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

CASE REFERENCE NUMBER: 44/15

SHAUN WELLES – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr David McKinney FRICS and Mr Patrick Cumiskey

Date of hearing: 5 October 2016, Belfast

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 dismissed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). There was no appearance before the tribunal by or on behalf of the appellant and the respondent, both parties being content to rely on written representations.

2. The appellant by Notice of Appeal, lodged by his solicitors, appealed against the decision of the Commissioner issued on 11 January 2016.

3. This appeal is in respect of the valuation of a hereditament situated at 52 Craigdarragh Road, Helen's Bay, Ballyrobert, Bangor, BT19 1UB ("the subject property").

The law

4. 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 does not intend in this decision to 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, as these provisions have been fully set out in earlier decisions of this tribunal.

5. An issue in this case arises in relation to the listing of the property as a hereditament in the capital value list. Article 2(2) of the 1977 Order states;

> " "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".

6. In relation to unoccupied property, the Rates (Unoccupied Hereditaments) Regulations (NI) 2011 ("the 2011 Regulations") provide that domestic dwellings and parts of buildings for the purposes of the 1977 Order are to be subject to rating (subject to certain statutory exceptions). Therefore rates are payable on an unoccupied domestic property at the same level as if the property were occupied. These provisions came into force on 1 October 2011.

7. Reference will be made later in this decision to the relevant case law to which the tribunal was referred by the parties.

The evidence

8. The tribunal heard no oral evidence. The tribunal had before it the following documents:

   (a) The Commissioners Decision issued on 11 January 2016;
   (b) The appellant's Notice of Appeal received 8 February 2016;
   (c) A Letter from Simon Brien Residential dated 11 January 2016;
   (d) A letter from Simon Brien Residential dated 21 June 2016

(e) Letter from the appellant's solicitors dated 24 June 2016;.

(f) A document entitled 'Presentation of Evidence' dated 02 June 2016, prepared on behalf of the respondent Commissioner by Mr Jonathan Maybin BSc (Hons) MRICS and submitted to the tribunal for the purposes of the hearing;

The facts

(1) The property is a privately built detached bungalow, built about 1955 of brick construction (rendered) with a flat roof. The property has a gross external area (GEA) of 158m^2 and a garage of 35m^2. The property has no central heating system and there are mains services but they are disconnected. The capital value has been assessed at £285,000.

(2) The appellant contends that the property is no longer habitable and should not be retained in the valuation list.

The appellant's submissions

9. In relation to the issue as to whether the property should remain in the list as a hereditament, the appellant states that the house is no longer habitable.

10. The appellant, in his notice of appeal, states that the property is completely uninhabitable. He refers to an attached letter from an estate agent stating that in its present condition the property does not comply with health and safety regulations for rental purposes and that the property could only be sold as a property that needed significant restoration and so the capital value substantially exceeds the true value of the property.

11. The letter from Simon Brien Residential dated 11 January 2016 states that the property in its present condition would be unlikely to get funding for a bank mortgage. Therefore they would propose to sell it as a property that needed significant restoration or renovation as the property is not fit for living at present. The agent considers that a suitable and appropriate value for the property would be between £175,000 to £195,000.

12. Reference is further made to a letter from the appellant's solicitors dated 24 June 2016 which refers to a sales advice note from the agent. The letter from the solicitors states that the property has been agreed for sale at £162,500. However the sales advice note refers to a purchase price of £167,500. The letter from the solicitor goes on to state that the property is unique due to its flat roof which covers the entirety of the property and appears to be in a very poor condition. It further indicates that comparatives are not possible in assessing the capital value because there are no properties in the area with such a poor exterior or extensive flat roof. Their conclusion is that the capital value assessment for the property is fundamentally flawed and the poor exterior coupled with the lack of comparables are not reflected in the current excessive capital value.

The respondent's submissions

13. In the Commissioner's Presentation of Evidence to the tribunal, the respondent submits that a recognisable hereditament existed which is secure and is in the main weather tight.

14. The respondent contends that the correct approach as to whether a hereditament exists is as outlined in *Wilson* v *Coll (Listing Officer).* The Presentation of Evidence goes on to outline some extracts from the judgment of Mr Justice Singh in that case.

15. In relation to the present appeal the respondent states that the subject property is not truly derelict and that it is capable of being repaired to make it suitable for its intended purpose, without changing the character of the property. Therefore a hereditament exists.

