

**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: 2/17**

**DAVID ALEXANDER – APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman: Mr Charles O’Neill**

**Members: Mr H McCormick MRICS and Ms Noreen Wright**

**Date of hearing: 16 January 2019, Belfast**

**DECISION**

The unanimous decision of the tribunal is that the subject property ought not properly to be included in the domestic capital valuation list. The appellant’s appeal succeeds and the tribunal orders that the subject property be removed from the valuation list.

**REASONS**

**Introduction**

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). The appellant David Alexander attended the hearing and the Commissioner was represented by Ms Gail Bennett.
2. The appellant by Notice of Appeal, appealed against the decision of the Commissioner issued on 21 March 2017.
3. This appeal is in respect of the valuation of a hereditament situated at 29 Abbey Street, Coleraine, BT52 1DU (“the subject property”).
4. The matter was listed before the tribunal on a number of occasions and was adjourned for a variety of reasons and came before this tribunal by way of an oral hearing on 16 January 2019.

## **The Law**

5. The statutory provisions 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.
  
6. An issue in this case arises in relation to the listing of the property as a hereditament in the capital value list. Article 2(2) of the 1977 Order states;  
  
    “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”.
7. Reference will be made later in this decision to the relevant case law to which the tribunal was referred by the parties.

## **The Evidence**

8. The tribunal heard oral evidence. The tribunal had before it the following documents:
  - (a) The Commissioners Decision issued on 21 March 2017;
  - (b) The appellant’s Notice of Appeal dated 19 April 2017;
  - (c) A document entitled ‘Presentation of Evidence’ dated 5 October 2017, prepared on behalf of the respondent Commissioner by Alison Jackson MRICS and submitted to the tribunal for the purposes of the hearing;
  - (d) Building/Structural Survey Report by Ivan Scott Associates Limited dated 9 November 2017;
  - (e) Copy notice of refusal of certificate of fitness issued by the relevant council dated 22 December 2017;
  - (f) Order by the President of the Valuation Tribunal dated 25 July 2018 in respect of a request for disclosure of information regarding other properties;

(g) Correspondence between the parties and the tribunal.

### **The Facts**

- (1) The property is a privately built terraced house, built pre-1919. The property has a gross external area (GEA) of 146.85m<sup>2</sup>.
- (2) The appellant contends that the property is no longer habitable and should not be retained in the valuation list.

### **The Appellant's Submissions**

9. In relation to the issue as to whether the property should remain in the list as a hereditament, the appellant states that the house is no longer habitable.
10. The appellant stated that he had purchased the property as a development site. It has not been occupied since he bought it. It was the intention of the appellant to redevelop the site to create a number of units.
11. In relation to the condition of the property the appellant states (in his notice of appeal) that the subject property has been vacant for many years, is not wind/water tight and most of the windows are missing. It has extensive dry, rising and wet rot throughout the structure. There is no heating system, no functioning kitchen or bathroom and the plumbing and electrical installations are substantially damaged/missing. There are structural cracks with vegetation growing through the window and roof voids. He further states that it would cost in excess of the value/valuation to repair to a standard to enable beneficial occupation.
12. This is supplemented by a report from Ivan Scott Associates Limited dated 9 November 2017. The report confirms that the inside and outside of the property was inspected, but that the woodwork or other parts of the structure which are covered, unexposed or inaccessible were not inspected. In his conclusion the surveyor noted:

“We would rate the property within the very poor category and would additionally describe it as derelict.  
Whilst the structural elements generally are in reasonably sound condition there are significant defects which will cause continuing deterioration. The fabric; windows, doors, stairs and wall finishes are in very poor condition.

Significant repairs, including replacement of structural timbers will be required before the property may be considered for occupation.

- Main roof in relatively good structural condition. Concern at junction between main roof and rear return. Significant damp penetration at left side of rear return.
- Much of the roof and walls to the rear return as well as the rear wall to the front terrace is covered with a very significant growth of ivy. Severe disruption to finishes has occurred.
- Gutters and downpipes are in poor condition or missing.
- The structure of the walls is in reasonable condition however there is significant rot to the front right corner extending throughout the full height of the building. There is evidence of a similar defect towards the rear bedrooms right side.
- This rot will have affected the walls above and below the locations where spores are visible.
- Significant remedial works are required involving replacement of timber joists and further treatment before the building can be considered for occupation.
- Floor joists/floorboards wood boring insect infestation.
- The existing roof to the rear return requires significant repair.
- There is evidence of damp to the side party walls.
- It is likely that repairs to flashings to adjacent buildings will be required.”

