NORTHERN IRELAND VALUATION TRIBUNAL

THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007

CASE REFERENCE NUMBER: NIVT 6/17

BARRY McALPINE – APPELLANT
AND
COMMISSIONER OF VALUATION FOR NI – RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 6th December 2017

CHAIRMAN: Stephen Wright

MEMBERS: Mr Eric Spence MRICS AND Mr Peter Somerville

DECISION

The Tribunal's unanimous decision is that the Appellant's appeal is not allowed and the Capital Valuation assessed on, Flat 1, 87 South Parade, Ballynafoy, Belfast BT7 2GN, of £80,000 is upheld.

Introduction

1. The appellant did not attend the Hearing. The respondent did not attend the Hearing.

2. The appeal was heard by virtue of Rule 11(1) of the Valuation Tribunal Rules (Northern Ireland) 2007 which states "an appeal may be disposed of on the basis of written representations of all parties have given their consent in writing."

3. The valuation of the property that is subject of appeal Flat 1, 87 South Parade, Ballynafoy, Belfast BT7 2GN ("the subject property"). The subject property is a privately built single level self-converted apartment of solid brick construction with pitched slate roof and was built in 1910. The property has single glazed timber windows, central heating system in place but not operational and mains services in place.

4. The appellant, by notice of appeal dated the 5th June 2017, appealed against the decision of the Commissioner of Valuation on the issued on the 22nd May 2017 which states that the valuation should be "amended from £80,000 to £40,000 stating inter alia that the subject property in uninhabitable and that pursuant to a Valuation by a District Valuer on the 18th March 2014 that the capital valuation should be reduced from £80,000 to £40,000.

5. The following documents have been considered by us:-

a. The Notice of Appeal against the valuation for rating purposes (Form 3) dated the 5th June 2017.

b. Valuation Certificate issued on the 22 May 2015.

c. Presentation of Evidence by the Commissioner of Valuation by Ms Seline McElhatton BSc MRICS including Appendix 1 and 2, namely photographs and schedule of comparable evidence dated the 29th August 2017.

The Law

6. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (the 2006 Order"). Article 54 of the 1977 Order enables a person to appeal to this Tribunal against the decision of the Commissioner on appeal regarding the capital value.

7. Schedule 12 of the 1977 Order as amended states as follows:

"7(1) subject to the provisions of this schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in Paragraphs 9-15, the hereditament might reasonably 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 a hereditament for the purposes of any revision 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. …

(4) in sub-paragraph (1) "relevant to capital valuation date" means 01st January 2005 or such date as the Department may substitute by order made subject to a negative resolution for the purposes of a new capital valuation list."

(7) Article 54(3) of the 1977 Order provides that on appeal any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. Thus, any appellant must successfully challenge and displace the presumption of correctness otherwise the appeal will not be successful.

Background to the Appeal

8.1 Seline McElhatton the Valuer for the Commission of Valuation first sets out of the history of the subject property.

8.2 On the 18th March 2014 Mr McAlpine applied to the District Valuer requesting an allowance to be made due to the subject properties poor condition. The District Valuer applied a 50% allowance reducing the Capital Value from £80,000 to £40,000 to reflect the condition of the property following the freezing weather conditions of 2011. The effective date of the valuation was the 1st April 2014.

8.3 On the 26th March 2014 the case was registered by the District Valuer for re-inspection of the property. An External inspection was conducted based upon the statutory assumptions namely that the assumed renovations were complete. The allowance was removed from effective from the 1st October 2017 and the Capital Valuation increased to the original level of £80,000.

8.4 On the 24th July 2017 Mr McAlpine lodged an appeal against the District Valuer's decision. On behalf of the Commissioner of Valuation Ms Seline McElhatton inspected the subject property on the 3rd May 2017.The survey resulted in an increase in the CV to £100,000 which was subsequently adjusted to the original level of £80,000 to reflect the poor external repair.