16. In relation to the marketing advice from the agent, the respondent argues that this is of limited value in that it has not adhered to the relevant legislation but supports the view that a hereditament exists.

17. In relation to the issue that the property does not comply with health and safety regulations for rental purposes the respondent states that one of the statutory

assumptions is that there has been no contravention of any statutory provision or requirement or obligation whether arising under a statutory provision, an agreement or otherwise.

18. The respondent states that the fact that the property would be unlikely to get a mortgage or loan is not a relevant consideration under the legislation.

19. In relation to the capital value of the property, reference was made in the Presentation of Evidence to a list of comparable hereditaments in the same state and circumstances. Details of these comparable properties were set out in a schedule to the Presentation of Evidence dated 2 June 2016, with further particulars of same, including photographs of the comparable properties. These were capital value assessments, the details of which are as follows:

	Address	Description	Gross external area	Capital value
1	5 Rushfield, Helen's Bay,	1946-1965 detached bungalow, block/stone construction, tile roof.	Habitable space 163m2 Garage 30m2 Outbuilding 23m2	£320,000
2	20 Rushfield, Helen's Bay,	1946-1965 detached bungalow, block/stone construction, tile roof.	Habitable space 152m2 Garage 28m2	£310,000
3	132 Crawfordsburn Road, Bangor.	1946-1965 detached bungalow, 1.5 storey, block/stone construction, tile roof.	Habitable space 158m2 Garage 15m2	£300,000
4	48 Craigdarragh Road, Helen's Bay	1946-1965 detached bungalow, block/stone conkstruction, tile roof.	Habitable space 112m2 Garage 26m2	£245,000

The Tribunal's Decision

20. There are two main issues to be considered in relation to this case. These may conveniently be referred to as the listing issue and the capital value issue. Each of these will be considered in turn.

The listing issue

21. In relation to the listing issue the tribunal has considered the recent judgment of the Northern Ireland Valuation Tribunal in *Whitehead* v *Commissioner of Valuation* in which the tribunal considered the question as to whether the subject property was a hereditament for the purposes of the rating list. In that case the President of the Northern Ireland Valuation Tribunal helpfully considered the case of *Wilson* v *Coll* and its applicability to Northern Ireland. The relevant parts of the judgment in *Whitehead* v *Commissioner of Valuation* are as follows:

> "23. 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?
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> 24. 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.
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> 25. 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?

26. "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."

22. In relation to the facts of this case in considering the question "having regard to the character of the property and a reasonable amount of repair works being undertaken could the property be occupied as a dwelling", the tribunal prefers the evidence of the respondent that the fabric of the building is intact. It also finds that while repairs and improvements are required, if a reasonable amount of repair works were carried out the property could be occupied as a dwelling. As to the nature of the works required the appellant has not submitted any figures to support the cost of the work required to be undertaken to the property. Weighing up the arguments advanced and the material considerations the tribunal's unanimous decision is that the subject property as it stands, in the state and condition described in the evidence, is properly to be included in the rating list as a hereditament. The appellant's appeal on that point fails accordingly.

The capital value issue

23. Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner's valuation as to capital value to appeal to this tribunal. In this case the capital value has been assessed at a figure of £285,000. On behalf of the Commissioner it has been contended that this figure is fair and reasonable in comparison to other properties. The appellant's contentions are as stated above and the appellant contends that the proper valuation should be £175,000.

24. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms that "On an appeal under this Article, any valuation shown in the 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 that presumption, or perhaps for the Commissioner's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation.

25. In this case the tribunal accepts that the best comparable available is 5 Rushfield, Helen's Bay. This is a detached bungalow built around 1955. It is recorded as having a gross external area only 5m2 larger than the property, with a similar sized garage. The other comparables referred to in the Presentation of Evidence also support the valuation of the subject property.

26. The tribunal carefully considered the issue as to whether the appellant had provided sufficient challenge to the Commissioner's schedule of comparables. Taking all matters into account the conclusion of this tribunal is that the appellant has not placed before the tribunal sufficient evidence to displace the statutory presumption as to correctness of the capital value and therefore the appeal is dismissed and the tribunal orders accordingly.

Mr Charles O'Neill - Chairman
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 3 November 2016