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: 03/24

JAMES McGOVERN - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President
Members: Mr A Tough FRICS and Ms N McCartan

Hearing: 22 October 2025, Belfast

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed, without further Order.

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 Notices of Appeal (Forms 1 & 3) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate issued 21 December 2023 (confirming that the following-mentioned property was demolished, with an effective date of 30 January 2023). The tribunal shall refer to this latter date as being “the demolition date”. This appeal was in respect of the Capital Value of a hereditament situated at Rouken Lodge, 26 Bryansford Avenue, Tollymore, Newcastle BT33 0LG (“the subject property”). The

matter has been subject to a number of adjournments, at the appellant's request, before coming on for an oral hearing.

2. The appellant, in making his appeal, indicated that he wished to have an oral hearing. The tribunal convened on 22 October 2025, with the respondent being represented by Mr Andrew Carr MRICS, accompanied by Ms Gail Bennett MRICS. On the hearing date, the ordinary member of the tribunal was unavoidably unable to attend in person and attended remotely by WebEx and the chair and valuation member attended in person, as did the appellant.

The Law

3. The 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 or "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 legislation, at Schedule 12, paragraph 7 of the 1977 Order provides that the Capital Value of a hereditament shall be the amount which, on the assumptions mentioned (materially paragraphs 11 and 12 of Schedule 12, the details of which are mentioned below), the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date. The relevant paragraphs of Schedule 12 include the following statutory assumptions, which provide that –

- The hereditament is sold free from any rentcharge or other incumbrance;
- 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,

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

The tribunal shall further allude to some case law authorities (including previous decisions of the Valuation Tribunal). The appellant and the respondent's representatives both advanced legal arguments referencing certain of such authorities. These provided a measure of assistance in the decision-making of the tribunal and the tribunal is grateful to the parties for these articulately-presented submissions, in writing and orally.

<u>The Issue to be Determined and the Evidence</u>

4. The central issue in this case relates to the location, state and condition of the subject property, Rouken Lodge, 26 Bryansford Avenue, Tollymore, Newcastle BT33 0LG in the rating period prior to the demolition date, effective 30 January 2023. The respondent's Presentation of Evidence (more of which below) contains a "Flood Map" which delineates certain areas of Newcastle which have been deemed subject to flooding. The subject property sits within the Flood Map delineated areas. This fact is readily accepted both by the appellant and also by the respondent. In the appellant's case some fundamental issues arise from this locational issue which the appellant has carefully presented, both in writing and orally, in his appeal to the tribunal.

5. The tribunal sought to establish definitively with the appellant that the proper focus of the tribunal ought to be placed upon the location, state and condition of the subject property for a period of time leading up to the demolition date. The issue of contention, as far as the appellant was concerned, was whether at various stages of the process prior to the demolition date the subject property ought to have been rated or, as the appellant sought to argue, whether the subject property ought to have been exempt from rating, by the proper application of rating law to the essential facts. It is therefore the task of the tribunal to assess relevant evidence concerning the state and condition of the subject property prior to the demolition date and to establish material facts for consideration in this appeal.

6. With this specific and agreed focus in mind, the tribunal considered any oral evidence from the appellant and also any documentary evidence emerging from the available papers and documents, including any photographic evidence adduced. The tribunal had before it the appellant's Notices of Appeal to the tribunal (Forms 1 & 3) and the documents also included the following:-

- The Valuation Certificate issued 21 December 2023.

- A document dated 12 June 2024 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Mr Andrew Carr B.Eng. (Hons) MRICS and submitted to the tribunal.

- Copies of various communications from the appellant to the tribunal consisting of written submissions and other communications relating to the case.

7. The subject property and history has been described in the Presentation of Evidence (PoE), with a useful Rating History/Background section which sets forth the following material dates:

2 July 2015 – A3 registered to remove property from the list "property derelict and not fit for occupation".

16 October 2015 – Certificate issued. Property not considered derelict. CV decreased from £195,000 to £190,000.

8 September 2020 – A3 registered to have property revalued/removed from the List "property is flooded".

27 August 2021 - Certificate issued. Valuation considered fair and reasonable. No change to CV at £190,000.

11 July 2023 - A3 registered to have new property valued. Case type changed and case used to remove the subject from the Valuation List.