Appellant's Representations

8.5 Mr McAlpine is seeking a reduction in CV to £40,000 on the grounds that the property is uninhabitable. He has outlined the following grounds –

- The property has not been lived in for many years due to the state of disrepair
- There is a serious damp problem from date of purchase (20 years ago) and although redecorated, the damp has always returned
- Discovered that a river or stream runs under the property which may have been covered over 100 years ago. Considers not only to seriously affect value but made the property uninhabitable.

- The property has greatly deteriorated since the date of the inspection by Land & Property Services when the CV was reduced to £40,000
- Finally he disagrees with the increase in the CV to reflect the rear extension as it is a minor extension, not done by Appellant and is in a ruinous state

8.6 The Appellant further elaborates in his addendum attached to his Notice of Appeal;

"The subject premises are uninhabitable. They have not been lived in for many years due to the state of disrepair. This arises from a serious damp problem. When I first purchased the property 20 years ago there was damp on the ground floor. On three occasions it was redecorated but still there was a quick return to it being uninhabitable because of damp. I have since discovered that a river or stream runs under the property and may have been covered, well over 100 years ago. This has not only seriously affected the value but made the property uninhabitable.

There is clearly a conflict of opinion within The Valuation Office. When this property was inspected previously the Inspector reduced the value to £40,000.00. Its condition has greatly deteriorated since then. The current Valuer has justified her restoration of the value to £80,000.00 by saying there was an extension at the back. This was not done by me. I would say it was done many years ago. However, it is a minor extension and is in a ruinous state."

Representations of the the Respondents

9.1 On the 5th June 2017 Mr McAlpine appealed the Commissioner of Valuation's decision to the Northern Ireland Valuation Tribunal.

9.2 Ms McElhatton for the Commission for Valuation makes the following representations:-

9.3 The SubjectProperty is a privately built converted ground floor flat Built 1910. The property has Gross external area - Habitable Space 54 sq m Single glazedtimber windows. A Central heating system in place but not operation and a Mains services in place

9.4 The Capital Value has been assessed in accordance with the Rates (Northern Ireland) Order 1977. Schedule 12 Paragraph 7 defines Capital Value as "… the amount which on assumptions mentioned in Paragraphs 9 to 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." The relevant capital valuation date in the current case is 1st January 2005.

9.5 The subject property under appeal is a privately built converted single level self-contained apartment of solid brick construction with pitched slate roof. The subject is set in a suburban location, on a street linking the Ormeau and Ravenhill Roads in Belfast. The CV as assessed is £80,000. Ms McElhatton inspected the property on behalf of the Commissioner of Valuation on the 3rd May 2017. Inspection photographs are set out in Appendix 1. A summary of the repair issues identified during my inspection in her presentation as follows:

Internal Repair Issues

- Evidence of rising damp
- Extensive condensation and mould
- Penetrating damp
- Collapsed kitchen ceiling due to the burst pipe (following freeze of 2011)
- Basic kitchen units requiring replacement
- Basic sanitary ware requiring replacement
- The central heating system is not operational but radiators and pipework exist in the property

External Repair Issues

- Main roof appears in average repair bearing in mind the age and character of the property Window frames in timber (single glazed) appear sound
- External plasterwork to rear return appears sound but there is evidence of penetrating damp within
- The mortar to the solid brick (front and rear elevations) appears intact
- External doors in place - the rear door, due to damp within the subject may require replacement

9.6 Mr McAlpine's grounds of appeal focus on the view that the subject property (which has been vacant for a number of years) is uninhabitable in its current state and the 50% allowance previously applied to reflect its condition should be maintained, reducing the CV to £40,000.

9.7 The approach taken by Land & Property Services in assessing the CV of a vacant domestic property in disrepair, as per rating legislation, was explained to Mr McAlpine during telephone calls and is as follows:-

1. It is first determined whether or not the property can be considered to be a hereditament.

2. If the property is considered to be a hereditament, the subject is valued by reference to the CV of similar properties. However, as per Schedule 12, Paragraph 12(1) of the Rates (NI) Order 1977, there is an assumption of average internal repair and therefore consideration can only be given to the actual external repair of the property.

If the property is not considered to be a hereditament, the Valuation List entry is deleted.

9.8 Article 2 (2) of the Rates Northern Ireland) Order 1977 defines a "hereditament" as being a property which is or maybe become 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. A property which "is or may become liable to a rate" must be a property that is capable of beneficial occupation. A property which is incapable of beneficial occupation would not fall within the definition of a "hereditament" in Article 2 (2).

9.9 In the case of *Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin),* Mr Justice Singh examined the proper approach to be taken in the determination of whether or not there is, or continues to be, a hereditament.

9.10 The key question that being, *"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?' (Paragraph 39 of the case)*

9.11 The decision on whether a property could be occupied as a dwelling is a physical one, rather than an economic one. The test is to consider whether physically the property can be repaired to make it habitable to a minimum standard having regard to the nature, age and type of property. For example, the repairs required are only those that will bring the property to an average standard that the property would have been in, had regular maintenance been undertaken and therefore, disrepair had not occurred, i.e. a 1910 built converted flat only requires repairs to the

standard that a 1910 flat would expect, not those of a renovated flat standard, where entire elements of the property have been renewed to a modern day standard.

9.12 In the case of *Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin),* Mr Justice Singh further elaborates in relation to the repairs required (Paragraphs 40 & 41 of the case),

"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."*

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

9.13 The Case of *Anne O'Hare v Commissioner of Valuation* (Case Ref 88/12) dated 28th August 2013 outlines the NIVT's view on the approach taken in Wilson V Coll. Whilst the Tribunal states that the same general approach ought to be adopted in Northern Ireland, this is qualified in the following manner;

"In determining the issue generally, there will be properties at either end of the range; on one hand truly derelict properties that very clearly ought not to be included in the valuation list and, on the other, many unoccupied properties which require only very minor works of repair to render them habitable." (Point 16 of the decision)

9.14 The Tribunal acknowledged that many properties will exist between these parameters and that "reasonableness" must be tested.

9.15 The Tribunal stated (Point 17 of the decision) that "A *reasonable person would not wish to expend* a *very substantial amount of money upon the repair of* a *near-worthless property. Thus the reality 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."*

"*..the only common sense and proper way to look at things* is *to examine the specific facts of any case and to take all material factors into account in adopting* a *broad common sense view of things in addressing the issue of whether, 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."*

9.16 The Valuer is of the view the subject property remains a hereditament and should be retained in the Valuation List. The subject is not truly derelict and could still be occupied as a dwelling in its current state of external repair (ie. under the statutory assumption of average internal repair and fit out) or, alternatively, following a reasonable amount of repair works, which would not change the character of the property.

Assessment of Capital Value (CV)

10.1 In the view of the Valuer the property is considered to be a hereditament, as per Schedule 12, Paragraph 12 (1) of the The Rates (Northern Ireland) Order 1977 Land Property Services must assume that that the subject property is in an average state of internal repair and fit out, having regard to the age and character of the hereditament.

10.2 The statutory assumption of average internal repair and fit out means that the elements of the subject's interior which require modernisation/repair are to be disregarded in the assessment of CV. Only the actual external repair of the property can be considered. Due to the issues arising from rising and penetrating damp, the subject property Ms McElhatton is of the opinion that the property should be defined as being in poor external repair.

10.3 Consideration has been given to the comparable evidence, as detailed, in Appendix 1.

Firstly I have given consideration to the assessment CV of the subject property, if it were in average repair, and reflecting the increase in habitable space to 54 sq m (from 39 sq m).

