

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

CASE REFERENCE NUMBER: NIVT 7/12

AGNES GIBSON — APPELLANT
AND
COMMISSIONER OF VALUATION FOR NI — RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 9 January 2013

Chair: Barbara Jemphrey

Members: Mr Brian Sparkes (FRICS) and Mr Hugh Mulholland

DECISION AND REASONS

The Hearing

1. The Appellant, Mrs Agnes Gibson, appeared at the Tribunal with her husband Mr John Gibson. The Respondent was represented by Ms Christine Arthurs and Mr Michael McGrady.
2. The property the subject of the appeal is 91 Hillsborough Road, Moneyrea, Newtownards, BT23 6AZ (the subject property).
3. The Respondent initially assessed the capital value (CV) of the property as £125,000 but in March 2012, following a fresh application, amended the valuation to £100,000 as at 1st January 2005, the relevant capital valuation date. The Appellant appeals against that decision under Article 54 of the Rates (Northern Ireland) Order 1977, as amended (hereinafter the 1977 Order).
4. The following documents were before the Tribunal;
 - Commissioner's decision on appeal dated 28 March 2012;
 - Notice of appeal along with grounds of appeal on 10 May 2012;
 - Respondent's presentation of evidence;
 - Correspondence between the Tribunal and the parties.
5. The Tribunal heard evidence and submissions from Mrs Gibson and Mr Gibson on her behalf and from Ms Arthurs.
6. The Tribunal reserved its decision. This notice communicates the Tribunal's decision and contains the reasons for the decision in accordance with Rule 19 of the Valuation Tribunal (NI) Rules 2007.

The Law

7. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter the 2006 Order).
8. The relevant legislation for the purposes of this appeal is as follows. Article 2(2) of the 1977 Order defines a 'hereditament' 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

9. 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 came into force on 1 October 2011 (the 2011 Regulations). These prescribe that, subject to the exceptions set out in the schedule to the Regulations, unoccupied domestic properties are liable to rates.
10. Schedule 12 of the 1977 Order as amended provides 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 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.

(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.

(3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.

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

Capital value — the assumptions ...

12.—(1) 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.

(2) The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

...

11. Article 54(3) of the 1977 Order provides that¹ 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.

The Tribunal's Findings

12. There are two issues before the Tribunal in this appeal. The first is whether the subject property is a hereditament which is or may become liable to a rate within the definition of a hereditament set out in Article 2 (2) of the 1977 Order or is an unoccupied property within the exceptions set out in the within the categories of exceptions set out in the 2011 Regulations. The second issue is whether, if the property is properly included on the Valuation list, the capital valuation is correct.

Is the subject property liable to rates?

13. The Respondent's Presentation of Evidence describes the subject property as a two storey semi-detached dwelling house. It is of traditional design and construction with solid brick walls and a render finish and a slate roof. It has a Gross External Area (GEA) of 88.47m². It has mains water, electricity and sewage. It has wooden framed single glazed windows. It has a kitchen. There are two bedrooms and a bathroom on the first floor.
14. Mrs Gibson submitted that the property was uninhabitable. The electric wire was in a dangerous condition. The property was disconnected from the mains electricity. There was no central heating in the premises. Mrs Gibson produced a letter from the owner of the adjoining property stating that the oil tank which was located in close proximity to the subject premises belonged to 89 Hillsborough Road. The mains water supply was disconnected as pipes had burst and were corroded. External plaster was falling off and was in a dangerous state. Window frames were rotting throughout the subject premises. Mrs Gibson provided photographs evidencing each of these defects.
15. Ms Arthurs referred to the decision of the Administrative Court in England and Wales in *Wilson v Josephine Coll (Listing Officer)* (2011] EWHC 2824 (Admin). She submitted that the relevant question to be asked is whether the subject property is a 'hereditament' as defined by the 1977 Order, that is whether it is a 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. She submitted that this meant asking whether the property is a house which is in a state that means that it could be occupied, and whether is wind and weather tight. She submitted that it means asking whether the property is exposed to the elements so much that it is derelict. She submitted that the question is not whether the property is currently occupiable but whether it can be made occupiable. This means looking at whether it is capable of being put back in the condition it was when last occupied having regard to the nature, age and type of property. Although she accepted that the subject property is in some disrepair she did not accept that it is derelict.

16. The case of *Wilson v Coll* was decided in the High Court of England and Wales on foot of a judicial review action. Whilst this decision is not binding as it relates to legislation applicable in England and Wales it provides useful guidance on the interpretation of similar provisions in the 1977 Order.
17. In the case of *Wilson v Coil* Mr Justice Singh highlighted the importance of keeping the question as to whether a hereditament exists separate from the issue of the capital value of the property including the irrebutable assumptions to be made about the property. He said;

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

41. The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake. As I have already indicated, that submission, and my conclusion in accepting it, draws force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present legal regime, whereas it is present in the legal regime which governs non-domestic rating.”
18. The subject property requires rewiring, damp proofing and a renewed roof. Whilst conditions in the property may be below what we expect in a modern dwelling it cannot be said that the extent of disrepair is such that the property is derelict or, with a reasonable amount of repair, incapable of occupation as a dwelling. In these circumstances we are satisfied that the subject property is a ‘hereditament’ which is liable to a rate.
19. The Appellant has not claimed that the subject property comes within any of the exceptions set out in the 2011 Regulations and the panel is satisfied that none of the exceptions apply.

Capital Value

20. Ms Arthurs submitted that the statutory assumptions mean that the property is assumed to be in an average state of internal repair and fit out. She submitted that the capital value for the subject property had been initially £125,000 reduced to £100,000. She submitted that this reflected the tone of the list and the comparables in the area.
21. Mr Gibson submitted that there should be consideration given to today’s standards in relation to bathroom and kitchen facilities in assessing capital value. He submitted that the subject premises were in such condition that they were unable to obtain insurance for them.

22. The Respondent put forward evidence of four comparable properties in the area, one of which is neighboring the subject property.
23. The Capital Value Assessments of the comparable properties were all unchallenged.
24. The panel must apply the statutory presumptions set out in schedule 12 of the 1977 Order. These include the presumption set out at paragraph 12 of schedule 12 that the subject property is in an average state of internal repair and fit out having regard to the age and character of the property and its locality. The capital value of the subject property is therefore the amount it might reasonably have been expected to have realised if it had been sold on the open market by a willing seller on 1 January 2005 assuming it was in an average state of internal repair and fit out.
25. We have regard to the capital values in the valuation list for comparable properties as submitted by the Respondent. The panel was satisfied that, in accordance with schedule 12 paragraph 7 of the 1977 Order as set out above, the comparables submitted by the Respondent were appropriate being properties in the same area, state and circumstances as the subject property. We take into account the external disrepair of the subject property as identified in the Respondent's Presentation of Evidence at page 8. We are satisfied that the capital value of the subject property is consistent with the properties put forward as comparables taking the external disrepair into account.

Decision

26. The Appellant has not discharged the burden upon her to show that the valuation assessed for the subject property is not correct in accordance with paragraph 7 of Schedule 12 of the 1977 Order. In all of the circumstances and in light of the findings above the Tribunal was satisfied that the valuation shown on the valuation list in relation to the subject property is correct.
27. The unanimous decision of the Tribunal is that the appeal is dismissed.

Barbara Jemphrey Chair
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 20 February 2013