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 42/24

MICHAEL McCOY - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr Brian Reid FRICS & Mr Garry McKenna

Hearing: 25 June 2026, Belfast

DECISION

The unanimous decision of the tribunal is that the appellant's appeal does not succeed and the appeal is dismissed by the tribunal.

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) dated 12 November 2024 appealed against the decision of the Commissioner of Valuation in a Valuation Certificate in respect of the Capital Value of a hereditament situated at 11 Foxfield Road, Mobane, Crossmaglen BT34 9HZ ("the property").

2. The tribunal sat to hear the matter on 25 June 2026, Belfast. The appellant indicated that he was content for the matter to be disposed of by written representations and did not appear, nor was there any appearance for on behalf of the respondent Commissioner, who also relied upon written evidence and submissions. The panel members attended in person to hear and to determine the case.

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 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 pertinent 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; and
- 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. This is an unoccupied premises case. A central issue in this case, as in many such cases, relates to the physical condition of the property at the material time and unoccupancy, with the appellant arguing that the property should not be liable for rates as it is empty and in no condition for habitation. The respondent's position is that the property fulfils the so-called "hereditament test" and thus ought properly to be included in the Valuation List. It is thus submitted that the Capital Value has been properly assessed in accordance with established principles and statutory considerations. Regarding the issue of the physical condition of the property at the material time (and the appellant's arguments of "no condition for habitation") as in other such cases, the respondent has sought to rehearse arguments that are often deployed concerning the "hereditament test", more of which below. The tribunal had before it the appellant's Form of Appeal to the tribunal (Form 3) dated 12 November 2024. In this case for some reason there was not a Certificate of Valuation made available to the tribunal, albeit one had seemingly been requested, but in any event the date of the Commissioner's Valuation Certificate was apparent from the remainder of the documentation and it is clear that the appeal is against a Certificate of Valuation issued by the respondent Commissioner after an appeal by the appellant, issued on 11 April 2024 which provided for no change to the Capital Value at £50,000. The documentation available to the tribunal also included the following:

4.1 A document dated 20 April 2025 consisting of a Presentation of Evidence prepared on behalf of the Commissioner, as respondent, by Mr Andrew Carr MRICS and submitted to the tribunal. This Presentation of Evidence includes a timeline, a part of which includes certain material dates and shows that an application for rates exemption has been made on the basis that the property was a derelict, as far back as 2016:

9 August 2016: Certificate issued. No change to Capital Value at £50,000.

6 September 2016: Appeal to Commissioner of Valuation.

28 September 2016: Certificate issued. No change to Capital Value at £50,000.

10 October 2023: External application on the basis that the property was stated to be uninhabitable.

22 February 2024: No change to Capital Value at £50,000.

29 February 2024: Appeal to Commissioner of Valuation.

11 April 2024: Certificate issued. No change to Capital Value at £50,000.

6 December 2024: Appeal to Northern Ireland Valuation Tribunal.

4.2 Copies of various emails to the Tribunal Secretary from the appellant and on behalf of the respondent and emails from the Tribunal Secretary to the parties.

5. The Presentation of Evidence provides a property description (with which basic description the appellant does not appear to take significant issue). The property is a pre-1919 detached cottage, located 200m down a lane off Foxfield Road, approximately 1.9km SSE of Crossmaglen and 2.75km E of Cullaville. It has a GEA of 102.5 m² and the Capital Value is assessed at £50,000. Further information from the Schedule to the Presentation of Evidence states that there property is single-storey, there is no garage, it is in Crossmaglen Ward, and that the external repair is deemed to be "poor". When the property was inspected by the respondent's Valuer on 29 March 2024 and again on 17 January 2025, the external structure of the property was assessed as remaining largely intact. Some roof tiles were damaged and some of these were noted to have been replaced. There were signs of damp on most of the external walls and internally the property was in poor repair. Damp was visible on most of the walls and ceilings. The roof was damaged and leaking in one of the bedrooms and in the bathroom. In the Valuer's opinion the property required refurbishment to make it habitable. External photographs of the property are provided in the Presentation of Evidence and these were reasonably adequate for the tribunal to assess the overall condition of the property, externally. There were also a number of internal photographs provided in the third Appendix to the Presentation of Evidence and the internal condition was noted, insofar as relevant, as far as six rooms were concerned, with evidence of a collapsed bedroom ceiling, presumably due to the water penetration. From the photographic evidence, the windows appeared to be reasonably intact and the roof, overall, appeared intact and slated and indeed some repairs work appeared to have been conducted in order to reinstate part of the roof which had fallen into disrepair. The tribunal was uncertain as to when this latter reinstatement roof work had been carried out, but clearly some work had been undertaken to ensure the property remained weathertight. There was also a location map indicating the location of the property and some other properties which are submitted on behalf of the respondent as being comparable.

6. In his appeal, the appellant contended that the property had been unoccupied from November 1994 and that, prior to her demise, his mother had lived there alone. In 1992 a Renovation Grant was approved, but then a Grant for a replacement dwelling at an alternative site had been subsequently approved. Unfortunately, shortly after the Planning Permission had been granted for the replacement dwelling, the appellant's mother had passed away and therefore plans were never carried out. The appellant states that he had tried to maintain the property as best he could, even though it was empty, with the hope that his eldest son might take it over. However, very sadly, the son had died unexpectedly in May 2016 and the other children of the family were not in a position to take care of the property. The tribunal, very regrettably, encounters such situations in many of these empty home cases. In this, as in

other such cases, the tribunal cannot but be extremely sympathetic to the situation encountered by a number of appellants, including the appellant in this instance.

7. Returning to the Presentation of Evidence, the Appendix provides details in respect of a total of five identified submitted comparables, including the property. These four others are as follows (with a helpful location map):-

19 Foxfield Road, Crossmaglen Ward. Pre-1919 detached single-storey cottage (1910), GEA 107.0 m², garage N/A, external repair average. The Capital Value is £90,000.

27 Foxfield Road, Crossmaglen Ward. Pre-1919 detached single-storey cottage (1910), GEA 125.0 m², garage N/A, external repair average. The Capital Value is £110,000.

173 Concession Road Crossmaglen Ward. Pre-1919 detached single-storey cottage (1910), GEA 77.0 m², garage N/A, external repair average. The Capital Value is £65,000.

86 Concession Road Crossmaglen Ward. Pre-1919 detached single-storey cottage (1910), GEA 89.4 m², garage N/A, external repair poor. The Capital Value is £45,000.

8. The tribunal has noted the submissions. The appellant has set out his personal history concerning the property, as stated in his application form. He contends that the property ought not to be included in the Valuation List, on account of the state and condition of the property, both internally and externally. In regard to the appellant's assertion that the property ought not to be included in the Valuation List, the respondent has advanced arguments which are commonly advanced in appeals of this nature. Arguments centre around the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)*** this being a judgment of the High Court in England and indeed a case which has been the subject of previous observations in a number of decisions of the Valuation Tribunal in Northern Ireland. For the respondent it is submitted that ***Wilson v Coll*** is relevant in that it proposes the appropriate test to be applied: that test is a physical rather than an economic test. The critical distinction is not between repairs which would be economic to undertake (or uneconomic) but rather the proper distinction is between a truly derelict property which is incapable of being repaired to make it suitable for its intended purposes and repairs which would render it capable again of being occupied for the purpose for which it was intended. The tribunal notes the confirmation made in the Presentation of Evidence that there were a number

of issues which would need to be addressed before the property could be occupied, including stating that, whilst the external structure of the property remained largely intact, some roof tiles were damaged and some had been replaced. There were signs of damp on most of the external walls. Internally the property was in poor repair. Damp was visible on most of the walls and ceilings. The roof was damaged and leaking in one of the bedrooms and the bathroom.

9. The respondent's submission was based upon the previously-determined case **of *Whitehead Properties Ltd v Commissioner of Valuation [NIVT 12/12]*** (which latter was the first case in which the Valuation Tribunal interpreted ***Wilson v Coll*** as it might apply to the Northern Ireland jurisdiction)***.*** The submission set out a number of extracts from the ***Whitehead*** decision, which have been mentioned in a number of previous decisions of the Valuation Tribunal. These do not need to be rehearsed in this determination, save to say that in ***Whitehead*** the Valuation Tribunal set out in some detail the principal considerations in cases of this type and applied, in the jurisdiction of Northern Ireland, certain of the principles emerging from ***Wilson v Coll***, including providing a nuanced and case-specific interpretation, which depended upon the factual circumstances of any specific case in Northern Ireland. Accordingly, it was the respondent's view that, with a reasonable amount of repair works, the property could once again be occupied for its intended purpose, as a domestic dwelling. It was submitted that the property, whilst conceding it to be in poor repair externally and unoccupied for some time, could be made fit for habitation with a reasonable amount of repair works. It was submitted that the current Capital Value ascribed, took account of the comparables which suggested that a base Capital Valuation of £85,000 was appropriate, and taking a further reduction of approximately 40% (£35,000) to reflect the element of disrepair, resulting in the current Capital Value, it was proposed that there be no change to the current Capital Value of £50,000.

10. The respondent's case then proceeds upon the basis that the tribunal shall accept the proposition that the property shall be deemed correctly included in the Valuation List and the case for the correctness of the assessed Capital Valuation is made based on the statutory considerations and evidence of comparables included in the Presentation of Evidence, with specific submissions advanced in respect of these comparables.

THE TRIBUNAL'S DETERMINATION

11. As it does in all of these cases, the tribunal must accomplish two tasks in this appeal, in sequence. Firstly, the tribunal must determine whether or not the property is, as the respondent would argue, correctly included in the Valuation List. Only if the tribunal determines that this is so, does the tribunal then proceed to assess the correctness of the Capital Valuation. Dealing with the "listing issue", the tribunal has noted the appellant's case as set out briefly in the appeal form. Assessing all of the available evidence and applying the relevant considerations, the tribunal is not persuaded that the property is in such a state and condition that it should not be included in the Valuation List. The respondent has readily conceded that the property is in poor external repair and indeed a reduction in the Capital Value has been afforded on this account (see above). In previous cases (for example ***Whitehead***), the tribunal has commented that there is a notional spectrum ranging between a property which might require only a small amount of repair work to render the property fit for habitation - and true dereliction. Here, there is still some distance from the point of true dereliction. For example, there is no evidence of structural cracking or bowing of any of the walls and the windows and doors appear to be reasonably intact. Clearly there are further roof repairs required (in addition to those which appear to have been conducted seemingly in relatively recent times in an endeavour to make the property watertight) and there are other external matters to be attended to, but the property does not need, insofar as the evidence goes, a very substantial amount of external repairs and refurbishment work, nor any of a specifically structural and far-reaching nature.

12. Having had explained to it by the appellant the history of the matter, the tribunal is alert and sympathetic to the familial significance of the property, as far as the appellant is concerned and perhaps the emotional attachment to what was a family home for the appellant's late father and mother. Further, the tribunal is alert to the most unfortunate situation encountered by the appellant's family in terms of passing on the property to the next generation. In such cases, the tribunal harbours a considerable amount of sympathy for the appellant and concerning the difficult situation in which he finds himself and concludes that he is clearly reluctant to proceed with demolition and he still has hopes for the property. Whilst sympathetic, the tribunal is nonetheless obliged to apply the law as it stands to the situation in which the appellant finds himself.

13. Upon the evidence, the property is capable of repair to render it fit for habitation. However, is it capable of "reasonable" repair? The difficulty for the tribunal is that it is not permitted to take into account financial circumstances of the appellant, harsh though that might seem. This is simply not possible, as the law does not provide for such a consideration to be taken into account and applied. There is no doubt that the property will require some expenditure for reinstatement, externally, including work to deal with the roof. However, the

property is, in the assessment of the tribunal, correctly included in the Valuation List. That determination addresses the first "listing" issue.

14. The other issue which might be difficult for the appellant to comprehend is why the tribunal might appear to have not taken full account of the poor interior, as evidenced from any of the photographs. As mentioned above, 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 pertinent 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 paragraph of Schedule 12 which now must be considered includes the following statutory assumption: "*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*". These words are important and perhaps the significance is not commonly understood. A statutory assumption is an assumption that must be made by the tribunal: the tribunal has no discretion to depart from applying such an assumption to any case. So the assumption of average state of internal repair and fit out – having regard to the age and character – of the property must be made by the tribunal. When this mandatory (not discretionary) assumption is applied, the tribunal is unable to take account of the internal state of repair of the property and, accordingly, must apply the statutory assumption that it is average. Of course this appears to be an artificial concept and perhaps not easily understood. Despite this, it must be applied because of these statutory provisions: the tribunal has absolutely no discretion in the application of this concept, notwithstanding having noted the evidence emerging from the photographs provided by the appellant and also those contained within the Presentation of Evidence. The reason why the tribunal is explaining this statutory concept is to account for what might otherwise seem to be an injustice, seen from the perspective of the appellant, that the poor internal situation has seemingly not been properly taken account of by the tribunal in deciding upon the listing issue. Hopefully, upon carefully reading what the tribunal has above stated, the appellant may understand why the internal circumstances of the property cannot be taken account of in the way in which he might otherwise have wished. That is the best that the tribunal can do to explain this aspect of the matter and hopefully this is clearly understood by the appellant, from reading this determination.

15. The appellant has concentrated mainly upon the listing issue and he has not to any great extent specifically challenged the Capital Value assessment in this appeal. Nonetheless the tribunal believes that it is proper for this be scrutinised as to correctness. The focus is upon the situation prevailing at the

time of the appeal. The general “tone” evidence submitted on behalf of the respondent was determined by the tribunal to be quite useful. Assessing all of the available evidence, the tribunal does not detect any significant deficiency or manifest error in the assessment of the Capital Value of the property. Examining the range of unadjusted Capital Values concerning the six alternative properties presented, the valuation regime applied to the property seems to have correctly and accurately assessed the Capital Value. The potential for disadvantage in regard to the poor external repair has then been catered for by a previous Capital Value reduction (by 40%) to £50,000, in order to reflect elements of disrepair.

16. As the tribunal has often observed, there is a statutory presumption contained within the 1977 Order, Article 54(3). Because 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 to the tribunal, 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 tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the Capital Value to an appropriate figure. 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, as the appellant has not put forward (or may not be deemed to have put forward) any effective and compelling challenge to the respondent’s schedule of comparables, nor any evidence or argument effectively to displace the statutory presumption of correctness in respect of the valuation, the presumption of correctness is not displaced.

17. For these reasons the tribunal’s unanimous decision is that the appellant’s appeal cannot succeed and accordingly, the appeal is dismissed.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 20 July 2026