

NORTHERN IRELAND VALUATION TRIBUNAL

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

Case Reference Number - 46/15

ERNEST RUTLEDGE - APPELLANT

and

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

NORTHERN IRELAND VALUATION TRIBUNAL

Date of Hearing: 1 September 2016

Chairman: Garrett E. O' Reilly

Members: Eric G. Spence and Angela Matthews

Background

1. This is a reference to the Northern Ireland Valuation Tribunal under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (the 1977 Order) which enables a person to appeal to the Northern Ireland Valuation Tribunal against a decision of the Commissioner of Valuation of Northern Ireland.
2. The Capital Value of property situate and known as 215, Nutfield Road, Lisolvan, Brookeborough, Enniskillen BT94 4EX (the Property) was revised and reduced by the District Valuer from £115,000.00 to £100,000.00.
3. The Appellant appealed the District Valuer's revision to the Respondent.
4. The Respondent, on appeal, further amended and reduced the Capital Value of the Property from £100,000.00 to £75,000.00 (the Valuation).
5. The Appellant has appealed the Respondent's decision on the ground that the Property is an agricultural building and also on the ground that the Valuation is too high.

Representation

There was no personal appearance before the Tribunal by or on behalf of the Appellant or by the Respondent.

The Appellant was represented by Tom Elliott MP who stated that he was content for the appeal to be disposed of by written representations and would not be appearing at the appeal hearing. The parties indicated that each was content to rely on written representations.

The Valuation Tribunal Rules (NI) 2007 (as amended) provide that an appeal can be heard in these circumstances and the Tribunal was satisfied to proceed.

The Documents before the Tribunal

1. Valuation Certificate of Land & Property Services dated 22 December 2015 whereby the Commission of Valuation certified the Capital Value of the Property to be £75,000.00.
2. Notice of Appeal dated 18 March 2016 whereby the Appellant appealed the Valuation (the Notice of Appeal).
3. Order of the Northern Ireland Valuation Tribunal dated 13 April 2016 whereby it was ordered that the time limit for service of appeal against the Valuation was extended.
4. Presentation of Evidence dated 10 May 2016 of Stella O' Hagan BSc (Hons) MRICS for Commissioner of Valuation (the Presentation of Evidence).
5. Letter and attachments dated 25 June 2016 of Tom Elliott PM. whereby the Appellant submitted a letter with attachments supplemental to the Notice of Appeal (the June Letter).

Agricultural Building Evidence and Submissions

1. In the Notice of Appeal the Appellant contends that the Property

“is not used for any other purpose and has not been since 2008. Therefore given the factual position of the matter then it should be classified as an agricultural building”.

2. In the June Letter the Appellant states that the Property

“is incapable of being occupied regardless of the work carried out as it was repeatedly used as an ‘outbuilding’ for agricultural purposes. This was exemplified by the use of the subject’s property to store farming equipment such as tyres located in the Kitchen” and

“the subject’s property contains farming equipment and is adjoining beleaguered farm buildings....”.

3. The Appellant did not adduce any evidence to show that the use of the Property was, and has been, for agricultural purposes or that the Property contains farming equipment (other than there are tyres in the kitchen).

4. In the June Letter the Appellant contends that the Property is not habitable and that the Valuation should be further reduced having regard to the condition of properties detailed in the Presentation of Evidence as being comparable to the Property.

5. In the Presentation of Evidence the Respondent accepted if the Property is an agricultural building then it would not be rateable but maintained that the Property has neither been adapted nor is substantially used as an agricultural building.

6. The Respondent said that an inspection of the Property showed that any deemed agricultural use is limited to the storage of tractor tyres in the kitchen, and therefore could not be qualified to be considered an agricultural building; the Respondent provided a photograph of tyres in the kitchen.

7. The Respondent included two photographs of the Property from the road and others around the exterior and the interior of the Property and contended that on any visual inspection the Property would naturally be considered a dwelling house and not an agricultural building.

8. A 2011 photograph in the Presentation of Evidence shows the Property advertised and being marketed for sale as a dwelling house.

9. The photographs did not indicate that the Property had either been physically adapted or been substantially used as an agricultural building.

10. The Respondent submitted that the Property is properly classified as a private dwelling and that the Valuation is reasonable.

The Law

.1. "Agricultural buildings" are defined in Schedule 1 to the 1977 Order as

"(a)...buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon..... and (b) includes a building which is used solely in connection with agricultural operations carried on an agricultural land and which is occupiedbut does not include a building which is a dwelling house."

2. In considering if the Property can be considered as an agricultural building and not a hereditament Paragraph 3 of Schedule 5 to the 1977 Order may also be helpful. It provides that

"a dwelling shall not be deemed to be used otherwise than wholly as a private dwelling house by reason of either or both of the following circumstances -(b) that part of the hereditament,....., is used partly for the purposes of a private dwelling house and partly

for other purposes, unless that part was constructed, or has been adapted, for those other purposes”

