

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: NIVT 12/23

MARGARET KERR - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr T Hopkins FRICS & Dr P Wardlow

Hearing: 29 April 2025, Belfast

DECISION

The unanimous decision of the tribunal is that the appellant's appeal is not upheld and the tribunal Orders the property to continue to be listed in the Valuation List at the Capital Value such as has been determined by the respondent.

REASONS

Introduction

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, by Notice of Appeal (Form 3) received by the tribunal on 12 December 2023 appealed against the decision of the Commissioner of Valuation in a Valuation Certificate in respect of the Capital Value of a property situated at number 21

Derrygally Road, Dungannon, County Tyrone BT71 6LX (“the property”). The tribunal notes a typographical error in some correspondence from the respondent describing the property address as number 12 (not 21) Derrygally Road, Dungannon, but any such error has been deemed not to have materially affected the validity of the proceedings.

2. The tribunal sat to hear the matter on 29 April 2025. There were no appearances at hearing nor any representation, as the appellant (after having initially requested an oral hearing) then had indicated that she was content for the appeal to be dealt with on the basis of the written documentation presented. The tribunal panel members attended in person.

The Law

3. The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). As is now the case in all determinations of this nature, the tribunal does not intend in this decision fully to set out the detail of 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 previous decisions of the Valuation Tribunal, readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter. Antecedent Valuation Date (“AVD”) is the date to which reference is made for the assessment of Capital Values in the Valuation List. Until a further domestic property revaluation occurs, Capital Values are, under the statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The 2006 Order amending legislation applied to the 1977 Order, at Article 8 (2), provided that in Part 1 of Schedule 12 (concerning the basis of valuation), after paragraph 6 there was to be inserted paragraph 7. Paragraph 7 (3) provides that the assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same circumstances as another, this being the statutory principle underpinning assessment of Capital Value. The material provisions, for the purposes of the tribunal’s determination in this case, read as follows:-

11. *The hereditament is sold free from any rentcharge or other incumbrance;*

12. – (1) *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.*

(2) *The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.*

The Issue to be Determined and the Evidence

4. It is clear that a central issue in this case relates to the physical condition of the property at the material time. The appellant in the appeal form had stated “*valuation of property should only be £20,000 and should be demolished*”. The history of the matter also appears to indicate that the appellant had applied to have the property removed from the Valuation List. The tribunal therefore treated this as being both an application for a reduction of the assessed Capital Value and, perhaps more to the point, an application to have the property removed from the Valuation List. The tribunal therefore treated this as being what is termed a “listing issue” case. This contention by appellant is relatively common in appeals to the Valuation Tribunal and, as will be mentioned below, there have been a number of previous decisions made by the Valuation Tribunal on the specific point. These various previous decisions sit in the context of a number of quite widely different factual scenarios, differing from one case to the next. As is also commonly the case in appeals of this type, regarding the issue of the physical condition of the property at the material time, the respondent has sought to rehearse arguments that are often deployed concerning the so called “hereditament test”, again more of which below. The tribunal had before it the appellant’s Form of Appeal to the tribunal (Form 3) and the documents also included the following:

- 4.1 Copy Valuation Certificate in regard to the property, issue date stated to be 9 October 2023, signed by the Commissioner of Valuation indicating a Capital Value of £100,000 (here the tribunal accepts that there was a typographical error in the copy of that Valuation Certificate seen by the tribunal, which Certificate ought to have been dated 9 November (not October) 2023, but which said error has been deemed not to have materially affected the validity of the Certificate).

- 4.2 A document dated 10 January 2024 consisting of a Presentation of Evidence prepared on behalf of the Commissioner of Valuation, as respondent, by Mr Andrew Carr BEng MRICS and submitted to the tribunal. This Presentation of Evidence includes a timeline which indicates, in a little detail, the following material dates:

29 October 1990: a certificate was issued confirming the property was entered into the Valuation List

29 October 2014: the agricultural allowance was removed and an extension to the property was valued. The Capital Value was increased from £80,000 to £130,000.

