

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: 27/14

VINCENT DEVLIN – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O’Neill

Members: Mr David McKinney FRICS and Dr Peter Wardlow

Date of hearing: 16 January 2015, 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 appealed against the decision of the Commissioner (on appeal) dated 8 September 2014.
3. This appeal is in respect of the valuation of a hereditament situated at 27 Ballykeel Road, Ballykeel, Cabra, Newry, BT34 5RH (“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 (on appeal) dated 8 September 2014;
 - (b) The appellant’s Notice of Appeal dated 29 September 2014;
 - (c) A written submission by Mr Damien Devlin BSc (Hons) MRICS dated September 2014 on behalf of the appellant.

- (d) A document entitled 'Presentation of Evidence' dated 28 October 2014, prepared on behalf of the respondent Commissioner by Ms Sonia McIntyre BSc (Hons) MRICS and submitted to the tribunal for the purposes of the hearing;

The facts

- (1) The property is a privately built pre 1919 detached cottage of rubble masonry construction with a pitched slate roof located off a minor road approximately three miles from Rathfriland. The property has a gross external area (GEA) of 149m² and a double garage of 37m². The property benefits from oil fired central heating. The respondent indicates that at the time of her inspection furniture and kitchen appliances remained in the dwelling. The capital value has been assessed at £95,000.
- (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, refers to an attached sheet from a quantity surveyor. Attached was a document dated September 2014, which appears to be in the form of a letter from Damien Devlin headed "Dear Sir/Madam " although it is headed "Report on detached property at 27 Ballykeel Road, Cabra, Newry". The tribunal found the status of this document unclear as the letter did not give any indication as to the experience or expertise of its author (save that it stated that the author is a member of the Royal Institution of Chartered Surveyors). The document did not contain any of the usual matters found in expert witnesses reports such as a duty to the relevant tribunal, confirmation that the report author is not under any conditional fee arrangement, that there are no conflicts of interest and that the report complies with the requirements of the Royal Institution of Chartered Surveyors as set out in their practice direction.

11. The letter from Mr Damien Devlin states the following:

“... Throughout most of the building there is considerable evidence of rising damp and consequently the presence of foul odours, dry rot in wood finishes such as skirting and architraves and the deterioration of all wall finishes and decoration. The absence of both a damp proof membrane to the external 600mm wide rubble walling and floor have through time facilitated the ingress of damp. It is noted that the windows, roof coverings, electrical installation and wall finishes are in need of replacement and without immediate action the ingress of water through the roof and windows will be a major issue certainly if not this winter period immediately thereafter. The foul drainage system is in need of complete replacement. It is well documented that the occurrence of damp in buildings has a negative impact on health, particularly in relation to respiratory illness. When you take into account all the issues that are evident in the building I would recommend that only 23 square metres of the more modern portion of the building are usable for storage purposes. The remainder of the building should be made safe and/or considered for demolition. I would also propose that the remainder of the building should be boarded up with plywood to close in window openings to prevent the opportunity for occupation and that the acceptable 23 square metres of the building are cordoned off for use as a store. Consequently the rateable value of the building in my opinion would be in the order of 15% of the £95,000 previously advised based on floor area and should be revised to £14,250 p.a.”

12. Therefore in essence the appellant submits that the dwelling is no longer habitable and that the capital value of the property should be £14,250. No comparables have been submitted by the appellant to support this proposal.

The respondent's submissions

13. In the Commissioner's Presentation of Evidence to the tribunal, Ms McIntyre submits that it is not correct to assess this property as being partially liable to assessment and that there is one hereditament as it stands. She contends that the idea of some kind of artificial apportionment of the value is at odds with the definition of capital value.

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 fabric of the building is intact. The property did not appear to require any significant reconstruction and is largely wind and water tight. It was noted that on inspection by a representative of the respondent the property had the following defects: missing ridge tiles, damp, condensation and a rotten window frame. However the respondent is of the view that these issues are inherent and would be considered normal for the age and type of building. It is considered by the respondent that there are minor repairs and improvements required but the property is capable of repair and looks habitable as it stands. In view of this fact it is contended that there is a hereditament.

16. 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 28 October 2014, with further particulars of same, including photographs of the comparable properties. In passing the tribunal notes that in the table attached to the Presentation of Evidence reference was not made to the subject property in the table as well as the comparables as in other tribunal cases. This detail while included elsewhere in the Presentation of Evidence is useful to be repeated in the table for ease of reference. Four comparables were referred to in total in the Presentation of Evidence. These were capital value assessments, the details of which are as follows:

(a) The first comparable referred to was 9 Ballyweely Road, Cabra, Ballyweely, Newry, BT34 5RQ. It is a pre 1919 detached cottage with a gross external area of 121m² and a garage of 23m². The assessed Capital Value is £85,000. There is no sales evidence for this property.

(b) The second comparable referred to was 41 Killeel Road, Hilltown BT34 5XZ. It is a pre 1919 detached cottage with a gross external area of

159m². Outbuildings on this property have been considered agricultural and are not assessed. The assessed Capital Value is £105,000. There is no sales evidence for this property.

(c) The third comparable referred to was 8 Drumdreenagh Road, Rathfriland. It is a pre 1919 detached cottage and has a gross external area of 157.5m² and an outbuilding of 12m². The assessed Capital Value is £102,500. There is no sales evidence for this property.

(d) The fourth comparable referred to was 31 Castlewellan Road, Ballymaghery, Hilltown BT34 5UY. It is a pre 1919 detached cottage and has a gross external area of 150m². The assessed Capital Value is £105,000. There is no sales evidence for this property.

The Tribunal's Decision

17. 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

18. The respondent referred the tribunal to the judgment of Mr Justice Singh in the English High Court decision of *Wilson v Josephine Coll (Listing Officer)* [2011] EWHC 2824 Admin. In that case the learned judge considered the principles to be applied in deciding whether a property was a hereditament for the purposes of the English valuation list. He stated (at paragraphs 39, 40 and 41 of his judgment):

“In answering the question correctly the respondent submitted to me what in fact should be asked as a question which is posed for Listing Officers to consider in a practice note to the council tax manual, practice note number 4. The question is as follows: “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?”

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 on whether a property is capable of being rendered suitable for occupation (in the present context occupation of 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 of being occupied for the purpose for which it is intended.

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, does 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 in fact in a legal regime whereas it is present in the legal regime which governs non-domestic rating”.

19. The tribunal has also 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?

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.

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.”

20. The tribunal notes that the approach taken by the Northern Ireland Valuation Tribunal in the *Whitehead* case is a persuasive authority however it has been adopted in subsequent decisions of this tribunal in cases such as *O'Hare v Commissioner of Valuation* and *Fletcher v Commissioner of Valuation*. Therefore this tribunal determines that the same general approach as espoused in *Whitehead* should be adopted in this case.
21. 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 there are repairs and improvements required they are relatively minor and therefore 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.
22. The tribunal has considered all the points made by the appellant in his notice of appeal and in the letter from Mr Damien Devlin and the points made by the respondent in the Presentation of Evidence. 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.
23. In the light of the decision that the subject property is a hereditament there is no necessity to consider the argument that the property should be regarded as

partly to be assessed and partly not to be assessed. The property is a hereditament and is properly to be included in the valuation list.

The capital value issue

24. 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 £95,000. 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 £14,250.
25. 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.
26. In this case the tribunal accepts that the best comparable available is 9 Ballyweely Road, Cabra, Ballyweely, Newry. This is a pre 1919 detached cottage which is a larger gross external area than the subject property and has a smaller garage. Furthermore 41 Kilkeel Road, Hilltown has a similar gross external area and no garage and has a capital value of £105,000. The other comparables referred to in the Presentation of Evidence also support the valuation of the subject property.
27. 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
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to the parties: 25th February 2015