decision letter of 5 June 2013 in relation to the valuation of a hereditament situated at 22 Mays Corner Road, Ballybrick, Katesbridge Banbridge BT32 5RB (“the subject property”). The appellant, Mr. John McGivern was present at the tribunal and his appeal was presented by Mr. Conor McGivern. The respondent was represented by Mr. Michael McGrady and Mr. Andrew Magill.

2. The respondent’s Presentation of Evidence describes the subject property as originally being included on the Valuation List as a pre 1919 detached cottage of rubble masonry/stone construction with a light corrugated roof located in a rural area of County Down near Katesbridge with a gross external area (“GEA”) of 77 m2 with no heating.

3. The appellant in his Notice of Appeal stated that the property is two hundred years old, not fit for living purposes, used for sentimental family traditional reasons that the home is in need of so much work to make it livable.

4. By letter to the Tribunal dated 16 November 2013 the Appellant challenged that the property should be considered as a hereditament at all. He made the case that the property was not a habitable building and could not be lived in the current state. The letter explained that the property does not nor ever had central heating, bathroom or toilet facilities or kitchen. The roof would require substantial repairs replacement or enhancement. The present entrance to the property would probably require substantial reconfiguration, applications for planning permission, building control and application to Roads Service which would require a substantial amount of capital outlay.

5. The Appellant distinguished the comparable properties as having central heating and speculated as to whether they may have bathroom or kitchen facilities.

6. At hearing the Appellant orally confirmed his position which was that the subject property should be retained on the Valuation List being a property which is or may become liable to a rate within the definition of a hereditament set out in Article 2(2) of the 1977 Order. The Appellant asserted that he did not require the Tribunal to consider whether, if the property is properly included on the Valuation List, the capital valuation is correct.

7. The appellant appeals against that decision under Article 54 of the Rates (Northern Ireland) Order 1977, as amended (hereinafter the 1977 Order).

The Evidence

8. The following documents were before the tribunal;

- Appellant's Notice of Appeal to the Tribunal dated 24 June 2013;
- Valuation Certificate dated 5 June 2013;
- Respondent's Presentation of Evidence dated 18 November 2013;
- Extract case law as referred to in the Respondent's Presentation of Evidence: **Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin) ("Wilson v Coll")**

- Letter from the Appellant dated 16 November 2013
- Case Reference **NIVT 89/12 Montgomery –v- Commissioner of Valuation for NI**

9. The tribunal heard evidence and submissions from the appellant, Mr. McGivern and from Mr. McGrady and Mr. Magill on behalf of the Respondent.

10. The tribunal reserved its decision. This notice communicates the tribunal's decision and contains the reasons for the decision in accordance with Rule 19 of the Valuation Tribunal (NI) Rules 2007.

The Law

11. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter the 2006 Order). The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The tribunal, as is customary, does not intend in this decision to fully set out the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many decisions of this tribunal, which are readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter.

12. Further relevant legislation for the purposes of this appeal is Article 2(2) of the 1977 Order which defines a 'hereditament' as follows;

"hereditament" means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list.

13. Article 25A and Schedule 8A of the 1977 Order provide that rates are payable on unoccupied properties which fall within a class prescribed by Regulations. The Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 ("the 2011 Regulations") came into force on 1 October 2011. These prescribe that, subject to the exceptions set out in the schedule to the Regulations, unoccupied domestic properties are liable to rates.

14. Article 54(3) of the 1977 Order provides that, on appeal, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

The Tribunal's Findings

15. The issue before the tribunal in this appeal is whether the subject property is a hereditament “which is or may become liable to a rate” within the definition of a hereditament set out in Article 2(2) of the 1977 Order or an unoccupied property which falls within the categories of exceptions set out in the 2011 Regulations.

Is the subject property liable to rates?

16. The respondent indicated at the outset that the appellant was seeking that the property be out of the Valuation List because of certain defects. Mr. Magill had carried out an inspection of the premises and he stated that the property was not truly derelict. It was in an average state of external repair. He made the case that many properties on the valuation list have no kitchen. He pointed out that the property did have a fireplace. It was acknowledged there was no bathroom and no outside toilet. Mr. Magill compared the instant case to the decision **in NIVT 89/12 Montgomery –v- Commissioner for valuation of 7 January 2013.** In the course of his submissions it became apparent that the Appellant had not been alerted to this judgment and the tribunal rose for a period of time in order that a copy of this decision could be furnished to the Appellant for his consideration.

