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 8/25

COLUM BYRNE - 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) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate in respect of the Capital Value of a hereditament situated at 22 Duburren Road, Lislea, Newry, County Down BT35 9WA ("the property").

2. The tribunal sat to hear the matter on 25 June 2026, Belfast. The appellant appeared in person accompanied by Mrs Dolores Byrne. The respondent was represented by Mr Andrew Carr B.Eng MRICS, accompanied by Ms Sonya McIntyre, Senior Valuer. The 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 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 relates to the physical condition of the property at the material time and unoccupancy, with the appellant arguing that the property is in effect derelict, with structural

issues. 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 it being "neglected for many years" and "beyond repair"), 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 30 March 2025 and the documents also included the following:

4.1 Copy Valuation Certificate in regard to the property, issue date 30 May 2024, signed by the Commissioner of Valuation (revised Capital Value of £80,000 indicated in substitution for a previous Capital Value of £100,000).

4.2 A document dated 12 May 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 indicates the following material dates:

2 August 2017: Property occupied. Capital Value reduced from £130,000 to £100,000 taking into consideration poor external repair and restricted access.

5 December 2023: a reference to "occupant deceased".

12 December 2023: external application. Property vacant, derelict and beyond reasonable repair (note this is the application assertion, not any LPS determination).

7 February 2024: Certificate issued. Agricultural Allowance removed. Capital Value unchanged at £100,000.

11 April 2024: Certificate issued. Property not considered derelict for rating purposes. Capital Value unchanged at £100,000.

2 May 2024: Appeal to Commissioner of Valuation, Property derelict/dilapidated (as asserted).

30 May 2024: Certificate issued by Commissioner of Valuation. Capital Value reduced from £100,000 to £80,000.

18 April 2025: The decision of the Commissioner of Valuation was appealed to the Northern Ireland Valuation Tribunal.

4.3 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 farmhouse located 160m down an overgrown lane off Duburren Road. It is 2.4km SSE of Belleek Village and 4.3km WSW of Camlough Village. It has habitable space of 155.2 m², rural location, heating "partial", external repair "poor". The property has been vacant for some years. It is stated that the current Capital Value reflects a poor level of external repair. External photographs of the property are provided, including some specifically showing evidence of broken windows, missing roof slates and external cracking and disturbance affecting the chimney area. There are also internal photographs showing cracked wall finishes and ceilings. There is 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. The appellant also submitted photographic evidence which was carefully noted by the tribunal. The tribunal closely questioned the appellant at hearing concerning this photographic evidence, which he maintained demonstrated structural cracking observable from inside the building, but which affected the external structure, he stated. The area to which he was specifically referring was around the main central chimney stack. His photographs also showed significant internal cracking of plasterwork and finishes and demonstrated, so he stated, that at some stage the floors had been dug up and not reinstated. The appellant explained that the property had devolved from his late father who had resided there, the property having been in the family for a number of generations, to various family members upon his father's demise and the appellant stated that he had bought out the rest of the family in order to gain ownership. The appellant made further submissions in the course the hearing all of which were carefully noted by the tribunal, some of which will be further mentioned below.

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

9 Duburren Road, Lislea Camlough Ward. Pre-1919 detached single-storey cottage (1910), habitable space 45.0 m², grade D, heating N/A, external repair very poor (no lane), rural location. The Capital Value is £44,000.

30 Cregganduff Road, Mullaghbane Ward. Pre-1919 detached single-storey cottage (1910), habitable space 74.0 m², grade D, heating N/A, external repair poor (170 m lane), rural location. The Capital Value is £50,000.

35 Cregganduff Road, Mullaghbane Ward. Pre-1919 detached single-storey cottage (1910), habitable space 56.0 m², grade D, heating “partial” , external repair poor (240m lane), rural location. The Capital Value is £36,000.

110 Carrickgallogly Road, Camlough Ward. Pre-1919 detached two-storey farmhouse (1910), habitable space 201.0 m², grade C, heating full, external repair average (100 m lane), rural location. The Capital Value is £150,000.

9 Crossmaglen Road, Camlough Ward. Pre-1919 detached two-storey farmhouse (1910), habitable space 145.0 m², grade C, heating partial, external repair average (no lane), rural location. The Capital Value is £125,000.

22 Mountain Road, Camlough Ward. Pre-1919 detached two-storey farmhouse (1910), habitable space 145.0 m², grade C, heating partial, external repair average (no lane), rural location. The Capital Value is £155,000.

7. The tribunal has noted the submissions. The appellant has stated in his application form: “*The property has not been occupied and has been neglected for many years to the point where it cannot be repaired or restored. This building has never had running water or electricity. I feel it is extremely unreasonable to be expected to pay rates on a building that is beyond repair*.” In regard to the appellant’s assertion that the property is beyond repair and thus not properly 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 repairs to the roof, chimney and guttering and that windows and external doors needed replaced. Services needed to be reinstated and internally the property required a full refurbishment, including a new kitchen, bathroom, internal doors, flooring and carpets. The external structure and fabric of the building remained largely intact (and no evidence had been presented to show otherwise). In the opinion of the respondent, the subject property was in poor repair and not habitable in its current state. However, the test for removing the property from the Valuation List was not whether it was habitable but whether or not the property was beyond reasonable repair. A property should not be deleted from the Valuation List because it was in poor repair.

8. In this regard 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 also referenced the Valuation Tribunal cases of ***McCormick v Commissioner of Valuation [2024]*** and ***Catherine Stewart v Commissioner of Valuation* [2024]** and made reference to the factual scenarios emerging in these cases, which nonetheless caused the tribunal in each case to conclude that a hereditament existed, upon the facts and with the proper application of the law**.** It was accordingly submitted for the respondent that, notwithstanding that the appellant considered the property to be beyond repair, applying the approach accepted by the Valuation Tribunal that is derived from ***Wilson v Coll*** (as exemplified in ***Whitehead, McCormick*** and ***Stewart***) 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 accordingly 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, £80,000, accurately reflected the state and circumstances of the property.

9. 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

10. The tribunal must accomplish two tasks in this appeal, in sequence. Firstly it 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 and he has also made in some well-presented arguments to the tribunal at the hearing, with specific reference to the photographic evidence. 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. 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, the tribunal assesses the property as existing at a point in this spectrum which is still some distance from the point of true dereliction. For example, notwithstanding that there is a structural issue affecting the chimney, with clear evidence of significant repairs and reinstatement being required to the chimney and to the surrounding roofing area, the roof is otherwise largely intact with no evidence of imminent collapse of any part of the roof. Likewise, there is no evidence of structural cracking or bowing of any of the walls, notwithstanding the claimant's argument that the property had "no foundations". Clearly the windows and doors need to be replaced and a number of other external matters attended to, for example guttering and rainwater goods. The tribunal notes the concession made by the respondent's representative that the property will inevitably continue to deteriorate unless works are done to reinstate, until a point of dereliction will inevitably be reached.

11. Having explained the history of the matter, the tribunal is alert to the historical and familial significance of the property as far as the appellant is concerned and perhaps an emotional attachment to what was a family home and the tribunal has noted that the appellant retains an aspiration that the property might be at some stage in the future returned to a useful function for members of his family, in contrast to moving towards a possible demolition of the property at this stage. In all such cases, the tribunal harbours a considerable amount of sympathy for the appellant and the somewhat difficult situation in which he finds himself under these circumstances. Whilst sympathetic, the tribunal is nonetheless obliged to apply the law as it stands to the situation in which the appellant finds himself.

12. 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 applied. There is no doubt that the property will require some expenditure for reinstatement, externally, including considerable work to deal with the roof section close to the central chimney and to reinstate the chimney stack. However, the property is in the assessment of the tribunal correctly included in the Valuation List. That determination addresses the first issue.

13. 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 extremely poor interior, as evidenced from 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 of 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.

14. 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 to £80,000, in order to reflect the issue of poor external repair.

15. 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.

16. 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