5 December 2016: the Capital Value was reduced from £130,000 to £100,000, following an application.

6 September 2023: there was an application to have the property removed from the Valuation List.

3 October 2023: a Certificate was issued by the District Valuer confirming no change to the assessed Capital Value of £100,000.

17 October 2023: an appeal case to the Commissioner of Valuation was registered.

9 November 2023: a Certificate was issued by the Commissioner of Valuation (see observations above) confirming no change to the Capital Value of £100,000.

12/13 December 2023: the matter was appealed to the Northern Ireland Valuation Tribunal.

4.3 The appellant in this appeal made no specific response to the content of the Presentation of Evidence, for example by making a specific challenge to the comparables set forth therein or to the methodology employed in assessing the Capital Value by the respondent, nor by advancing any factual or legal submissions or arguments. The Presentation of Evidence was therefore largely unchallenged, save as to the fundamental issue of whether or not the property ought, or ought not, to be included in the Valuation List (or alternatively whether the Capital Value ought to be reduced). The “listing issue” was accordingly the central or primary issue requiring to be determined by the tribunal.

4.4 The Presentation of Evidence provides a property description (with which basic description the appellant does not appear to take issue). The property is a pre-1919 detached cottage with rendered block walls, pitched tiled roof, single glazed timber frame windows and hardwood doors. It is located on the Derrygalley Road approximately 3.3 km north-east of Moy village. The Valuer reports that on the day of inspection the property was not occupied but appeared to be wind and watertight. Some elements of disrepair were noted, including damaged PVC guttering and damp. Internally the property appeared basic and the opinion was expressed that it would clearly benefit from repair and renovation. It was the further opinion of the Valuer that the property was in an average state of external repair. Photographic evidence was provided in the Presentation of Evidence which the tribunal found to be helpful, the photographs having been date stamped (and presumably taken on) 28 September 2023 and 25 October 2023. These photographs show both the external condition of the property and there are also some photographs of the interior. The Presentation of Evidence replicates the appellant’s grounds of appeal

which are stated in the appeal form as follows: *“both flat roofs leaking, windows all leaking, no septic tank, no toilet, no heating – oil burner not working, back boiler leaking, kitchen not fit for cooking, bathroom not usable, damp and blue mould, unfit for human habitation”*. It concludes by stating: *“valuation of property should only be £20,000 and should be demolished”*

- 4.5 In the relevant section of the Presentation of Evidence the pertinent statutory provisions are recited and then references are made to a number of previously determined decisions of the Valuation Tribunal (these will be referenced further in the section of this decision dealing with submissions). After having set forth a detailed resume of certain legal arguments as exemplified in a number of case reports, the Presentation of Evidence provides at the conclusion the statement that in the opinion of the Valuer and considering the previous Northern Ireland Valuation Tribunal decisions cited, the property was not truly derelict and that, with a reasonable amount of repair, it could be occupied as a dwelling: it therefore must be concluded that a hereditament exists and the application of the statutory assumptions contained in schedule 12 of the Rates (Northern Ireland) Order 1977 should be applied, including the assumption 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. It was thus proposed to retain the property in the Valuation List.
5. The Appendix to the Presentation of Evidence provides details in respect of a total of four identified submitted comparables, excluding the property. It is not proposed to provide the full detail of these in this decision as these have not been specifically challenged by the appellant. Basic identification is therefore sufficient, for the purpose. A helpful location map is provided in respect of all the identified properties, which are noted all to be in relatively close proximity, located in a rural area. These comparables are as follows, in addition to the property:-
1. 24 Derrygalley Road, Dungannon (Capital Value £135,000).
 2. 47 Trewmount Road, Moy (Capital Value £105,000).
 3. 152 Trewmount Road, Moy (Capital Value £125,000).
 4. 53 Derrygalley Road, Dungannon (Capital Value £125,000).