10.4 A CV of £100,000 is considered fair and reasonable in comparison to similar properties, in average repair.

10.5 The following illustrates comparable evidence of allowances granted to reflect poor repair.

PIO	Address	Allowance	Reason Granted	CV	Date Granted
251545	Flat 1 49 South Parade	36.84%	To reflect poor repair, in tone with adjacent property	£60,000 (from £95 ,000)	Case Closed 20/11/2012
251547	Flat 3 49 South Parade	28.57%	To reflect poor repair, in tone with adjacent property	£50,000 (from £70,000)	Case Closed 20/11/2012
288309	Flat 1, 113 Eglantine Avenue	10%	For poor external repair	£90,000 (from £100,000)	Under LPS Appeal Case Ref: 7058084-1. Closed 29/09/2016
209924	99 Alexandra Park Avenue	16.67%	To reflect poor external repair	£40,000 (from £48,000)	Supported under LPS Appeal Case 7035821-1 Closed 24/05/2016

10.6 The table details allowances ranging from 10% to 36.84%. The allowances at the higher end of this range, date back to 2012 and therefore, pre date the decision of the NIVT in the case of *Anne O'Hare v Commissioner of Valuation* (Case Ref 88/12) dated 28th August 2013, which outlines the NIVT's view on the approach taken in *Wilson V Coll* (outlined on Pages 7 & 8). The allowances at lower end are more typically in the range 10% to 16.67% and reflect this decision.

10.7 Based on the above evidence and legal submissions, the valuer concludes that the temporary allowance of 50% applied to the subject effective from the 1st April 2011.to be excessive. The Valuer formed the opinion that due the poor external repair the resultant problems of rising and penetrating damp, which have proved

difficult for th appellant to resolve a 20% allowance is appropriate., The Capital Value was revised to £80,000 accordingly and is considered fair and reasonable in comparison to similar properties.

Observations of the Tribunal

11. The appellant's case to the Tribunal is that the original assessment of the valuation, as revised should not be £80,000. The appellant in his notice of appeal stated he believed that the actual valuation should be £40,000. The appellant later made representations that in essence the property is derelict and one possible inference to read into his submissions is that the subject property should not be in the rating List or be "zero rated" The purpose of this Tribunal is to consider the evidence and apply the relevant law to the issues of capital valuation. The valuation to the subject property has been assessed in accordance with the Rates (Northern Ireland) Order 1977.

12. The Tribunal has taken into account an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides, *"On the appeal and this article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to correct until contrary is shown".* It is thus the statutory assumptions as to the correctness of the valuation list that it be rebutted. It is therefore up to the appellant in any case to challenge and to displace the presumption or perhaps for the Commissioner's decision on appeal to be seen to be so manifestly incorrect that the Tribunal must take steps to rectify the situation.

13. The appellant's contention in essence is that the subject property is in an uninhabitable condition and not capable of beneficial occupation hence it should be taken out of the list.

14. Article 2 (2) of the 1977 Order defines a "hereditament" as meaning a property which is or maybe become 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. A property which "is or may become liable to a rate" must be a property that is capable of beneficial occupation – that is a property which a tenant would pay rent. A property which is incapable of beneficial occupation would not fall within the definition of a "hereditament" in Article 2 (2).

15. The respondents correctly state that in a case of domestic properties certain repair assumptions should be made:

(1) The exterior or structure of the property is deemed in its actual state of repair – subject to only to the minor alterations test as explained. I refer to the case of *RF Williams (Valuation Officer) the Scottish and Newcastle Retail Limited Allied Domecq Retail Limited* at Paragraph 36 of the said Judgement.

(2) That the assumption also has to be made that the property is in:

(a) an average state of internal repair;

(b) an average state of internal fit out.

Having regard to the age of the hereditament, the character of hereditament and locality.

16. In seeking to determine the matter the Tribunal have found assistance in the case *F J Wilson (appellant) and M Webb on behalf of the Listing Officer (respondent) decision of the Valuation Tribunal for England* and in the case of *Wilson-v-Josephine Coll (Listing Officer*) [2011] EWHC delivered on the 13th October 2011 by Mr Justice Singh referred to by the Respondent in her presentation.

17. The material facts in the case *Wilson-v-Josephine Coll* were not in dispute. The property concerned was a two bedroom semi-detached house dating from the 1930s. It has appeared on the valuation list since its commencement in 1993 and had been valued at Band B. Banding is not under challenge in this case if the property is to remain in list at all. The property had been vacant since June 2007 and in a state of disrepair with no work having been carried to it since it became vacant. So far as appears to be the case for the present purposes, it was, for a period after it became unoccupied designated as an exempt dwelling under what is known as Class A of the Exempt Dwelling Order.

18. Mr Justice Singh in referring to a case of *Post Office-v-Nottingham Council [1976] 1*

WLR624 Browne LJ at Page 365 B sets out the following helpful passages.

"The question is whether the building *as a building* is so far completed as to for occupation for the purposes for which it is intended – as a house, shop, office, factory or, in this case a telephone exchange."

Later Mr Justice Singh refers at Page 635H-636A Brown LJ stated:

"I think the test is; as a matter of fact and degree, is, or, will the building, as a building, being ready for occupation or capable of occupation for the purposes for which it is intended?"

19. Mr Justice Singh stated at Paragraphs 39, 40 and 41 states:

"In answering the question correctly the respondent submitted to me what in fact should be asked as 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 undertaking could the premises be occupied as a dwelling?" 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 on whether a property is capable of being rendered suitable for occupation (in the present context occupation of 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 of being occupied for the purpose for which it is intended. 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, does 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".

20. In the case of *Wilson Webb the Chairman of the Valuation for Tribunal for England i*n seeking to apply the High Court ruling in which Mr Justice Singh enunciated in *Wilson-v-Josephine Coll* then summarised a detailed list of the repairs that were required to be undertaken to the subject property that was the subject of that appeal and this included inter alia:

(a) Internally the whole property needed redecorating;

(b) All windows required rubbing down and repainting;

(c) The kitchen units needed replacing;

(d) One window pane in the kitchen needed replacing;

(e) The bath needed replacing;

(f) The hole in the bathroom ceiling needed repairing;

(g) A few tiles were missing from the roof and needed replacing;

(h) The hot water cylinder (which had been stolen) needed replacing;

(i) The copper piping within the dwelling, (which had been stolen) needed replacing;

(j) Part of the floor in the kitchen and joists in the kitchen needed replacing;

21. The property did not require any significant reconstruction and was largely wind and watertight.

22. The Chairman of the England Valuation Tribunal in seeking to apply the High Court Judgement of Mr Justice Singh stated at paragraph 15:

> "*Both parties try to introduce the panel an economic test with the appellant arguing that the cost of repairs and building an extension would meet or might even exceed the value of the dwelling and the respondent arguing the payment of £36,000 (£43,200 including VAT) for fire damage demonstrated the cost of the repair would be substantially lower than the value of the dwelling.*
>
> *The panel considered neither point was of any assistance when determining the appeal. The fire damage was according to the respondents, contained within one room and would not include all the repairs required and the respondent incorporating in his estimate the cost of meeting the legislative requirements of letting the dwelling*. Further at Paragraph 41 of his decision, Mr Justice Singh states, *"the crucial distinction is 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 does force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present regime, whereas it is present in the legal regime which governs non-domestic rating".*

The Tribunal concurs with this view**.**

23. I further refer to the recent Judgment of the President of the Northern Valuation Tribunal Mr Leonard, in the case of *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland,* Case reference number 12/12 in which the Tribunal considered the question "whether or not the subject property ought to be included in the rating list as a hereditament". In that case the President helpfully considered the case of *Wilson v Coll* and it applicability to Northern Ireland.

24. I now set out the relevant paragraphs at paragraphs 23 -26 of the said judgment:-

" 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."

25. The Tribunal find the decision of *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland* a persuasive authority and accordingly determine, that the same general approach ought to be adopted in Northern Ireland as in the case of *Coll v Wilson* but with the important qualification of the test of "reasonableness" as set out at paragraph 26 of the judgment of *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland* . The Tribunal concur with the observation of the President of the Tribunal when he states "*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. …...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. …… 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…."*

26. A factor that may point to the property being taken out of the rating list is the factors set out by the appellant at paragraph 8.5 of this judgment and 8.10 in particular when the appellant states*2* ***"the subject premises are uninhabitable. They have not been lived in for*** *many years due to the state of disrepair. This arises from a serious damp problem. When I first purchased the property 20 years ago there was damp on the ground floor. On three occasions it was redecorated but still there was a quick return to it being uninhabitable because of damp. I have since discovered that a river*

or stream runs under the property and may have been covered, well over 100 years ago. This has not only seriously affected the value but made the property uninhabitable."