17. Mr. Magill, in the Presentation of Evidence, referred the tribunal to the case of *Wilson v Coll*. In relation to the question as to whether a hereditament exists the tribunal should take account of Mr. Justice Singh’s judgment in *Wilson v Coll*. A property which requires a reasonable amount of repairs continues to be a hereditament. In Mr. Magill’s presentation of evidence he stated that the property could not be described as derelict and it is clearly repairable. The repairs should be seen as just that and not renovation. He further submitted that any external repairs were minor.

18. The case of *Wilson v Coll* was a decision in relation to a judicial review decided in the High Court of England and Wales. Whilst this decision is not binding on the tribunal, as it relates to legislation applicable in England and Wales, it provides useful guidance on the interpretation of similar provisions in the 1977 Order. He referred to Schedule 12 paragraph 12 (1) and the assumption that the property is in an average state of internal repair and fit out.

19. In respect of the property’s shortcomings as set out above, Mr. Magill submitted that in his opinion they were issues of reasonable repair and in light of the *Wilson v Coll* case; the subject property does not cease to be a hereditament.

20. The appellant then made submissions. He made the case that the property is internally little more than a shell. The roof contained asbestos, there was no kitchen, no bathroom, although it was accepted that there was a kitchen unit with a plumbed tap. The Appellant explained that the property is currently 15-20 m from an existing old stone lane which was access to the property. The Appellant informed the Tribunal that her property had poor sight lines presently, and the property was situated close to a corner. The Appellant made the case that in order to upgrade the property would require the construction of a whole new entrance and would require liaison with planning, building control and roads service.

21. The appellant did not make any further comment regarding the state of the property.

22. However the correct test as Mr Justice Singh highlighted in paragraph 41 of the *Wilson* judgment is not whether repairs are economic,

“41 The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake. As I have already indicated, that submission, and my conclusion in accepting it, draws force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present legal regime, whereas it is present in the legal regime which governs non-domestic rating.”

23. The test for deciding whether a property is a hereditament is set out in the *Wilson* case and was specifically set out in the Presentation of Evidence by Mr Magill.

“40 ... I accept that as a general matter of law the crucial distinction for the purposes of deciding whether there is, or continues to be, a hereditament should focus upon whether a property is capable of being rendered suitable for occupation (in the present context occupation as a dwelling) by undertaking a reasonable amount of repair works. The distinction, which is correctly drawn by the respondent, in my view, is between a truly derelict property, which is incapable of being repaired to make it suitable for its intended purpose, and repair which would render it capable again of being occupied for the purposes for which it is intended.”

24. There are certainly works that could be carried out to the premises to improve it. The respondent in his evidence did highlight problems with the property. The tribunal, from the photographs and all of the evidence, both written and oral, is of the view that if certain repairs were carried out the subject property could be occupied as a dwelling. The appellant asserted that as another property he owned had been taken out of the Valuation List he

was of the view that the subject property should also be removed but no further evidence to support this claim was adduced by the appellant. The tribunal finds that the property it is not truly derelict. The tribunal accepts the respondent's evidence that the fabric of the property is largely intact and that internally the property is basically just a shell. Whilst the tribunal has, through all of the evidence, been made aware of the problems in the property the tribunal is of the view that it cannot be said that the extent of disrepair is such that the property is derelict or, with a reasonable amount of repair, incapable of occupation as a dwelling. In these circumstances we are satisfied that the subject property is a 'hereditament' and therefore liable to a rate.

25. The appellant has not claimed that the subject property comes within any of the exceptions set out in the 2011 Regulations and the panel is satisfied that none of the exceptions apply.

Decision

26. The tribunal must take account of the statutory presumption contained in Article 54(3) of the 1977 Order. It states "On an appeal under this article any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown ". It is therefore up to the Appellant in any case to challenge and to displace the presumption or perhaps for the Commissioner's decision on appeal to be seen to be so manifestly incorrect that the tribunal must take steps to rectify the situation.

27. The Appellant has not discharged the burden upon him to show that the valuation assessed for the subject property is not correct in accordance with paragraph 7 of Schedule 12 of the 1977 Order. The tribunal is of the view that the subject property is appropriately on the Valuation List in accordance with tone with evidence the respondent has adduced in its Presentation of Evidence. The appellant chose not to challenge the valuation of the Valuation List. In all of the circumstances and in light of the findings above the tribunal was satisfied that the valuation shown on the Valuation List in relation to the subject property is correct.

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

Ms Sarah Ramsey, Chair

Northern Ireland Valuation Tribunal

4th April 2014