2 November 2023 - Certificate issued. Subject removed from the Valuation with effective date of 30/01/2023.

5 December 2023 – Appeal to CoV registered.

21 December 2023 - Certificate issued. No change to date. Subject removed from the Valuation List with effective date 30/01/2023.

13 February 2024 – Notification received from NIVT confirming Notice of Appeal.

13 February 2023 (sic - presumably “2024”) - Appeal to NIVT registered.

8. The PoE states that the subject property was listed as a privately-built detached bungalow, constructed circa 1970. It is demolished. The subject property had a Gross External Area (GEA) of 148 m² with an integral garage of 33 m². The Capital Value of the subject property was assessed at £190,000. It was located on Bryansford Avenue, near the centre of Newcastle. Like many other properties in the Newcastle area, the subject property fell within the floodplains of the Shimna, Burren and Carrigs rivers. On the day of inspection, work was progressing on the replacement property. Photographic evidence is annexed to the PoE, with images taken in October 2021, April 2022, February 2023, July 2023 and December 2023. These include depictions of the demolition of the subject property and construction work in respect of a replacement dwelling (in December 2023). Mr Carr states that he spoke with the appellant and explained to him the concept of the “hereditament test” (more of which below) and records that the appellant had stated that he began to renovate the subject property in 2020 but some time later he made the decision to demolish and rebuild, instead of continuing with the renovation. The appellant had stated that he began stripping out the subject property (removal of asbestos, radiators, “loos” and kitchen) in December 2021 and that he wanted the subject

property to be removed from the Valuation List from that date. The appellant had confirmed that the external fabric of the building was intact until 30 January 2023 and he had provided photographic evidence of the demolition in progress, including an asbestos disposal certificate.

The Submissions of the Parties and the Tribunal's Consideration of the Issues

9. It is now helpful to set forth some of the arguments contained in the respective cases of the appellant and the respondent, beginning with the respondent's case.

The Respondent's Case

10. In the PoE, after having set out the appellant's case, Mr Carr on behalf of the Commissioner respondent has stated that the main issue in the case is an appeal against the Effective Date of the removal of the subject property from the Valuation List. The second issue is to consider the capital valuation of the subject property before it was demolished. The case is that the effective date for removal of the subject property was 30 January 2023 (the demolition date) and that the assessed Capital Value of £190,000 was fair and reasonable, prior to that. The PoE then sets forth a detailed submission concerning the legal position as it is submitted to apply to the subject property.

11. The legal case arguments set out in the PoE make reference to the cases of: ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and to the judgement of (as he then was) Mr Justice Singh in that case. There was reference made that ***Wilson v Coll*** has been considered, in the Northern Ireland jurisdiction, in the case of ***Whitehead Properties Ltd v Commissioner of Valuation (NIVT 12/12)***. There was also a reference to ***Gilmore v CoV (NIVT 7/19)***. It is unnecessary to set out the detail of the extracts cited in the PoE from these cases, but the tribunal will return to the principles below. In summary, the case made for the respondent is that the subject property was externally intact up until a building contractor started demolition on the demolition date. Until that date, the subject property would have

passed the “hereditament test”, so it is submitted, and thus it would have fallen for inclusion within the Valuation List up until the demolition date. The statutory assumptions contained in Schedule 12 of the 1977 Order must be applied, particularly the assumption of average internal repair. The PoE had identified four comparable properties which were considered as similar to the subject property in terms of location, age, size and construction and these comparables suggested that a Capital Value of £190,000 for the subject property was fair and reasonable. Appendix 1 to the PoE sets forth a schedule of five properties, including the subject property, the details of which are identified as follows (all these being 1966 – 1990 detached bungalows, built around 1970):

1. 26 Bryansford Avenue, Newcastle GEA 148 m², garage 33 m², Capital Value £190,000 (the subject property).

2. 75 Bryansford Avenue, Newcastle GEA 149 m², garage 17 m², Capital Value £190,000.

3. 61 Bryansford Avenue, Newcastle GEA 139.95 m², garage 21 m², Capital Value £185,000.

4. 51 Bryansford Avenue, Newcastle GEA 141 m², garage 17.6 m², Capital Value £185,000.

5. 45 Bryansford Avenue, Newcastle GEA 139.3 m², garage 25.3 m², Capital Value £180,000.

12. The tribunal has noted a consistency among these identified comparables, with certain useful evidential information to be gained by considering these and, indeed, it is noted that the appellant has not directly sought to challenge either the selection of these comparables nor the valuation information emerging from this evidence. He has not put forward alternative comparables evidence seeking to challenge this assessment, as such. Instead, the appellant’s argument, which shall now be mentioned, is that the subject property ought not to have been included in the

Valuation List at all: he has entirely rejected the respondent's arguments in that regard. What then are the appellant's arguments?

The Appellant's Case

13. In his appeal forms and in written submissions, further emphasised by the appellant at the oral hearing, the appellant has sought to argue, citing various authorities, that the respondent was mistaken in including the subject property in the Valuation List for the reason that it did not pass the "hereditament test" in the period leading up to the demolition date. It is clear that the appellant has made himself familiar with certain aspects of rating law and the tribunal is grateful to the appellant for the clarity with which he has set forth his submissions.

14. The appellant states that in placing reliance upon the case of ***Wilson v Coll***, the respondent had neglected to take account of the Valuation Tribunal's comments in the case of ***Gilmore v COV***. To take the following extract from the appellant's submissions (it being noted that the chair in that case was Mr Farrelly and not Mr Leonard):

> (LPS) "….*neglected to take account of Mr Leonard's comments in paragraph 12 of Gilmore v VO (NIVT) - whether a property remains a hereditament involves consideration of* ***whether it is capable of being rendered fit for its intended purpose*** *of occupation with a* ***reasonable*** *amount of repair works… In paragraph 15 of the same judgement, he noted the absence of any economic test and went on to consider what constituted a reasonable amount of repair work and concluded that this turned on the facts".*

15. The appellant's argument continues:

> "*My home was no longer capable of being rendered fit for its intended purpose, as it was low lying. It was badly flooded twice since 2008, and has had a number of near misses right up to December 2023"*.

16. The appellant then refers to the case of ***Whitehead v COV*** (at paragraph 26) which case (being the first case of its kind in Northern Ireland to deal with this subject

matter) had discussed the concept of “reasonableness” as: “*generally the way a rational and just person would have acted*” and where it had been observed that the tribunal was reluctant to lay down any rigid principle that, in effect, inhibited or prevented the tribunal from taking a proper, comprehensive and broad view, in the round, of all the relevant facts. The appellant then quoted from paragraph 26 of ***Whitehead***, in summary submitting that, although there is no economic test, focusing upon what was purely physically possible might lead to an unrealistic and indeed a irrational and unreasonable view of things, for anything might be repaired and reinstated if one were acting outside the limits of reason. Because of this, the tribunal was required to focus upon the facts in each individual case and each individual case was therefore essentially fact-specific. The appellant’s argument rested upon the proposition that to renovate (for example) an; “…*old property that could never be satisfactory for its purpose*”.. “…*virtually worthless (nobody would buy it to use as a home, as it’d be a constant source of anxiety and potential for similar future financial, potentially uninsurable expenditure) would be irrational and unreasonable*”.

17. The appellant sought to draw to the tribunal’s attention several points of asserted fact, including the following: the subject property was a low-lying 1970s bungalow with a repeated history of flooding; the price of (pre-flooded) renovation was approximately the same as rebuilding; the appellant had just undertaken a renovation to modernise it when the Shimna River flooded it again in 2020; the floor could not be raised above the flood levels due to the limited roof height, so it would always be of restricted value (nobody wants a house that floods – the “worthless house”); the appellant’s insurance company was happy to reinstate the property to its pre-flood configurations but not in line with the renovation that was already underway. The appellant would be reinstating the existing room configurations and damaged systems to upgrade and to match the renovation and new building standards, which was stated to be clearly an unreasonable and irrational situation – “a Catch 22” – a worthless repair; structural issues became apparent in the aftermath of the flood further emphasising the correctness of the appellant’s decision to demolish and rebuild; the appellant made the decision and arrangements to demolish and rebuild at a flood-safe level, even though the appellant had already spent considerable time and money in getting a renovation under way. Critically, it would have a raised and solid floor and this would make it truly fit for purpose and would be of value to the appellant on the property market.

18. Further to this, the claimant argued, citing the case of ***Newbigin (Valuation Officer) (Respondent) v S J & J Monk (a firm) (Appellant) UKSC/2015/0069***, that while building was undergoing reconstruction, it may be incapable of occupation for a time and that it had been the practice of the Valuation Office (in England & Wales) to treat the property as a hereditament with only a nominal value, rather than temporarily to remove the property from the rating list. The appellant concluded submissions with the argument that, should the tribunal disagree with his basic propositions, he believed that the subject property should have been considered for a lower valuation for the inevitable works period.

The Tribunal's Decision

19. The Valuation Tribunal, in earlier determinations, has made observations at some length, regarding the case of ***Wilson v Coll*** and the judgement of (as he then was) Mr Justice Singh, in that case. As mentioned, ***Wilson v Coll*** has been considered, in the Northern Ireland jurisdiction, in several appeals to the Valuation Tribunal, the first of these being ***Whitehead Properties Ltd v Commissioner of Valuation*** where the Valuation Tribunal conducted a detailed consideration and analysis of the principles properly to the extracted from ***Wilson v Coll*** and the appropriate application of these principles in the jurisdiction of Northern Ireland. The tribunal does not intend in this decision to rehearse that detailed analysis, already conducted, with which both parties to this appeal are seemingly familiar. So, in the briefest of summaries, the principles emerging are, 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***. Thirdly, the Valuation Tribunal in making any determination is not entitled to take into account the individual circumstances of any appellant, including the personal financial circumstances of that party.

20. In this specific case, the tribunal examined any evidence concerning the history prior to the demolition date. The appellant had given evidence of his progressing

reconstruction of the subject property up to a point when he made the determination to demolish and to rebuild. The evidence is that he had stripped out some of the interior quite a considerable time before the demolition date. His account was that he had applied for planning permission both for the demolition and reconstruction and he asserted that he could not begin the demolition, as the tribunal understands it, primarily for the reason that he did not want to demolish and then be left in a situation where he had failed to secure planning permission for rebuilding. Once he secured planning permission, which from the evidence was in April 2022, there was still a further time lag before the commencement of the demolition operation.

21. He explained this timeline to the tribunal by stating that he had to secure tenders not just for the demolition but also for the same contractor to do the rebuilding. The tribunal had a little difficulty in understanding two aspects of this. Firstly, why, in anticipation of getting planning permission, the appellant had not at least secured a demolition contractor to commence work immediately the planning permission came through (if the appellant had indeed been concerned about the risk of demolition prior to that) and, secondly, (whilst it is within the appellant's discretion to secure the same contractor for both demolition and construction operations) why it took so long for this nominated contractor to come on site and to commence the demolition stage and, indeed, why this could not have been adequately arranged in advance in order to coincide with the granting of planning permission in April 2022.

22. From the facts of this, the only conclusion that can be drawn by the tribunal is that the appellant wished, in effect, to "keep his options open" concerning the possibility of retaining the existing structure of the original building. This, however, presents a difficulty for the appellant. In the view of the tribunal, there was nothing preventing the appellant negating the risk of a continuing rating liability by proceeding with the demolition immediately he had taken a decision not to proceed with the original renovation plan. As the tribunal understands it, any party shall need consent to demolish listed buildings, structures and scheduled historic monuments. In conservation areas and areas of townscape or village character, consent is required to demolish any building. However, if demolition of buildings or other structures shall not affect any historic environment or is not otherwise controlled or prohibited, a party does not need consent. Accordingly, the tribunal cannot discern any planning consent reason, upon the facts of this case, for the appellant not to have proceeded with demolition.

23. It is quite evident that, up until the time he made that critical decision, the appellant had decided to keep the structure intact and to proceed with the planned renovation, not with demolition. Accordingly, there was a structure that was (upon the inevitable conclusion to be drawn from the appellant's decisions and actions at this time) capable of reinstatement: indeed that was the appellant's plan. The tribunal is aware of the appellant's voiced concerns about the risk of being left with a demolition site but with no planning permission to rebuild. However, the appellant has endeavoured to remove any element of risk whatsoever by relying upon the maintenance of the integrity of a structure well beyond the point at which he made the critical decision to demolish and rebuild and therefore he has inevitably assumed the corresponding risk that this maintained structure would continue to be rated. It was his conscious decision to do so. In effect, the appellant "cannot have it both ways". He appears to have wanted to adopt a risk-free course, relying upon the fact that he could take whatever time he needed to proceed with his plans, but seeking to rely on rating exemption.

24. In summary, the tribunal cannot uphold the appellant's proposition in this appeal. Therefore, the effectively risk-free "keeping options open" approach is inevitably going to be at the cost of the public purse, by the appellant arguing that the subject property would not be liable to rating, whilst he "kept his options open". This approach cannot be supported by the tribunal.

25. There is plenty of authority for the proposition that (on account of the statutory assumptions mentioned above) even major internal construction of a property does not cause it to cease to be a hereditament, for rating purposes. The public policy reasons underlying this are well-settled. Upon the facts, the subject property was roofed, had intact walls and doors and windows and it was seemingly weather and watertight, all the factors that in previous cases determined by the Valuation Tribunal have resulted in a hereditament being deemed to exist. Whilst there is what is known as the "developers' exemption" applied on behalf of the respondent in Northern Ireland, as far as the tribunal understands the situation, there is no policy in this jurisdiction of applying a reduced or a nil Capital Value whilst renovation work is proceeding. The tribunal does not find that this ought to have been the case in this appeal.

26. As mentioned, the tribunal has commented in other cases of this type upon the public policy considerations underlying the rating of empty homes and those which are undergoing internal renovations, especially so in the context of the statutory assumptions which have been applied by the respondent in this case.

27. The tribunal has carefully noted what might be termed the "flood plain" argument articulated by the claimant in the course of the oral hearing. This is an argument to the effect that the existence of the subject property in a "flood plain" lifts it into a different category than that which might apply to the facts of the other cases and that, as each case is fact-specific, this factor cannot be ignored. Notwithstanding this, once the decision had been made by the appellant not to proceed with the reconstruction, but rather to demolish and rebuild, the appellant ought to have proceeded forthwith to demolish and he would have thus been spared any further rating liability: he consciously chose not to do so. Prior to this, he chose to maintain the external integrity of a potentially-rateable structure, capable of reinstatement. He now looks for support from the rating system in regard to his decision-making. However, he cannot rely upon the indulgence of the rating system in order to grant him a rating exemption in respect of decisions made by him and delays incurred which could have been differently-taken decisions or otherwise managed delays and which might otherwise have resulted in no rating liability whatsoever.

28. Taking all of this into account and considering the circumstances of the subject property up to the demolition date, the tribunal is required to assess whether a hereditament did or did not exist over this period of time. Carefully considering rating law on the point and the facts, the tribunal's unanimous determination is that a hereditament did exist over the material time, prior to the demolition date, which hereditament would be subject to rating.

29. The appellant did not specifically challenge the comparables, but instead sought to rely on the exemption argument. This being so, the next issue for determination is whether the assessed Capital Value (prior to the demolition date) can be upheld at a figure of £190,000. The tribunal makes this assessment, regardless of whether there was an express challenge from the appellant or not. On behalf of the respondent, in the Presentation of Evidence there are five comparables in total, including the subject property. In the absence of any specific challenge by the appellant, the tribunal proceeded to examine the comparables evidence and to reach a conclusion

as to whether or not the Capital Value ascribed to the subject property was, in broad terms, “in tone”. Certainly, there appears to be evidence from the comparables of a relatively narrow and specific range of values applicable to properties of the same age and of roughly the same habitable space as the subject property, in the same location. There appears to exist from this evidence a consistency between the characteristics and circumstances of the subject property and the other stated comparables which certainly does not support any suggestion that the Capital Value of £190,000 is "out of tone”.

30. As the Valuation Tribunal has often observed in its decision-making, there exists a statutory presumption which is contained within the 1977 Order, at Article 54(3). On account of this, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by the Valuation Tribunal to be so incorrect that the statutory presumption must be displaced and the Valuation Tribunal must adjust the Capital Value to an appropriate figure.

31. The tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, the tribunal examined the essential issue of whether or not the appellant had put forward sufficient (or any) challenge to the respondent’s schedule of comparables and sufficient or any evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation.

32. The tribunal’s unanimous decision is that the appellant has not put forward evidence and argument effectively to displace the statutory presumption of correctness in respect of the capital valuation applied to the subject property. For that reason, the Capital Value has been correctly assessed and the appeal, on any ground, cannot succeed and it is dismissed by the tribunal, without further Order.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 12 November 2025