Reasons and Decision

1. The Members carefully considered the written representations.
2. The Members noted that if the Property is classified as an Agricultural Building then it is not a hereditament and is exempt from rates and would be removed from the Valuation List. Accordingly the Members decided that it was appropriate to first consider the submission and evidence of the Appellant as to whether the Property is an agricultural building because if so the appeal would be successful and therefore consideration of the Valuation and its correctness would not be necessary and would fall away.
3. The Members noted the Presentation of Evidence showed that the only use at the time of the Respondent’s inspection; which might not be considered to be consistent with use of the Property as a dwelling house was the presence of tyres in the kitchen. This was consistent with the Appellant’s contention in the Notice of Appeal but the Members decided this tyre storage fell far short of what could have convinced them that the Property was an Agricultural Building
- 4 The Appellant acknowledged that the Property was not occupied.
5. The Members also noted the photographs, and specifically, that the internal photographs, did not indicate any form of agricultural storage use (other than possibly the tyres) and concluded that the Property would not be considered as an Agricultural Building from any visual inspection.
6. The Members also took notice of the 2011 photograph in the Presentation of Evidence which showed the Property as a very substantial Dwelling House with a large For Sale Sign erected in the grounds. This was in obvious contradiction to the Appellant’s contention that the Property had been used as an Agricultural Building since 2008 and further indicated that the Appellant himself considered it to be a dwelling house at that time. The Appellant had not commented on this photograph in the June Letter.
7. Having regard to the above facts and the evidence the Tribunal had no difficulty in deciding that the Property was not an Agricultural Building and properly included in the Valuation List and proceeded to consider the Valuation and its correctness.

Valuation Evidence and Submissions

1. The Appellant indicated in the June Letter that the Property was in a general state of disrepair and was not habitable and incapable of being occupied without extensive work and repairs carried out at substantial cost.

2. The Appellant questioned the validity of the properties used by the Respondent as comparables for determining the Capital Value on the basis that they were habitable and that three of the four comparable properties were occupied and so the Valuation should be reduced.
3. The Appellant did not make a proposal as to a reduced Capital Value for the Property on the basis of its disrepair.
4. The Respondent's valuation evidence of comparable properties was set out in the Presentation of Evidence.
5. The Appellant did not formally submit that the Property was in so a bad state of repair that it was no longer a hereditament and therefore should be removed from the Valuation List. However the Respondent acknowledged that the Property was not in a good state of repair and was vacant. In the Presentation of Evidence the Respondent provided evidence that the Property continued to be a hereditament and therefore rateable.

The Law

1. As to when a property is not categorised as a hereditament - the Judgment of Mr. Justice Singh in *Wilson v Joseph Coll (Listing Officer)* 2011 EWHC 2824 (Admin).

2. As to the onus of proof to establish the correctness of a capital value shown in a Valuation List - Article 54 (3) of the 1977 Order which provides:

"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."

3. As to the procedure to establish a capital value for a property Schedule 12 paragraph 7 (2) of the 1977 Order which provides

"in estimating the capital value of a hereditament for the purpose 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. As to the state of a hereditament Schedule 12 paragraph 6 (1) of the 1977 Order creates the assumption for determining a capital value of hereditament that

"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."

Reasons and Decision

1. The Members noted that the Respondent accepted that a property in a bad state of repair and unoccupied could be removed from the Valuation List. However, *Wilson v Josephine Coll* is the leading case in this area and from this case it is clear that a property must be in a virtually derelict state and incapable of being repaired to make

it suitable for use as a dwelling house before consideration should be given to removal from the Valuation List on the basis that it is no longer a hereditament.

The photographs in the Presentation of Evidence clearly show that the Property is in no way derelict and indicate that it could be put into repair within the guidelines in *Wilson v Coll*.

Consequently the Tribunal concluded that the Property continues to be a hereditament and so is properly included in the Valuation List and accordingly moved to consider the correctness of the Valuation.

2. The Members noted that the legislation not only placed the burden of proof to show that the Valuation was not correct was on the Appellant but also provided that the Property be valued as being in an average state of internal repair and fit out.

In this regard the Members referred to the June Letter and noted that the Appellant had not based his attempt to do so on a submission that the validity of the properties detailed in the Presentation of Evidence were not proper comparables in establishing the correctness of the Valuation.

The Appellant attempted to challenge the correctness on the basis that the comparable properties were in average condition and not in a similar condition to the Property and further that three of the four comparable properties were occupied.

The Members noted that in the final assessment of the Valuation the Respondent considered that a Capital Value of £95,000.00 was a valuation in tone with comparable properties but had made a 10% allowance to reflect the poor external state of the Property and a further 10% allowance to reflect the proximity of agricultural outbuildings reducing the Capital Value to £76,000.00 which was rounded down to £75,000.00.

The Members further noted that vacancy is not a factor in the statutory valuation process.

The Members considered that neither of these Appellant submissions is of any significance in challenging a Capital Value of a dwelling house and the Appellant had not made any relevant evidence or representation in relation to a challenge to the Valuation.

In short the Appellant had failed to produce any evidence to support the contention that the Valuation was not correct and so could not have discharged the burden of proof.

In this circumstance the Members were not convinced that they had any requirement to consider the evidence of the Valuation but they did so for the sake of completeness and they were satisfied on the evidence that they would not in any circumstances have reduced the Capital Value of £75,000.00.

3. Accordingly the Tribunal decided that the appeal must fail and the appeal is dismissed in its entirety and the Tribunal confirms that the Valuation of £75,000.00 shown in the Valuation List in respect of the Property is correct.

Garrett E. O' Reilly – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 8 September 2016