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: 87/12

ANNA O'HARE - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr Philip Murphy FRICS and Mr Patrick Cumiskey

Hearing: 28 August 2013, Belfast

DECISION

The unanimous decision of the tribunal is that the subject property of this appeal, Flat 1, Number 4 Fitzroy Avenue, Belfast BT7 1HW, is properly to be included as a hereditament. The tribunal upholds the Commissioner's Decision in Valuation Certificate dated 5 February 2013 in respect of the subject property and the appellant's appeal is dismissed, and the tribunal Orders accordingly.

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 her appeal should be dealt with by written representations.

2. The appellant, by Notice of Appeal received by the office of the tribunal on 5 March 2013 appealed against the Valuation Certificate of the Commissioner of Valuation dated 5 February 2013 in respect of the valuation of a hereditament situated at Flat 1 (Ground Floor), Number

4, Fitzroy Avenue, Belfast BT7 1HW ("the subject property") whereby the domestic capital value was determined at a figure of £67,500.

The Law

3. 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. It was not fully clear to the tribunal from the content of the appeal form (see paragraph 8 below) whether the appeal is both against the subject property being listed as a hereditament and thus appearing on the rating list, and also in regard to the matter of the fair and proper capital value. However the respondent has treated the matter as including such an appeal, so in regard to the first issue (what might be referred to as the "listing issue") for completeness the tribunal shall address that issue and, in addition, shall determine the capital value issue, which latter issue most certainly requires to be determined in this appeal. In regard to the listing issue, the tribunal shall very briefly set out the relevant statutory provisions of the 1977 Order (as amended).

4. Article 2 (2) of the 1977 Order, in regard to what constitutes a "hereditament" for the statutory purpose, provides 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 liability to rating, the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 ("the 2011 Regulations"), effective from 1 October 2011, provide that domestic buildings and parts of buildings for the purposes of the 1977 Order are to be subject to rating (subject to certain statutory exceptions). Accordingly, 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

5. The tribunal noted the written evidence and written 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 Valuation Certificate dated 5 February 2013;
- A document entitled "Presentation of Evidence" prepared on behalf of the Commissioner by Mr Andrew Magill MRICS, dated 15 April 2013, and submitted to the tribunal for the purposes of the tribunal hearing;
- Correspondence from Dr Alasdair McDonnell MP, dated 28 February 2013, sent to the tribunal in support of the appellant's appeal;
- Documentation consisting of copy emails from the appellant, copy medical information and a document entitled "Additional Evidence" signed by the appellant and Mr O'Hare, dated 28 May 2013 and received by the tribunal on 29 May 2013;
- Correspondence between the tribunal and the respondent.

6. The following facts were evident from the documentation. The subject property was originally a pre-1919 (apparently single occupancy) terrace house. It was converted at some time (the tribunal is not certain when) into a ground floor flat, called "Flat 1", being the subject property and a split level first and second floor flat, called "Flat 2" (which is the subject of a separate appeal to this tribunal). Both of these flats are currently vacant. The further particulars of the subject property such as are provided in the Presentation of Evidence confirm that the subject property is a single level flat located in the University area of Belfast. It is in a "shell state", with the exception of the kitchen and bathroom. The walls need painted and there were, at the time of inspection on behalf of the respondent (29 January 2013), no floor coverings. Damp was observed to be penetrating through the bathroom roof to the rear, which was interpreted as most likely to be due to water penetration on account of damaged slates. From the photographs, the property has a two-storey extension to the rear, which would be typical of terraced properties in this locality. Dampness was observed to be evident on the adjoining walls with the neighbouring property, that being number 6, Fitzroy Avenue. The opinion expressed on behalf of the respondent was that this was not a major issue and that it was one which could be

easily remedied. It was accepted that the neighbouring property, number 6, Fitzroy Avenue (which shall be further referred to, for convenience, in this decision as "number 6"), was derelict and that external damp was penetrating through the rear roof of the entire property over the bathrooms in both flats, being Flat 1, the subject property, and also Flat 2 (the flat above). The fact that number 6 was derelict (having apparently been the subject of vandalism and a number of fires) was observed to be and was accepted by the respondent as causing problems, as damp appeared to be spreading from number 6 to the adjoining walls and roof. Regrettably, the Presentation of Evidence did not comment expressly upon any disparity between any effect stemming from the foregoing concerning, specifically, the subject property and any effect concerning, specifically, Flat 2.

7. In the light of the available evidence, the tribunal's assessment was that any consequential dampness as a result of the problems observed to the bathroom roof to the rear (that of Flat 2, above the subject property), which was regarded from the evidence as most likely due to water penetration due to damaged slates, affected the upper part of the entire property and thus was deemed to have had some effect upon Flat 2. However, there was no clear and certain evidence available to the tribunal concerning any effect stemming from this specific issue upon the subject property. The other dampness effect observed to be evident, as far as it related to the adjoining walls with number 6, was not distinguished in the evidence as between the two flats. The tribunal's conclusion, derived from the quality and extent of all of this evidence, was that the dampness observed to be evident on the adjoining walls with number 6 was more likely to have had, comparatively, a more substantial effect upon the upper part of the entire property and hence upon Flat 2, when compared to the subject property. It is regrettable, where there are indeed two separate appeals affecting different parts of the one structure, such as is the case in this matter, that the Presentation of Evidence and any written evidence from the appellant did not make matters a little more clear in order to provide a little more assistance to the tribunal in the assessment of the facts. Any available information and evidence did not seek to draw a clear causal distinction and to provide specific detail concerning any dampness emanating from the damaged roof to the rear and that emanating directly from number 6, by what is assumed to be substantially a different route of water ingress.

THE SUBMISSIONS

8. In her appeal form, the appellant stated as follows:-

The wall we share with No. 6 from ceiling to floor is completely porous - each time it rains - damp patches appear on our walls - we refurbished our house then there were three fires in No. 6 (next door).

*Eventually it was completely burned down the firemen in trying to control the fire entered our property through the roof and sprayed our house with water- there was also smoke damage. We repaired this as best we could but we can't do anything about the damp walls. *No. 2 Flat has no kitchen*.*

9. On behalf of the respondent, Mr Magill in the Presentation of Evidence, in reference to the first issue requiring to be determined, made reference to whether a hereditament was properly to be deemed to exist. This is 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 judgment of the High Court in England, upon an appeal on a point of law from the Valuation Tribunal for England, was expressly 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 in regard to the issue of whether a property was capable of being rendered suitable for occupation by undertaking a reasonable amount of repair works. The distinction was between a truly derelict property, which was 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. The crucial distinction was not between repairs which would be economic to undertake or uneconomic to undertake. It was thus submitted that the tribunal should follow the judgment of Mr Justice Singh in ***Wilson v Coll*** and as a consequence determine that there was a hereditament that ought to be included in the rating list. The appellant made no specific submission in regard to that technical issue.

10. In respect of the capital value issue, the respondent's submission to the tribunal was that in arriving at the capital value assessment regard was had to the statutory basis of valuation and thus regard was had to the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the subject property. Three "comparables" were set out in a schedule to the Presentation of Evidence, with further particulars being given thereafter in respect of these comparables, including photographs, all of these being located in Fitzroy Avenue, Belfast, and in relatively close proximity.

11. In this case the capital value has been assessed (as adjusted) at a figure of £67,500. On behalf of the Commissioner it has been contended that that figure is fair and reasonable in comparison to other properties; the statutory basis for valuation has been referred to and especially reference has been made to Schedule 12 to the 1977 Order (as amended) in arriving at that assessment. Schedule 12 provides that the assessment of capital value is made based upon certain statutory assumptions which are set forth in the Presentation of Evidence. One of these assumptions, that mentioned in Schedule 12, Paragraph 12 (1), is 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".

12. The comparables set out in the Presentation of Evidence all are presumed to have had unchallenged capital valuations. The details of the subject property are also included below for comparison purposes. Brief particulars indicated are as follows:

(1) The subject property - Flat 1, 4 Fitzroy Avenue, Belfast, single level, self-contained, ground floor apartment, Nett Internal Area ("NIA") 36.46m^2, – capital value (adjusted) £67,500;

(2) Flat 2, 15-19 Fitzroy Avenue, Belfast, single level, self-contained, ground floor apartment, average external and internal repair, almost opposite the subject property NIA 44m^2, – capital value £80,000;

(3) Flat 5, 15-19 Fitzroy Avenue, Belfast, single level, self-contained, first floor apartment, average external and internal repair, NIA 29m^2, – capital value £70,000; and

(4) Flat 8, 15-19 Fitzroy Avenue, Belfast, single level, self-contained, second floor apartment, average external and internal repair, NIA 34m^2, – capital value £75,000.

13. These comparables were challenged by the appellant who submitted that the comparables were not similar to the subject property, that they were in a block which had been completely refurbished and were very appealing to a tenant or purchaser, that the subject property was beside a damp rat-infested house and opposite houses with wire mesh grills and very undesirable tenants and that these comparables were just outside the "dingy end of the street" and were located together in an expensively refurbished block . Any person who viewed the subject property was immediately put off by the surroundings. The appellant's insurers had refused further cover for the subject property because of the derelict house next door (number 6).

THE TRIBUNAL'S DECISION

The Listing Issue

14. This issue may be simply stated; it is whether or not the subject property ought to be included in the rating list as a hereditament. The tribunal has been referred to ***Wilson v Coll***. That case is not binding as an authority upon this tribunal in Northern Ireland. The tribunal is however entitled to take heed of the case and to have regard to any legal principles available from the reasoning. In ***Wilson v Coll*** Mr Justice Singh examined the proper approach to be taken 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 was between a truly derelict property, which was 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. The Court 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. To the material extent, Northern Ireland domestic rating law, likewise, does not include any "economic test", as such. The issue identified by the Court was, 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?

15. The tribunal, as has been mentioned in other recent cases, 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 an authority of any binding or conclusively persuasive character being drawn to the tribunal's attention. However, the determination of this tribunal is that the same general approach ought to be adopted in Northern Ireland, but qualified as is mentioned below.

16. 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. Many properties of course shall exist somewhere between these two parameters. How then is a "reasonable amount of repair works" to be judged and how is the concept of "reasonableness" to be tested?

17. "Reasonableness" is generally regarded as being the standard for what is fair and appropriate under usual and ordinary circumstances. The tribunal has difficulty in comprehending how what is reasonable can be tested if the true realities of the situation, including those which would most impact upon decision-making, are disregarded. 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. To that extent, the judgment in ***Wilson v Coll*** did not proceed to give any account of how the concept of "reasonableness" might otherwise be tested. 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 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. As has been mentioned, the tribunal is reluctant to lay down any rigid principle and each case will depend upon its own particular facts and circumstances.

18. In this case the appellant has not put forward any detailed case as to the issue of what might be required, having regard to the character of the property and the circumstances, to undertake repair works so that the subject property could be occupied as a dwelling. The points made by the appellant and the available facts to be drawn from the evidence are however noted. The respondent's contention is that the subject property could not in any manner be described as derelict. Any repairs would be just that, and not renovation. Applying this approach to the facts of this case and weighing up the arguments advanced and the material considerations, the tribunal's unanimous decision is that the subject property as it stands, in the state and condition described in the evidence, is properly to be included within the rating list as a hereditament. The appellant's appeal on that point fails accordingly.

The Capital Valuation Issue

19. Article 54 of the 1977 Order (as amended) enables a person to appeal to the tribunal against the decision of the Commissioner on appeal regarding capital value. In this case the capital value has been assessed (adjusted) at a figure of £67,500. On behalf of the respondent it has been contended that that figure is fair and reasonable in comparison to other properties. This assessment is challenged by the appellant. The brief rating history of the matter is that the subject property was originally assessed at £80,000 but, on appeal to the Commissioner, this was reduced to the present figure of £67,500, against which figure the appeal is now to this tribunal.

20. The tribunal notes the statutory presumption contained within the 1977 Order, Article 54(3). This is an important matter. On account of this statutory presumption, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown. This means that in order to succeed in the appeal, the onus is on any appellant either successfully to challenge and displace that statutory presumption of correctness, or the Commissioner's determination on appeal, objectively viewed, must be seen 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 saw nothing in the general approach taken to suggest that the matter had been approached for assessment in anything other than the prescribed manner as provided for in Schedule 12 of the 1977 Order, as amended.

21. In the light of the evidence and the submissions, the tribunal examined the essential issue as to whether the appellant had put forward any evidence or argument effectively to successfully challenge evidence

emerging from the comparables, or other sufficient evidence or argument effectively to displace the statutory presumption of correctness or to lead the tribunal to the conclusion that the respondent had misapplied the law to the facts of the matter, or otherwise made a determination concerning capital value effectively capable of successful challenge.

22. The statutory provisions state that the capital value of the subject property shall be the amount which (on the statutory assumptions) the property 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. Further, in estimating the capital value regard shall be had to the capital values of comparable properties in the same state and circumstances as the subject property. The tribunal accordingly conducted an analysis of the appropriateness of selection and the weight to be attached to the various comparables, insofar as this related to the statutory basis of valuation. As has been mentioned above, the comparables were challenged by the appellant who submitted that the comparables are not similar to the subject property, existing in a refurbished block, which was just outside the "dingy end of the street", whereas the subject property was contended to be outside this immediately desirable locality.

23. The tribunal has noted the submissions made by the appellant. The tribunal's analysis of the evidence from the respondent's selected comparables is that these are not inappropriate (as had been argued) existing as they did in relatively close proximity to the subject property. This evidence is useful, to an extent in each case, in assisting with the determination of the appropriate, unadjusted, capital value for the subject property. The evidence suggests that, before adjustment, a capital value for the subject property of £80,000 is not inappropriate. However in the Presentation of Evidence, for the respondent it is stated that the location of the subject property beside an unoccupied and fire damaged building should be reflected in the assessment, as this cannot be considered temporary. It is stated that in the Lands Tribunal an allowance of approximately 5% was given for "unpleasantness" and associated problems of living beside a bricked up and vandalised house (a reference made to Cedar Avenue, Belfast and to Lands Tribunal Case Reference: VR/76/1978). It was therefore conceded that due to problems of external repair and the blight effect upon the subject property of the adjoining property (number 6) an unadjusted capital value of £75,000 was appropriate, less 10% allowance, which would produce an adjusted capital value of £67,500, which latter was the fair and proper capital valuation.

24. Looking at everything and taking proper account of the evidence of the comparables and the specific circumstances and specific characteristics of the subject property, the tribunal assesses that the unadjusted capital value for the subject property ought not to have a

significant adjustment made in regard to the issue of any consequential dampness as a result of the problems observed to the bathroom roof to the rear, which was regarded as most likely due to water penetration due to damaged slates which affected the upper part of the entire property, rather than producing any significant effect upon the subject property. In regard to the remainder of the issues, a total adjustment of 10% to take account of all of the issues was fair and reasonable, for the reasons mentioned. Thus the (revised) unadjusted capital value of £75,000 was appropriate, less such a 10% allowance, which produced an adjusted capital value of £67,500. That in the tribunal's determination was a fair and proper capital valuation for the subject property in these circumstances.

25. Accordingly the decision of the Commissioner in this appeal is upheld. As these are the issues to be decided in the case, this determination disposes of the matter and the Commissioner's Decision is upheld and the appeal is dismissed and the tribunal Orders accordingly.

Mr James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: