

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: 12/12

WHITEHEAD PROPERTIES LIMITED - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Tim Hopkins MRICS and Ms Angela Matthews

Hearing: 21 February 2013, Belfast

DECISION

The unanimous decision of the tribunal is that the subject property of this appeal, number 5 Cultra Avenue, Ballycultra, Holywood, County Down BT18 0LT, is properly to be included in the rating list as a hereditament and the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant had requested, at the time the appeal was instituted, that his appeal should be dealt with by oral hearing. The appellant, at hearing, was represented by Mr Vincent Foster and the respondent was represented by Ms Christine Arthurs MRICS together with Mr Michael McGrady MRICS. Mr

Foster explained to the tribunal at the outset of the hearing that he was a director of the Whitehead Group of companies and that Whitehead Properties Limited, the appellant, was a wholly-owned subsidiary within that Group.

2. The appellant, by Notice of Appeal received by the office of the tribunal on 6 June 2012 appealed against the decision of the Commissioner of Valuation on Appeal dated 18 May 2012 in respect of the valuation of a hereditament situated at number 5 Cultra Avenue, Ballycultra, Holywood, County Down BT18 0LT (“the subject property”) whereby the non-exempt domestic capital value was determined at a figure of £370,000.
3. At the outset of the hearing the tribunal sought to clarify with the parties the primary issue or issues for determination. Mr Foster, on behalf of the appellant, very helpfully clarified that this was what could be termed a “listing” appeal only (in that the appellant sought to contend that the subject property ought not to have been included in the valuation list as a hereditament) and Mr Foster further confirmed that the appellant did not seek, otherwise, to challenge the capital value. The tribunal is grateful to Mr Foster for clarifying this and for narrowing the issue. This single issue to be determined is accordingly referred to below as the “listing issue”.

The Law

4. The statutory provisions generally concerning the capital value issue are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). The tribunal does not intend in this decision to set out the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, as these provisions have been fully set out in earlier decisions of this tribunal and for the further reason that these are not directly material to the single “listing issue” requiring to be determined in this appeal. In regard to the listing issue, the tribunal thinks that it is best to set out the relevant statutory provisions of the 1977 Order (as amended).

5. The first of these statutory provisions concerns a fundamental definition which is to be found at Article 2 (2) of the 1977 Order in regard to what constitutes a “hereditament” for the statutory purpose. It is accordingly provided as follows:-

“ “ hereditament” means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list”.

In regard to unoccupied property and the matter of liability to rating, the following provisions are applicable and the tribunal feels it best to set out these provisions in a little detail. The statutory position prior to 1 October 2011 was that Article 25A of the 1977 Order, prescribed that rates were payable on unoccupied properties that fell within a class prescribed by Regulations.

25A.—(1) Subject to the provisions of this Order, if the conditions specified in paragraph (2) are satisfied a person shall be chargeable to rates in respect of a hereditament which is unoccupied.

(2) The conditions are—

- (a) the hereditament is one to which Schedule 8A applies; and
- (b) the person is entitled to possession of it.

(3) A person shall be chargeable to rates under this Article only in respect of a period during which—

- (a) the hereditament is unoccupied; and
- (b) both the conditions specified in paragraph (2) are satisfied.

(3A) Regulations may provide that where a hereditament has both a capital value and a net annual value, a person shall not be chargeable to rates under this Article in respect of its capital value.

(4) For the purposes of this Article a hereditament is unoccupied only if no person is in occupation of any part of it.

(5) For the purposes of this Article a hereditament which is not in use shall be treated as unoccupied if (apart from this paragraph) it would be treated as occupied by reason only of there being kept in or on the hereditament plant or machinery—

- (a) which was used in or on the hereditament when it was last in use; or
- (b) which is intended for use in or on the hereditament.

(6) Schedule 8A (which makes further provision relating to the liability to be rated in respect of certain unoccupied hereditaments) shall have effect.

The Non-Domestic Rating (Unoccupied Hereditaments) Regulations (Northern Ireland) 2007 as amended (“the 2007 Regulations”) prescribed a class of property consisting of all non-domestic buildings or parts of buildings, except those listed in the Schedule to the said 2007 Regulations.

The Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (“the 2011 Regulations”) then revoked and replaced the 2007 Regulations. Regulation 3 therein provides:-

Hereditaments in respect of which a person is liable for the unoccupied property rate

3. The class of hereditament prescribed for the purposes of Article 25A(2)(a) of, and paragraph 1(1)(a) of Schedule 8A to, the Rates (Northern Ireland) Order 1977 consists of any hereditament included in a valuation list—
 - (a) which consists of a building, or any part of a building, together with any land ordinarily used, or intended for use, for the purposes of that building or part; and
 - (b) which does not fall within a class of hereditament described in the Schedule.

The following provisions of the Schedule to the 2011 Regulations apply:-

SCHEDULE

Classes of hereditament not prescribed for the purposes of paragraph 1(1)(a) of Schedule 8A to the Rates (Northern Ireland) Order 1977

- 1.—(1) Subject to regulation 2(2) and sub-paragraph (2), the hereditament is included in the NAV list and has been unoccupied for a continuous period not exceeding three months.
- (2) A hereditament shall be excluded from the class of hereditament described in sub-paragraph (1) to the extent (if any) to which it appears that, when next in use, it will be used for the purposes of a private dwelling.

From the foregoing provisions it may be seen that the effect of the 2011 Regulations is that from 1 October 2011, being the operative date, domestic buildings and parts of buildings as well as non-domestic buildings or parts of buildings for the purposes of Article 25A of the 1977 Order became subject to rating (subject to certain statutory exceptions). These exceptions are those which are set forth in the Schedule to the 2011 Regulations. Accordingly, the statutory effect of Article 25A and Schedule 8A of the 1977 Order, when read with the 2011 Regulations, is that rates are payable on

an unoccupied domestic property at the same level as if the property were to be occupied.

In respect of the interpretation of the material statutory provisions in Northern Ireland, the tribunal was referred by the respondent's representatives to the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)***, a judgment of the High Court in England. The tribunal will make further observations in respect of that case in the determination set out below and concerning any principles to be derived from that authority that might be of assistance to the tribunal in reaching a decision in the matter.

The Evidence and Facts (generally)

6. The tribunal noted the written evidence and submissions. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) and various documents including the following:-

- The Commissioner's Decision on Appeal dated 18 May 2012 and Valuation Certificate dated 27 September 2012.
- A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Ms Christine Arthurs MRICS and submitted to the tribunal for the purposes of the tribunal hearing.
- Documentation prepared on behalf of the appellant by Messrs Taylor & Boyd LLP, Consulting Structural and Civil Engineers, with annexed photographs, and report of KJ Fryers, Quantity Surveyor.
- Correspondence between the tribunal and the appellant and the appellant's representatives.
- Correspondence between the tribunal and the respondent.
- Certain additional documents submitted on behalf of the appellant including correspondence from estate agents and copy photographs and

documentation concerning properties situated at numbers 69 and 71 Hillsborough Road, Lisburn.

7. The following facts were not substantially in contention. The subject property is a dwellinghouse situated at number 5 Cultra Avenue, Ballycultra, Holywood, County Down BT18 0LT. Cultra Avenue is accessed via the Bangor Road in Holywood, County Down. The subject property consists of a detached chalet dwellinghouse, built circa 1955. The gross external area (“GEA”) of the subject property stated in the Presentation of Evidence is GEA 169m². There is a garage of GEA 24m². The subject property is of traditional design and construction, having cavity walls with a rendered finish and a “rosemary” tiled roof. The subject property has mains electricity, water and sewerage (all disconnected). There is oil-fired central heating. The windows are double glazed uPVC. The appellant has not taken issue with the specific description of the accommodation in the Presentation of Evidence which states that the accommodation comprises an entrance hallway, what are stated to be “four/five bedrooms/option of study”, reception room, downstairs bathroom, kitchen and dining room. The capital value in accordance with the Commissioner’s Decision on Appeal, is £370,000. This capital value is assessed as at 1 January 2005 (that being the antecedent valuation date, or “AVD”) for the purposes of the statutory rating scheme.
8. It appears that the background to the matter is that the subject property was originally purchased for demolition to enable the construction of a replacement dwelling, but that this project did not proceed due to economic factors. It is accepted on behalf of the respondent that the interior of the property is dilapidated through vandalism and general deterioration due to the subject property being unoccupied and other factors. The condition of the subject property is important in reference to the issue to be determined by the tribunal, so it merits some further comment from the evidence available.
9. From the photographic evidence and the evidence submitted on behalf of the respondent generally, it seems that there is a specific issue of particular significance to the appellant concerning what is stated to be a poorly-supported and constructed rear first floor dormer. It is contended on behalf of the appellant that this construction has neither planning permission nor the benefit of building control approval. The

respondent it seems endeavoured to ascertain the position but was unable to establish if either planning permission or building control approval existed in respect of this structure. It seems that they do not and so the tribunal accepts the appellant's contention in that regard. The report from Richard C Patterson, Chartered Structural Engineer, of Taylor & Boyd, Consulting Structural & Civil Engineers, dated 30 March 2012 ("the Taylor & Boyd report"), observed that on the rear elevation of the subject property a projecting dormer at first floor level was noted as being of a non-standard construction. This was found not to comply with the general stability requirements and the observation was made that the steelwork SHS post supporting one corner of this construction was rusting and did not appear to have adequate compressive or lateral restraint. A block or plinth supporting the opposite corner of the dormer was deemed to have deflected and failed lateral capacity requirements to BS 5628-1:2005. The roof to ground floor projecting dormer on the rear elevation was also found to be in a poor condition and it was stated that this would not comply with building control regulations. The comment was made in the Taylor & Boyd report that, without carrying out any further intrusive structural investigations on the subject property, the Engineers would be satisfied that the structural aspects of the subject property would not be suitable for habitable purposes.

10. In respect of other structural and condition issues, the Taylor & Boyd report observed that the roof in general appeared to be in reasonable condition. However the Engineers were concerned about the vertical and diagonal cracking evident on the masonry of one of the chimneys. It was also observed that several cracks were in evidence to the external rendered finish of the subject property. The experience of the Engineers suggested that in the properties of this age, these cracks might well extend to the inner relief of masonry and might cause damp and moisture ingress. The photographs appended to the Taylor & Boyd report illustrated some of these issues and were helpful.
11. Concerning potential repair or reinstatement costs, the report of K J Fryers, Quantity Surveyor, itemised specific costings for repairing and reinstatement work to the subject property including kitchen, dining room, bathroom, rear bedroom, left bedroom, living room, hallway, upstairs rear bedroom, and also general repairs which were quantified, in total, at a figure of £54,450.

12. Correspondence from BTW Cairns, Residential Estate Agents dated 28 March 2012 expressed the opinion that the subject property was uninhabitable and that it was not appropriate to health and safety reasons to market the property; considerable repairs would require to be undertaken before the Estate Agents would be prepared to market the property. Similar correspondence from Templeton Robinson, Residential Estate Agents dated 15 March 2012 stated that the property had been registered on the agent's rental portfolio, but that the agents had notified the vendors of the property that they were unable to continue to market the property due to its deteriorating condition. The Templeton Robinson letter continues, "The property is in an almost derelict state with obvious damp issues and is not suitable for occupation".
13. In support of the appeal, the appellant's representative sought to introduce evidence concerning two other properties, these being numbers 69 and 71 Hillsborough Rd, Lisburn, County Antrim. The tribunal examined photographs and some documentation concerning these two properties, which appeared to be owned or managed by entities within the same Whitehead Group of companies, as the tribunal understands it. Both of these properties had been removed from the valuation list, apparently on account of the condition of the properties in question. This evidence was used to support submissions on the part of the appellant which will be referred to below.
14. Mr Foster confirmed that the subject property had now been sold (as the tribunal understands it in either November or December of 2012) and the subject of the appeal related to whether or not the property should have been included in the rating list whilst in the ownership of the appellant.

THE SUBMISSIONS

15. On behalf of the respondent, Ms Arthurs referred to the Presentation of Evidence insofar as this was material to the issue to be determined (as part of that related to the exercise of comparative capital valuation which was not relevant). The major issue of contention was the so-called "hereditament test" or "listing issue" and the case of *Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)*, was submitted to be relevant in that regard. This was a judgment of the High Court in England upon an appeal on a point of law from the Valuation Tribunal for England

("VTE"). Extracts from that judgment were cited in the Presentation of Evidence report and it was submitted that it was clear from ***Wilson v Coll*** that the applicable test was a physical rather than an economic test. The tribunal was also referred to the English VTE decision of ***J Wilson (apparently misnamed "FG Wilson")***, dated **3 May 2012 (Appeal Number: 2260562639/148CAD/1)** (hereafter for ease of reference referred to as "***Wilson VTE***"), which decision alludes to the case of ***Wilson v Coll***.

16. For the respondent, it is contended that the tribunal should follow the judgment of Mr Justice Singh in ***Wilson v Coll*** and the subsequent case of ***Wilson VTE*** for the reason that the issue at the centre of these cases dealt with fundamental principles of rating law and it was contended that these cases had equal authority and weight in the jurisdiction of Northern Ireland.
17. In respect of the appellant's contention that the rear first floor dormer did not have planning or building control approvals, for the respondent it is submitted that the statutory assumption stated that, when assessing the capital value of the property, the hereditament was considered to be sold free from any encumbrance and therefore was to be valued in its current state and circumstances which would include the rear first floor dormer, even if no planning or building control consents existed. In short, the lack of building control or planning consents were contended to be matters which were properly to be disregarded by the tribunal in conducting its assessment on account of the statutory assumptions.
18. In regard to the repairs work costing produced by the appellant, on behalf of the respondent it is submitted that the works indicated provided for a general refurbishment of the property and went beyond what would be required in terms of repair as envisaged in the ***Wilson v Coll*** case. The statutory assumption assumes 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. Accordingly, a 1955 built property will not be constructed to the latest IEE electrical regulations or the latest plumbing and heating standards as a 2012 property; the same would apply to the fittings and fixtures internally. It was further contended that the dampness is primarily due to lack of ventilation and heating in view of the property lying vacant for a number of years. It was however accepted that lead has been removed from the

ground floor dormer which had caused water damage internally to ceilings and to the floor area directly below the dormer ceiling. However, the contention was that these matters, taken together, would not deem the property uninhabitable. In the rear ground floor bedroom it is accepted that there is ceiling damage caused by leakage from a burst pipe which has also caused damage to the floor directly below the leak whereby floor joists may require to be replaced as well as making good the ceilings. It stated that is not accepted, without further proof, that the cracking referred to in the Engineer's report has resulted in moisture ingress, rather than the cause of dampness being primarily due to the lack of heating and ventilation.

19. For the appellant it is contended that the property is properly to be deemed uninhabitable on account of the many defects identified in the reports, in particular the significant dampness identified and the structural issues reported regarding the dormer extension which did not have building control approval or planning permission. The tribunal's attention is drawn to the Taylor & Boyd report where it is confirmed in the report that the structural aspects of the subject property make it not suitable for habitable purposes and the observations made by the estate agents are also to be noted in that regard.

20. The tribunal has also been referred by the appellant to two other properties for comparative purposes, these being numbers 69 and 71 Hillsborough Road, Lisburn, County Antrim, both being de-rated. It is submitted that there is an inherent contradiction in these two properties not being included in the rating list, in contrast to the approach taken to the subject property, which is included. This is stated to be so in view of the fact that the condition of these two properties is no worse, it is suggested, than that of the subject property, from the evidence available. The respondent's representatives at hearing did state that the District Valuer was currently investigating these two properties with a view possibly to including them in the rating list.

THE TRIBUNAL'S DECISION

21. There is an issue to be determined in this case which may be simply stated. This issue is whether or not the subject property ought to be included in the rating list as a hereditament. As mentioned above, this means a property which is or may be liable

to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list. Apart from referring the tribunal to the applicable statutory provisions, the only other legal reference made in the case has been to the two cases mentioned above, **Wilson v Coll** and the subsequent VTE case also (somewhat confusingly), called **Wilson** (the "**Wilson VTE**" case). Neither of these two cases is in any way binding upon this tribunal in Northern Ireland. The tribunal is of course entitled to take heed of these cases and to have regard to any legal principles which may be extracted from the reasoning of the two authorities.

22. In the case of **Wilson v Coll** Mr Justice Singh examined in some detail the proper approach to be taken to the determination of whether or not there is, or continues to be, a hereditament, and suggested that the focus should be upon whether a property is capable of being rendered suitable for occupation by undertaking a reasonable amount of repair works. The distinction is between a truly derelict property, which is 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 intended purpose. Mr Justice Singh proceeded to determine that the crucial distinction was not between repairs which would be economic to undertake or uneconomic, as such a distinction was simply absent from the legal regime. An extract from the judgement may be of assistance and reads as follows:-

38. I accept the respondent's submission before me that that is another statutory indicator that, in the context of the council tax for domestic properties, [*citing the English statutory provision*] does not import any concept of what repairs a reasonable landlord would consider economic. The absence of such a phrase in contrast to the appearance of that phrase in the provision I have quoted from in [*citing the English statutory provision*] makes it plain, in my view, as the respondent has submitted, that no such qualification or implication was intended in the present context. However, what is important in considering the tribunal's reasoning in the present case is that all of that again goes only to the question of the valuation of a hereditament and the assumptions to be made for that purpose. It does not answer the question, as the tribunal appears to have thought that it did, of whether a hereditament exists or continues to exist.

39. In answering that question correctly the respondent submitted to me that what in fact should be asked is a question which is posed for Listing Officers to consider in a practice note to the Council Tax Manual, practice note number 4. The question is as follows:

"Having regard to the character of the property and a reasonable amount of repair works being undertaken could the premises be occupied as a dwelling?"

40. I accept the respondent's submission as a general matter in that respect. I accept that as a general matter of law the crucial distinction for the purposes of deciding

whether there is, or continues to be, a hereditament should focus upon whether a property is capable of being rendered suitable for occupation (in the present context occupation as a dwelling) by undertaking a reasonable amount of repair works. The distinction, which is correctly drawn by the respondent, in my view, is between a truly derelict property, which is incapable of being repaired to make it suitable for its intended purpose, and repair which would render it capable again of being occupied for the purposes for which it is intended.

41. The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake. As I have already indicated, that submission, and my conclusion in accepting it, draws force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present legal regime, whereas it is present in the legal regime which governs non-domestic rating.

23. To the material extent, Northern Ireland domestic rating law, likewise, does not include any “economic test” if it could be described as such. The issue accordingly identified by the English court in ***Wilson v Coll*** could be expressed in the form of a question. That question is - having regard to the character of the property and a reasonable amount of repair works being undertaken, could the premises be occupied as a dwelling?

24. The tribunal, as mentioned, is not bound to follow the approach taken in ***Wilson v Coll*** and is free to determine the matter in any way that seems proper, in the absence of a precedent or authority of any binding character being cited or drawn to the tribunal’s attention. However, in order to depart from the approach taken by the English court in ***Wilson v Coll***, the tribunal would need to identify a proper basis for taking a different approach. The point, of course, in ***Wilson v Coll*** is that there was no mention of any “economic test” in the English statutory provisions, and a similar position prevails in Northern Ireland in regard to the rating of domestic property. The determination of this tribunal, accordingly, is that the same general approach ought to be adopted in Northern Ireland, but with the important qualification mentioned below.

25. In determining the issue, it is easy to envisage a truly derelict property that on no account ought properly to be included in the valuation list. At the other end of the spectrum, as it were, there exist many properties which are unoccupied but which require only very minor works of reinstatement or repair to render these readily habitable. The difficulty, as the tribunal sees it, in the absence of any specific provision expressly enabling the tribunal to take economic factors into account (and

in the light of the position as stated in ***Wilson v Coll*** is to adjudge what might be deemed a “reasonable amount of repair works”. Clearly, it would be wrong to include a property on the rating list which required an “unreasonable” amount of repair works to render the property in a state to be included in the list. How then is the concept of “reasonableness” to be tested?

26. “Reasonableness” is generally regarded as being the standard for what is fair and appropriate under usual and ordinary circumstances - the way a rational and just person would have acted. In discussing this, the tribunal had some difficulty in comprehending how what is reasonable or otherwise could be tested if one entirely disregarded some of the true realities of the situation, including those which most would impact upon decision-making. Obviously a reasonable person would not wish to expend a very substantial amount of money upon the repair of a nearly worthless property. Leaving aside for the moment any statutory considerations, the reality, for any reasonable domestic property owner, must in some manner connect with the issue of potential expenditure and the worth of any property both before and after any repair and reinstatement. To that extent, the tribunal has some difficulty with the judgment of Mr Justice Singh in ***Wilson v Coll***, for the learned judge as far as can be observed did not proceed to give any account of how the concept of “reasonableness” might otherwise be tested. It is possible to expend an unreasonable sum upon the repair of a nearly worthless property; or, leaving aside monetary considerations, to expend an unreasonable amount of labour or of time in the repair of such a property. Any truly derelict property (in the common perception) might thus, by expending an unreasonable amount of money or an unreasonable amount of time and labour upon repairs, be capable of being placed in a state where it could indeed be occupied as a dwelling and thus be rated as a hereditament. Of course to do so would be to act irrationally and unreasonably by any normal assessment of things. Having accepted that there is no mention of any “economic test” in the relevant statutory provisions in Northern Ireland (as in England), the tribunal's view is that the only common sense and proper way to look at things is to examine the specific factual circumstances of any individual case and to take all material factors into account in taking the broadest and most common sense view of things in addressing the issue of whether or not, having regard to the character of the property and a reasonable amount of repair works being undertaken, the property could be occupied as a dwelling. Accordingly, the tribunal is reluctant to lay

down any rigid principle that, in effect, inhibits or prevents the tribunal from taking a proper, comprehensive and broad view “in the round” of all the relevant facts. This is so when conducting an assessment of what is reasonable, or otherwise, in relation to repair works necessary to render any property in a state to be included in the rating list. Tribunals across the broad spectrum of different statutory jurisdictions in Northern Ireland are designed, within the system of justice, to engage in decision-making in an entirely practical and common sense manner, applying the inherent skills and expertise of the tribunal members in the assessment of any material facts and by proper application of the law to any determined facts, and should be enabled to undertake this task in a properly-judged and comprehensive manner, provided that the law is properly interpreted and observed in the decision-making.

27. Examining the specific factual situation in respect of the subject property and noting the matters alluded to in the respective reports of Taylor & Boyd LLP, Consulting Structural & Civil Engineers, and KJ Fryers, Quantity Surveyor, and taking fully into account the submissions of the respective parties, the tribunal must reach a determination upon the issue of whether or not, having regard to the character of the property and a reasonable amount of repair works being undertaken, the subject property could be occupied as a dwelling, and thus be included in the rating list. In short, the tribunal must determine the listing issue.
28. A factor against possible inclusion would include the (unchallenged) observation made in the Taylor & Boyd report that the projecting dormer was found not to comply with general stability requirements and the steelwork SHS post supporting one corner did not appear to have adequate compressive or a lateral restraint. A block or plinth supporting the opposite corner was deemed to have deflected and failed lateral capacity requirements to BS 5628-1:2005. The Engineers indicated that the structural aspects of the subject property would not be suitable for habitable purposes. However, the tribunal has been provided with no specific details of what works would be required to deal with the issues observed by the Engineers. In the absence of specific details, it is somewhat difficult to the tribunal to assess whether or not any work required would constitute reasonable repair work, or otherwise, whether an economic test was or was not applied in carrying out that assessment.
29. Other factors against possible inclusion would include the possibility of structural damp ingress as mentioned in the Taylor & Boyd report, and also the results of water

leakage into the subject property, from vandalism (lead theft) and other causes leading to both external and internal repair and reinstatement issues having to be addressed. The appellant has also argued that the approach of the respondent is inconsistent when one looks at the two comparators which are not included in the rating list and which are, it is submitted, in a somewhat similar condition to the subject property, these being numbers 69 and 71 Hillsborough Road, Lisburn. It is difficult for the tribunal to draw any specific conclusion from this latter information, for the reason that respondent's representatives at hearing did state that they were currently investigating these two properties with a view possibly to including them in the rating list. This does appear to be, on the face of it, a possible anomaly, but what the tribunal can make this (if the rating of these two properties is to be revisited by the District Valuer with a view to possible inclusion) in terms of the purpose sought to be achieved by the appellant in this appeal is not clear. The tribunal does take note of this apparent anomaly as things presently stand. However, that of itself does not guarantee the success of this appeal.

30. Factors going towards possible inclusion in the rating list would include the observation that the property had a roof that, in general, appeared to be in reasonable condition (as is mentioned in the Taylor & Boyd report) and that many of the items mentioned, in particular many items included in the report of KJ Fryers, Quantity Surveyor, could not be said to go directly towards the issue of whether or not the property could be reasonably repaired and rendered in a state to be occupied as a dwelling.
31. Other issues mentioned in the appellant's submissions, such as whether insurance could be obtained and whether or not the subject property complied with building control regulations and planning permission, in the opinion of the tribunal fell outside the direct ambit of consideration in respect of the specific issue to be determined.
32. This is undoubtedly a difficult case, in view of the residual issues which were not quite fully resolved, in the tribunal's opinion, by *Wilson v Coll* and indeed in a subsequent VTE case of *Wilson VTE* (the facts of which case do not in need to be alluded to further in this decision for the reason that that case essentially followed the superior court's decision in *Wilson v Coll*). The difficulty faced by any tribunal is how to apply the decision as to what might be deemed a "reasonable amount of repair works", for

it is trite to say that, self-evidently, any property must not be included in the rating list which required an “unreasonable” amount of repair works. In disapplying any “economic test” (as per *Wilson v Coll*), the logicity is that what is purely physically possible must, upon that argument, be the focus of the tribunal. However, that of itself might lead to an unrealistic and indeed irrational and unreasonable view of things - for anything might be repaired and reinstated, if one were acting outside the limits of reason. The only sensible view that can be taken of these difficulties is that the tribunal must properly focus upon the facts in each individual case and must take the view that each case is essentially fact-specific. The tribunal thinks that the proper way to do things is to take the broadest common sense view of factual matters in the application of the law and to view things in the round.

33. Applying this approach to the facts of this case and weighing up the various arguments advanced and the various considerations which are material to the determination, the tribunal’s decision, unanimously, is that the subject property as it stands, in the state and condition as described in the evidence, properly falls to be included within the rating list as a hereditament.
34. As this is the only issue to be decided in the case, this determination disposes of the matter and therefore the Commissioner’s Decision on Appeal is upheld and the appeal is dismissed.

Mr James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 27th March 2013