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: 16/18

MARY MCCANN – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Christopher Kenton FRICS and Ms Angela Matthews

Date of hearing: 29 May 2019, Belfast

DECISION

The unanimous decision of the tribunal is that the subject property ought not to be included in the domestic capital valuation list. The appellant's appeal is successful and the tribunal orders that the subject property shall be removed from the Valuation List.

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 issued on 30 July 2018.

3. This appeal is in respect of the valuation of a property situated at 10 Rahony Road, Tattymoyle Upper, Fintona, Omagh, County Tyrone, BT78 2JX ("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. Reference will be made later in this decision to the relevant case law to which the tribunal was referred by the parties.

The Evidence

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

   (a) The Commissioners Decision issued on 30 July 2018;
   (b) The appellant's Notice of Appeal dated 19 August 2018;
   (c) A document entitled 'Presentation of Evidence' dated 6 November 2018, prepared on behalf of the respondent Commissioner by Gerard McGennity MRICS and submitted to the tribunal for the purposes of the hearing;
   (d) Evidence submitted by the appellant dated 5 December 2018;
   (e) Response from the respondent dated 9 January 2019.
   (f) Letter from the appellant dated 19 January 2019
   (g) Response from the respondent dated 8 April 2019

The Facts

(1) The property is a privately built pre-1919 detached cottage. The subject property is located in a rural area on the Rahony Road. It has a gross external area (GEA) of 92.6m^2. The capital value has been assessed at £45,000.

(2) The appellant contends that the property is not habitable and should not be retained in the valuation list.

The Appellant's Submissions

8. In relation to the issue as to whether the property should remain in the list as a hereditament, the appellant states that the subject property is unfit for human habitation. She indicates that the windows, doors and facia are rotten. There is no central heating.

9. The appellant further states that the only method of heating and cooking was an old solid fuel cooker in the living room. This now cannot be used. She confirms that all the copper piping and hot water cylinder were stolen in 2009 and that the tiles on the kitchen and living room floors are asbestos tiles.

10. As to the previous occupancy of the subject property, the appellant states that the property was renovated in the 1970s and had been rented since then with the last tenants leaving about 15 years ago. The appellant states that her estate agent views the property as a site only.

11. As to the circumstances of the appellant, she indicates that she cannot repair the property because in 2008 a virus caused ME and she remains ill to the present day. She states that she was too ill to object to rates being charged for the property firstly in 2012 and has only recovered somewhat during 2018 so that she can sit up more and can deal with things a little better. She poses the question does this constitute a force majeure and should any reduction in rates be back dated to 2012.

12. In response to the respondent's Presentation of Evidence, the appellant states that the subject property is not in an average state of internal repair and fit out as the window frames are so rotten that the glass is missing in places and the frames are too rotten to hold another pane of glass. She would further state that having regard to its age, character and locality, it is not in the same acceptable condition as many old cottages anywhere else or in that locality.

13. The appellant states that an estate agent McAtee Bros, Fintona advised her in 2010 that no one would buy the property to live in and that any buyer would need to demolish it and start again.

14. In relation to the comparable evidence submitted by the respondent, the appellant states that 66 Rahony Road is not comparable because it is habitable unlike the subject property. Its windows, doors and guttering are in an acceptable state and 'dusted down and painted' the house at 66 Rahony Road is fit to be lived in'. The appellant further states that she cannot comment on the other comparisons as she has not seen them.

15. In the light of these matters the appellant contends that the property should be exempt from domestic rates. She further states that the capital value of the property should be £15,000.

The Respondent's Submissions

16. In the Commissioner's Presentation of Evidence to the tribunal Mr McGennity confirmed that he inspected the property. In his evidence he states that the external fabric of the building is intact. Internally he noted some kitchen units and basic décor. However, he admits that the subject property is in need of complete renovation internally. The external repair of the subject property is in very poor condition given the overgrown nature of the site. The windows and fascia/soffit are in poor condition and now need to be replaced. He further indicates that part of the dwelling to the rear is of flat roof construction. He confirms that the appellant stated that the subject property has been vacant for 15 years and he is of the view that it has clearly declined in that time.

17. 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.

18. In relation to the present appeal the respondent states that the subject property is a hereditament.

19. In relation to the capital value of the subject property, the respondent states that the capital value had been reduced from £72,500 to £65,000 on 22 August 2012 to reflect its condition. An application to the District Valuer resulted in the capital valuation being reduced on 7 June 2018 to £52,500 to reflect poor external repair. On 20 July 2018 it was further reduced to £45,000 by the Commissioner of Valuation to reflect the poor construction of the flat roof to the rear of the property as well as the generally poor external repair of the subject property.

20. Reference was made in the Presentation of Evidence to a list of comparable hereditaments stated to be in the same state and circumstances as the subject property. Details of these comparable properties were set out in a schedule to the Presentation of Evidence, 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	66 Rahony Road, Meenagar, Fintona, County Tyrone	Privately built pre 1919 detached cottage in poor repair (photograph attached)	Habitable space 91m^2	£45,000
2	20 Rahony Road, Meenagar, Fintona, County Tyrone	Privately built pre 1919 detached cottage in poor repair (no photograph attached)	Habitable space 100m^2	£48,000
3	151 Tonnagh Road, Rahony, Trillick, County Tyrone	Privately built pre 1919 detached cottage in poor repair (no photograph attached)	Habitable space 110m^2	£50,000
4	15 Meenagar Road, Meenagar, Fintona, County Tyrone	Privately built pre 1919 detached cottage in poor repair (no photograph attached)	Habitable space 94m^2	£55,000

The Tribunal's Decision

21. 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

22. In relation to the listing issue the tribunal has considered recent judgments of the Northern Ireland Valuation Tribunal in *Whitehead* v *Commissioner of Valuation* and in *McGivern* v *Commissioner of Valuation*. In the Whitehead case 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.”