27. Ms McElhaton observes that the Subject Property is a privately built converted ground floor flat Built 1910.The property has Gross external area - Habitable Space 54 sq m Single glazed timber windows. A Central heating system in place but not operation and a Mains services in place. Further the Valuer observes that the subject property under appeal is a privately built converted single level self-contained apartment of solid brick construction with pitched slate roof. The subject is set in a suburban location, on a street linking the Ormeau and Ravenhill Roads in Belfast. Is this a dwelling that can be described as "truly derelict" (*Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland.* Case, Reference Number 12/12).Ms McElhatton takes the view that the property is not truly derelict and therefore should be included in the rating list?

28. The Valuer is of the view that having established the Capital Valuation as £100,000 and allowance 20% should be made reducing the valuation to £80,000

Decision of the Tribunal

29. The appellant's case to the Tribunal is that the original assessment of the valuation of the property of £80,000 should be £40,000

30. The purpose of the Tribunal is to consider the evidence and apply the relevant Law to the issue of capital valuation. The valuation to the subject property has been assessed in accordance with the legislation contained in the Rates (Northern Ireland) Order 1977. Schedule 12 Paragraph 7 as set out above at paragraph 7 of this judgment.

31. Ms McElhatton correctly in the view of the Tribunal was of the view that the property should remain in the Valuation List. This is also acknowledged to some extent by the appellant in that it is the amount of the valuation that is an issue. The Tribunal note the history of the valuation of the Capital Valuation of the subject property as set out at paragraphs 8.1 - 8.4 .The final Capital Valuation was initially assessed as £100,000 but a 20% allowance was made to take into account the state of the property and the Capital Valuation was revised to £80,000.

32. Schedule 12 of the 1977 Order requires that in cases of revision of a Valuation List "regard shall be had to the Capital Values in the Valuation List of comparable hereditaments in the same state and circumstances." A schedule of comparable evidence was gathered to illustrate the Capital Value assessments of similar properties to the subject property (I refer to Appendix 2). These selected comparables demonstrate a strong relativity which supports the assessment of £80, 000, which supports the valuation of the subject property. Ms McElhatton further illustrates the comparable evidence in allowances granted to reflect poor repair.

33. It is noted that Flat 1, 49 South Parade is given an allowance of 36.84% for poor repair and the capital valuation was reduced from £95,000 to £60,000 as at the 12 November 2012. Flat 3, 49 South Parade was given an allowance of 28.57% and reduced from £70,000 to £50,000 .as at the 12 November 2012. Flat 1,113 Eglantine Avenue was granted an allowance of 10% and the CV reduced from £100,000 to £90,000. The table details allowances ranging from 10% to 36%. Following the guidance in the NIVT case of Anne *O'Hare v Commissioner of Valuation* (Case Ref 88/12) which further outlines the NIVT's view on the approach taken in *Wilson V Coll*. The range of allowances would be more typically in the range 10% to 17.00%

34. The Valuer for the commissioner on the evidence formed the view that the temporary allowances of 50% applied to the subject property effective from the 1st April 2011 was excessive. On the evidence she concluded that allowances are more typically in the range of 10% to 16% and thus reflect her decision. Taking into consideration the poor external repair, the resultant problems of both rising and penetrating damp, which have proved difficult to resolve she considered a 20% allowance appropriate. The Tribunal concur with this view.

35. In relation to the subject property the Tribunal considers that the allowance is justified.

36. The Tribunal's unanimous decision is that the Appellant's appeal is not allowed and the Capital Valuation assessed on, Flat 1, 87 South Parade, Ballynafoy, Belfast BT7 2GN, of £80,000 is correct.

Mr Stephen Wright

Chairman, Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to all parties: 8 March 2018