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: 88/12

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 2, Number 4 Fitzroy Avenue, Belfast BT7 1HW, is properly to be included as a hereditament. The appeal succeeds to the extent that the decision of the Commissioner in this appeal is not upheld and the tribunal determines that the capital value of the subject property in the capital valuation list is properly to be amended to a figure of £78,000, and the tribunal Orders the list to be amended 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 11 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 2 (1st and 2nd Floor), Number 4, Fitzroy Avenue, Belfast BT7 1HW ("the subject property") whereby the domestic capital value was determined at a figure of £80,000.

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 that do not apply in this matter). 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 terrace (apparently single occupancy) dwellinghouse. It was converted at some time (the tribunal is not certain when) into a ground floor flat, called “Flat 1” (which is the subject of a separate appeal to this tribunal), and a first and second floor flat, called “Flat 2”, that being the subject property. 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 split level first and second floor flat, located in the University area of Belfast. It is in a “shell state”, with the exception of a bathroom. There is no kitchen. At the time of inspection on behalf of the respondent (29 January 2013) the walls needed painted and there were no floor coverings. Damp was observed to be penetrating through the bathroom roof to the rear which was interpreted as most likely 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, number 6, Fitzroy Avenue. The opinion expressed on behalf of the respondent was that this was not a major issue and that it could be easily remedied. It was accepted that the neighbouring property, number 6, Fitzroy Avenue (for convenience in this decision referred to 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, these being Flat 1 and also Flat 2, the subject property. The fact that number 6 was derelict (having apparently been the subject of vandalism and a number of fires) was accepted by the respondent as causing problems, as damp appeared to be spreading from number 6 to the adjoining walls and roof of the subject property. Regrettably, the Presentation of Evidence did not comment, expressly, upon any disparity between any effect stemming from the foregoing concerning, specifically, Flat 1 and any effect concerning, specifically, the subject property, 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 of the subject property (Flat 2), which from the evidence was 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 material effect upon the subject property, Flat 2. 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 the subject property, when compared to Flat 1. As is mentioned in the separate decision in respect of Flat 1, it is regrettable, where there are two separate appeals affecting different parts of the one structure, that the Presentation of Evidence and any written evidence from the appellant did not make matters a little more clear in order to provide more assistance to the tribunal in the assessment of the facts. In any event, it is accepted that both the damage to the roof and also the effect of water ingress from number 6, did have a material effect upon the subject property.

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 determination, 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 at figure of £80,000. 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 2, 4 Fitzroy Avenue, Belfast, converted apartment, multi-level self-contained (first and second floors), Nett Internal Area ("NIA") 55.08m^2, – capital value (amended) £80,000;

(2) 16 Fitzroy Avenue, Belfast, converted apartment, multi-level self-contained, (first and second floors) NIA 60m^2 – capital value £95,000;

(3) 27 Fitzroy Avenue, Belfast, converted apartment, multi-level self-contained, (first and second floors) NIA 66m^2, – capital value £105,000; and

(4) 83 (3) Fitzroy Avenue, Belfast, converted apartment, multi-level self-contained, (second and third floors) NIA 55m^2, – capital value £90,000.

13. These comparables were challenged by the appellant (it being taken that there was a common challenge in respect of both of the flats on the part of the appellant) who submitted that the comparables were not similar to the subject property, that they were in a refurbished condition and better location, whereas the subject property was beside a damp rat-infested house and opposite houses with wire mesh grills and very undesirable tenants. These comparables were just outside the "dingy end of the street". 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 a 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 (as adjusted) at a figure of £80,000. 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 £95,000. On appeal to the Commissioner, this was reduced to the present figure of £80,000, against which figure the appeal is now made 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 been 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 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 do 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. 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/nuisance upon the subject property of the adjoining property (number 6) an unadjusted capital value of £90,000 was appropriate, less 10% allowance, which produced a (rounded) adjusted capital value of £80,000, which latter was contended to be 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 notes the respondent's re-assessment of the unadjusted capital value at a figure of £90,000. The tribunal accepts this (unadjusted) capital value of £90,000 as the correct figure upon which to base any further adjustments. The tribunal further assesses that the unadjusted capital value for the subject property ought properly to have an adjustment made in regard to the issue of 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 and which thus had a consequent effect on the subject property**.** In respect of the appropriate extent of the adjustment properly to be afforded in regard to the issues, a significant adjustment is required in the opinion of the tribunal. In the presentation of evidence a reference has been made to Lands Tribunal Case Reference: VR/76/1978, where an adjustment of 5% had been made to take account of certain specific issues mentioned. The view of this tribunal is that it is somewhat difficult to carry out any precise correlation in respect of percentage adjustments in relation to adverse factors and issues that might have influenced the decision-making of the Lands Tribunal in the former Nett Annual Valuation ("NAV") cases (where the basis of assessment is rent on a "year by year" basis), on the one hand, and, on the other, those factors which ought properly to influence and to be determinative concerning the decision-making of this tribunal in addressing capital valuation appeals. This is so in view of the quite distinct and quite different basis of assessment now brought to bear under the current statutory regime. The tribunal detects what might be a recognition of the foregoing in the 10% (plus) allowance afforded in the instant case (as opposed to the suggestion made in the Presentation of Evidence that 5% had indeed been appropriate in the Lands Tribunal matter dealt with some years ago).

25. Bearing in mind the statutory regime now applicable and taking account of all the evidence, the findings of fact, and the matters referred to in the submissions of the parties, the tribunal's determination is that under all the circumstances an appropriate capital valuation for the subject property is £78,000, arrived at by applying a similar allowance as had the respondent to the (unadjusted) capital value of £90,000 and also a further appropriate allowance in respect of the roofing disrepair issues.

26. Accordingly the appeal succeeds to this extent and the decision of the Commissioner in this appeal is not upheld. As a consequence, the tribunal determines that the capital value of the subject property in the capital valuation list is properly to be amended to a figure of £78,000 and the tribunal Orders the list to be amended accordingly.

Mr James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: