

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1997 (AS AMENDED) AND
THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007

CASE REFERENCE: NIVT14/12

KEVIN O'LOAN

Appellant

and

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND

Respondent

Date of Hearing: 11th December 2012

Chairman: Francis Farrelly LL.M

Members: Ms.Siobhan Corr, MRICS and Patrick Cumiskey

Decision and Reasons

1. The property which is the subject of the appeal is 14 Brae Road, Martinstown, Ballymena, BT43 7LY.
2. The appellant has appealed the Commissioner's decision of 3rd May 2012 whereby the subject property has been given a domestic capital value of £70,000.00. Whilst the property is in need of repair the Valuation Certificate indicates that it is capable of beneficial occupation though the valuation has been amended, reducing the figure to £60,000.00.
3. In considering the appeal we have considered the correspondence between the parties and the Tribunal and the respondent's Presentation of Evidence and the appellant's counter submission.

The Relevant Law

4. Article 25A and Schedule 8A of the 1977 Order provide that rates are payable on unoccupied properties which fall within a class prescribed by Regulations. The Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 (the 2011 Regulations) came into force on 1 October 2011. These prescribe that, subject to the exceptions set out in the schedule to the Regulations, unoccupied domestic properties are liable to rates. It remains open to the appellant to make application for the reliefs that are available if applicable.
5. In appealing the burden of proof is upon the appellant to show by the ordinary civil standard of proof, the balance of probabilities, that the respondent's decision is incorrect in law or fact. Article 54(3) of the 1977

Order provides that, on appeal, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.

6. The statutory provisions are the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter referred as the 2006 Order’).

7. Article 2 (2) of the 1977 Order defines a hereditament:

“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”.

8. Schedule 12 of the 1977 Order provides:

7 (1) subject to the provisions of this Schedule, for the purposes of this Order the capital value of hereditament shall be the amount which, on the assumptions mentioned in Paragraphs 9-15, 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.

(2) in estimating the capital value of hereditament for the purpose of any provision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.

9. Paragraph 12(1) refers to the statutory assumption that:

“the hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.

Issues arising

10. The first issue arising is whether the property is a hereditament liable to a rates within the definition. If so, the second question then is whether the capital valuation is correct.

A hereditament

11. The appellant has provided a well prepared submission in which basically he asserts the property is really only suitable for demolition.

12. The respondent has cited the decision of Wilson –v- Josephine Coll [2011] EWHC2824. The property at issue there was a 2 bedroom semi-detached house which had been vacant since June 2007 and was in a state of disrepair. The judgement referred to the Court of Appeal decision of Post

Office –v- Nottingham Council [1976] 1WLR624 where Lord Justice Brown at 635B stated:

“the question is whether the building as a building is so far completed as to be capable of occupation or ready for occupation for the purposes for which it is intended – as a house, shop, office, factory, or in this case a telephone exchange”.

He went on to say at 635H....

“I think the test is: as a matter of fact and degree, is or will a building as a building be ready for occupation, or capable of occupation, for the purpose for which it is intended”.

In the Coll case Paragraph 17 Mr Justice Singh judgment stated:

“There is a crucial distinction in law between the valuation of a hereditament and the prior question of whether a hereditament exists”.

At Paragraph 40 he stated:

“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 probably 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”.

At paragraph 41 he stated:

”The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake”.

13. Considering these authorities our conclusion is that the appellant's property does constitute a hereditament. In the respondent's documentation it is stated that the appellant had lived in this property for a time whilst he built the adjoining property where he now lives. We appreciate the appellant's comments about how difficult conditions were. Nevertheless, this supports the view that the property is or was habitable two years earlier. We appreciate what he says about the condition of the property but the case law indicates that economic considerations are not determinative of whether a property is a hereditament.
14. We have been provided with photographs of the property which does show it requires repair and modernisation. However, the property it is not at such a state where it is incapable of being rectified for occupation by undertaking a reasonable amount of repair works, albeit at no doubt

substantial expense. There is no evidence to suggest that the property is otherwise exempt from the payment of rates.

Capital value

15. We now return to the next issue, namely capital value.
16. The respondent states that the long shared laneway and farmyard location have been allowed for. The respondent's bundle contains details of the properties used as comparators. Number 10 Brae Road has been refurbished and has been described as being in average external repair. At 106m² it is slightly smaller than the subject property which is 114.5m². Its valuation, allowing for the agriculture allowance has been put at £76,000.00. The appellant states it is twice the size of his property but this is not consistent with the measurements provided by the respondent. Beyond the appellant's statement we have no other evidence to contradict the measurements given by the respondent. The property has been extensively refurbished as recorded by the respondent. However, the poor condition internally of the appellant's property by comparison does not assist him because of the statutory assumptions.
17. The other two comparators are properties in poor external repair valued at £57,000.00 and £70,000.00. There is another property at 19 Glens Brae Road which is in average external repair which has been valued at £100,000.00 reduced by 20% for agriculture allowance to £80,000.00. Whilst this property has been refurbished the appellant is again not assisted because of the statutory assumptions so far as the interior is concerned.
18. It is our conclusion that these are reasonable comparators albeit because this is a rural location they are individual, and only the properties at 10 Brae Road and 19 Glens Brae Road are immediately proximate. However it is our conclusion these are appropriate for comparison. In light of their valuations we find the appellant has not demonstrated the valuation is incorrect. The appellant has provided photographs of other properties but we do not find these to be appropriate comparators. Notably, they are not in a farmyard location.
19. The unanimous decision of the Tribunal is that the appeal is dismissed.

Francis Farrelly, Chair
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 11 March 2013