23. In another decision of the Northern Ireland Valuation Tribunal, that of *Lindsay* v *Commissioner for Valuation* (07/16) it was held:

> “In the briefest of summaries only therefore, the principles emerging from these latter cases include, firstly, that in Northern Ireland each case should be determined upon its own particular facts and circumstances. Secondly, that the essential concept of a “reasonable amount of repair” required in order to place any property into a proper state of habitation must be determined by the application of sound common sense and in an entirely practical and realistic manner, as opposed to by the application of any overly-rigid principle or any slavish application of the narrowest of interpretations of the dicta of Mr Justice Singh in **Wilson v Coll.** Indeed it must be said that a rather colourful (and of necessity extreme – to make the point) illustration of this latter was provided by the Valuation Member in the course of this hearing when the Member cited the hypothetical example of “Dunluce Castle”. It is a fact that Dunluce Castle is “capable”

> (in terms of the proposition that this could physically be done) of being repaired, perhaps it might be postulated, to provide luxury hotel accommodation on the Causeway Coast. The mere fact that it is "capable", in these terms, of being repaired cannot be disassociated from the extremely high economic cost and the technical issues of doing so. Not upon any reasonable assessment could it be properly said that a "reasonable amount of repair" would be required and thus that (if it were classified as a domestic property) Dunluce Castle ought to be included in the Valuation List. This extreme example hopefully serves to make the point. Thirdly then, the Valuation Tribunal in making this determination is not entitled to take into account the individual circumstances of any appellant, including the personal financial circumstances of that party."

24. In deciding this matter, from the relevant case law, it is clear that the tribunal is not permitted to take into account the individual circumstances of the appellant including his or her financial circumstances. Therefore, no account can be taken of the fact that the appellant has suffered from ME and could not repair the property due to this. Neither can any account be taken of the financial circumstances of this particular appellant.

25. The question for the tribunal to consider is whether the property is such that - 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? In this regard the tribunal has to take a broad view of all the facts relevant to this case applying the decision-making factors included in the *Whitehead* case.

26. Factors which would lead to the conclusion that a hereditament exists are, as the respondent states, that in its view the external fabric of the building is intact, inside there are some kitchen units and basic décor.

27. However, the appellant states that the windows, doors and fascia are rotten. There is no form of heating in the property. All the plumbing equipment has been removed from the property. It is accepted by the respondent that the external repair of the property is very poor given the overgrown nature of the site. Part of the dwelling to the rear is of flat roof construction.

28. Pertinently, the appellant had contacted an estate agent in 2010 and it was confirmed to her that no one would buy the property to live in and that any buyer would need to demolish the property and start again.

29. The tribunal would state that it has not found this to be an easy case in which to consider whether a hereditament exists. It is appreciated that there are cases which involve properties which are truly derelict and which clearly and manifestly ought not to be included in the valuation list. However, this is not one of those cases. However, the tribunal is also mindful of the fact that there can be cases in which it would be possible to expend more money on repairing a property than it is actually worth at the end of the enterprise. In such circumstances does this pass the reasonableness test in relation to a reasonable amount of repair works? Reference was made earlier to *Lindsay* v *Commissioner of Valuation* in which it was noted that there can be cases in which a building, though capable of being repaired, cannot be disassociated from the extremely high economic cost of doing this. Is it reasonable in such circumstances to conclude that a reasonable amount of repair would be required?

30. This issue can perhaps be more acutely in question in relation to modestly valued properties in which it would take such a large amount of money to be expended on the property such that it could be occupied as a dwelling. In this case the tribunal concluded, relying on input from the valuation member, that the amount required to repair the property to a state where it could be occupied as a dwelling would be greater than what the property would be worth once the works had been completed.

31. Therefore, in establishing a reasonable amount of repair works to be undertaken the tribunal has to consider all the relevant facts “in the round”.

32. In this case, the issue as between the submissions on behalf of the appellant and the respondent are finely balanced. However, in deciding the matter the tribunal unanimously has come to the conclusion that the subject property is such that having regard to the character of the property and a reasonable amount of repair works being undertaken this property could not be occupied as a dwelling. It will

be appreciated that this relates to this case only and this tribunal recognises that each case will be such that it has to be considered on its own merits and that this in no way binds any tribunal to conclude a similar view in a different case.

33. Therefore, the conclusion of this tribunal is that the appeal succeeds and the subject property should be removed from the valuation list.

34. The appellant has sought that any reduction in rates be back dated to 2012 in the light of her stated medical condition. She has not produced any medical evidence in relation to this. It would appear from the Presentation of Evidence of the respondent that the first application in relation to the subject property was in fact made in June 2018 almost six years since the date the property was deemed by the respondent to be capable of beneficial occupation and the capital value reduced to reflect its condition.

35. In the light of this delay and in the absence of medical evidence, the tribunal has decided that the order shall take effect from the date this decision is recorded in the register and issued to the parties.

Signed: Mr Charles O'Neill, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 3 July 2019