The Submissions

6. The Appellant

The appellant's submissions have been noted by the tribunal, as set out in the appeal form. The appellant has made no additional submissions. In essence, the appellant's case is based upon the fundamental argument that the property ought not to be listed in the Valuation List, on account of the various factors indicated. In that regard the tribunal has inspected the evidence provided on behalf of the respondent, including mapping of comparables, the specific comparables evidence and a number of helpful photographs relating to the state and condition of the property.

7. The Respondent

Regarding the issue of whether or not the property ought to be included in the Valuation List, the submissions made on behalf of the respondent in the Presentation of Evidence are ones which are relatively familiar to the tribunal. Submissions of this type are advanced in the majority of such cases. As is the recent practice of the tribunal, it is not regarded as necessary to rehearse these arguments in detail for the reason that the fundamental arguments and propositions have been thoroughly addressed in a number of prior decisions of the Valuation Tribunal over a number of years, all of which are publicly-available. The respondent's submission in this case proceeds with a commentary upon the "hereditament test" and references the commonly-cited case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)***, this being a judgment of the High Court in England which, as mentioned, has been the subject of previous observations set out in a number of decisions of the Valuation Tribunal in Northern Ireland. Thus, for the respondent it is submitted that ***Wilson v Coll*** is relevant to the determination of this appeal as it proposes the appropriate test to be applied – a physical rather than an economic test. The critical distinction here is not between repairs which would be economic to undertake (or uneconomic) but rather the proper distinction is to be drawn between a truly derelict property, incapable of being repaired to make it suitable for its intended purpose and repairs which would render it capable again of being occupied for the purpose for which it was intended. The test of what is reasonable has been applied by the Valuation Tribunal in previous determinations. The Presentation of Evidence makes reference to ***Whitehead Properties Ltd v Commissioner of Valuation [NIVT 12/12]*** (the latter being the first case in which the Valuation Tribunal interpreted ***Wilson v Coll*** as that judgment might properly be applied in Northern Ireland); ***McGivern v Commissioner of Valuation [2017]***; ***Cooper v Commissioner of Valuation [2019]***; and ***Philips v Commissioner of Valuation [2021]***. The submission cites in detail extracts from the judgement of Mr Justice Singh in ***Wilson v Coll*** and from that of the Valuation Tribunal President in ***Whitehead*** and, again, it is not necessary to rehearse these in this determination, for the reasons stated.

8. The concept of assessing (without applying any economic test - which the tribunal is prohibited from doing) whether or not a specific property under appeal is truly derelict and reasonably incapable of repair or, alternatively, whether it may reasonably be repaired as so as to make it suitable for its intended purpose and thus render it capable of again being occupied must be determined by the tribunal from the facts in this case, as in all such cases.
9. The general principle is that if any property required even quite significant renovation works, that of itself does not effectively counter the proposition that the property ought to be retained in the Valuation List as a hereditament, pending completion of any necessary renovation works. Again, it might be perhaps a little difficult for the appellant to understand this concept. However, that is the proper application of the law in cases of this type, as it currently stands in Northern Ireland. As was remarked in **Whitehead**, the tribunal must guard against an extreme or entirely forced or entirely artificial interpretation of things. For this reason the comment has been made in earlier cases that each individual case must depend upon its specific facts and circumstances. The tribunal has therefore carefully examined all of the relevant circumstances in this case emerging from the evidence.

The Tribunal's Determination

10. Taking everything into account, the tribunal's unanimous conclusion from the facts and applying the law, is that the property is properly to be included in the Valuation List. Further to that, the tribunal has considered the evidence available from the comparables (notwithstanding that there was no express challenge made to these made by the appellant) and the determination is that the assessed Capital Value is in line with the evidence emerging from these comparables: it is appropriate and correct, as assessed. On account of this, the appeal cannot succeed and the tribunal Orders the property to continue to be listed in the Valuation List at the Capital Value such as has been determined by the respondent.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 21st May 2025