NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 89/12

ERNEST MONTGOMERY – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 3rd October 2013

Chair: Nessa Agnew

Members: Tim Hopkins and Robert McCann

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 18 March 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") dated 7 January 2013 in respect of the valuation of a hereditament situated at 81 Drumaknockan Road, Drumlough, Hillsborough, County Down BT26 6QP ("the subject property"). The appellant, Mr Montgomery was present at the tribunal. 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 an inter war detached cottage of rubble masonry construction with a standard slate pitched roof located on the outskirts of Hillsborough with a gross external area ("GEA") of 66.7m2 and a garage of 31.2m2.

3. The appellant in his Notice of Appeal stated that the plaster was falling off the end gable of the house, the roof is badly leaking. It further stated that all radiators and the hot and cold water pipes have been stolen from the house so as a result there is no running hot or cold water and no heating and on that basis you could not live in the property. Internally the property is basically a shell with plastered walls, ceilings and floors. There is a reasonable part fitted kitchen. There is no bathroom and the heating system is

inoperative at present as a result of the theft of the copper work. The respondent had assessed the capital value ("cv") of the property as £125,000. On appeal to the Commissioner of Valuation the survey was checked and amended to 67.75m2. The garage was deleted as it no longer existed at the time of the inspection. The cv was reduced to £110,000. The explanation in the Valuation Certificate stated:

> Capital Value reduced to £110,000 in line with properties of a similar state and circumstances.

4. There are two issues in this appeal. The first is whether 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 second issue is whether, if the property is properly included on the Valuation List, the capital valuation is correct.

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

The Evidence

6. The following documents were before the tribunal;

   - appellant's Notice of Appeal to the Tribunal dated 18 March 2013;
   - Commissioner's Decision on Appeal dated 7 January 2013;
   - respondent's Presentation of Evidence dated 17 May 2013;
   - caselaw:

     Wilson v Josephine Coll(Listing Officer) [2011] EWHC 2824 (Admin) ("*Wilson v Coll*")

7. The tribunal heard evidence and submissions from the appellant, Mr Montgomery and from Mr McGrady and Mr Magill on behalf of the respondent.

8. 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

9. 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.

10. 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.

11. 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.

12. 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

13. As set out at paragraph 4, there are two issues before the tribunal in this appeal. The first 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. The second issue is whether, if the property is properly included on the Valuation List, the capital valuation is correct.

Is the subject property liable to rates?

14. 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 in December 2012 and he stated that the fabric of the property was largely intact. There were a few missing slates and minor cracking around one of the windows.

15. Internally, Mr Magill described the property as having concrete flooring and a reasonable part-fitted kitchen. He further described a property with no bathroom and no heating system due to the theft of the copper work. Mr Magill referred to the statutory capital value assumption contained in paragraph 12(2) that the property is in an average state of internal repair and fit out.

16. 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.

17. 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 paragraph12 (1) and the assumption that the property is in an average state of internal repair and fit out.

18. 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.

19. The appellant then made submissions. He stated that he had met with Mr Magill and that he had informed him that the property his father had lived in had been taken out of the rating system following an inspection by the LPS. The frost had burst the water pipes and that in his view it should be the exact same situation with the subject property. Mr Montgomery believes the subject property should be exempt from rates. He stated that his own home which is situate on the same road at 51 Drumaknockan Road, Hillsborough has a capital value of £120,000. As it is the appellant's family home, Mr Montgomery stated that it was a far superior property to the subject property. In addition, the appellant stated that 53 Drumaknockan Road had been taken out of the Valuation List because it was beyond reasonable repair. Mr Montgomery said that both 53 Drumaknockan Road and the subject property were very small detached cottages. The appellant did not have any photographs of these properties. The appellant stated he cannot afford to pay the rates on the vacant property.

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

21. 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."

22. 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."

23. 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.

24. 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.

Capital Value

25. Mr Magill referred to the three comparables contained in the Schedule of Comparable Evidence contained in the Presentation of Evidence. At the outset the tribunal asked why there were no photographs of the two smaller comparables, 25 Rafferty's Hill("B") and 22 Rock Road ("C"). Mr Magill explained that in general LPS took such photographs from the roadside. Both B and C were situate on laneways and LPS was not allowed access to them. Since submitting the Presentation of Evidence there has been a case registered on B and Mr Magill produced a photograph of 2 Rafferty's Hill. It had a GEA of 54m2 with outbuildings of 35m2 and is smaller than the subject property. Mr Montgomery gave evidence that he was familiar with the property and knew the man who had lived in it all his life and Mr Montgomery's oral evidence was that if he owned comparable B he would put a tenant in it and that the property would be lived in. Mr Magill submitted the photograph of B and confirmed to the tribunal in response to a question raised that rates were being paid on the property. In respect of comparable C, Mr Magill also confirmed that rates were being paid. He stated that the legislation

required the respondent to have regard to capital values in the Valuation List of comparable properties in the same state and circumstances but that it was difficult where the subject property was a very small detached property at just over 67.75m2.

26. When asked what adjustments had he made in respect of the third comparable at 94 Tullynore Road ("D") which has a GEA of 87m2 and is therefore 20m2 larger, Mr Magill pointed out that he did not arrive at the capital value by calculating the rate per metre square. When asked which comparable did he place most weight on the respondent said comparable B. Although it is smaller it also has outbuildings with a GEA of 35m2 which Mr Magill said were of very little significance. In terms of weight the next property would be comparable D with Mr Magill putting the least weight on comparable C.as it had proved impossible to see the property.

27. Mr Montgomery again referred to the property he lives in with his family and which has a capital valuation of £120,000 and the appellant described it as much larger property and in far superior condition than the subject property which has a cv of £110,00.

28. In response the respondent did suggest that there were tonal issues as regards the appellant's own house. The respondent admitted that it was difficult to find comparables as close to the subject property in terms of size and age. The respondent stated that detached properties with a GEA of 60m2 are "few and far between".

29. The panel must apply the statutory presumptions set out in Schedule 12 of the 1977 Order. These include the presumption set out at paragraph 12 of Schedule 12 that the subject property is in an average state of internal repair and fit out having regard to the age and character of the property and its locality. The capital value of the subject property is the amount it might reasonably have been expected to have realised if it had been sold on the open market by a willing seller on 1 January 2005 assuming it was in an average state of internal repair and fit out.

30. As the property must be assumed to be in an average state of internal repair and fit out the tribunal cannot take account of the lack of running water and an operational heating system and other internal repair issues identified by the appellant and confirmed by the respondent in both the oral and written evidence.

31. The tribunal accepted the respondent's written submission, having had regard to the photographs of the property, that any element of external repair can only be described as minor.

32. The Tribunal has had regard to the capital values in the Valuation List for the comparable properties submitted by the respondent. The tribunal is of the view that the subject property is in tone with the comparables. In applying Schedule 12 paragraph 7(2) of the 1977 Order, the tribunal is of the view that two of the comparable properties submitted by the respondent are appropriate. The tribunal has not taken comparable C into account as there was no photograph attached and it had not been viewed by the respondent. The other two properties appear to be in the same state and circumstances as the subject property. Mr Montgomery did make reference to other properties which he stated would be better or alternative comparables but he did not produce any evidence concerning such properties. In the absence of such evidence or information and taking

account of the respondent's oral and written evidence, the tribunal is satisfied that the capital value of the subject property is consistent with the properties put forward as comparables.

Decision

33. 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.

34. 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 in tone with the properties that the respondent has adduced in its Presentation of Evidence. 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.

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

Ms Nessa Agnew, Chair
Northern Ireland Valuation Tribunal

7th January 2014