13. At hearing the appellant further clarified that the rear of the property is in much poorer state than the front. Indeed, he has received a request from a neighbour to repair the party wall between the property and another property.

14. The appellant further stated that the roof has deteriorated since the date of the report undertaken by Ivan Scott Associates Limited in that the roof rafters are pushing on the eaves from the walls. This is due to the failure of part of the roof.

15. The appellant further confirmed at the hearing that there is dry rot extending from the second floor to the front door and from the rear wall at the back to the roof of the hallway. The first floor is crumbling.

16. When asked about the cost to repair the property the appellant at one stage mentioned a figure of £65,000 to £80,000 but then stated that the property was not capable of renovation and should be demolished but that he was reluctant to do this given that the property is located in a terrace and he was conscious of the neighbouring properties.

17. The appellant had also in his written evidence submitted a copy of a notice of refusal of a certificate of fitness issued by the local council on 22 December 2017 under the Private Tenancies (NI) Order 2006.
18. The appellant also stated that he was aware of other properties in the area such as 22/24/26 Abbey Street which were in similar if not better repair than the subject property and which have been removed from the valuation list.

### **The Respondent's Submissions**

19. In the Commissioner's Presentation of Evidence to the tribunal and at hearing, the respondent submits that a recognisable hereditament existed. Ms Jackson was of the opinion in her written report that the property could not be described as truly derelict. She states that it is recognisable as a dwelling house and whilst there are issues with damp, rot, broken windows and intrusion of vegetation etc. the property still exists as a recognisable hereditament.
20. The respondent contended that the correct approach as to whether a hereditament exists is as outlined in *Wilson v Coll (Listing Officer)*. The Presentation of Evidence outlined some extracts from the judgment of Mr Justice Singh in that case.
21. The respondent states that as a consequence of deciding that a hereditament exists, an assumption must be made that the subject property is in an average state of internal repair and fit out having regard to the age and character of the subject property and its locality.
22. In relation to the capital value of the property, reference was made in the Presentation of Evidence to a list of comparable hereditaments in the same state and circumstances. Details of these comparable properties were set out in a schedule to the Presentation of Evidence, with further particulars of same, including photographs of the comparable properties. These were capital value assessments, the details of which are as follows:

	Address	Description	Gross external area	Capital value
1	28 Abbey Street, Coleraine	Privately built pre 1919 terrace	Habitable space 115m <sup>2</sup>	£85,000
2	27 Abbey Street, Coleraine	Privately built pre 1919 terrace	Habitable space 148m <sup>2</sup>	£100,000
3	76 Union Street, Coleraine	Privately built pre 1919 terrace	Habitable space 145m <sup>2</sup> Outbuildings 26m <sup>2</sup>	£105,000
4	17 Chapel Square, Coleraine	Privately built pre 1919 terrace	Habitable space 72m <sup>2</sup> Outbuildings 3m <sup>2</sup>	£60,000.

23. It was noted that a comparable referred to in the Presentation of Evidence (25A Abbey Street) was in fact commercial property and therefore this comparable was ignored for the purposes of this case.

24. The respondent confirmed in the Presentation of Evidence that the capital value of the subject property had been reduced from £75,000 to £65,000 to reflect the very poor external repair.

### **The Tribunal's Decision**

25. There are two main issues to be considered in relation to this case. These may conveniently be referred to as the listing issue and the capital value issue. Each of these will be considered in turn.

#### *The listing issue*

26. In relation to the listing issue the tribunal has considered recent judgments of the Northern Ireland Valuation Tribunal in *Whitehead v Commissioner of Valuation* and in *McGivern v Commissioner of Valuation*. In the *Whitehead* case the tribunal considered the question as to whether the subject property was a hereditament for the purposes of the rating list. In that case the President of the Northern Ireland Valuation Tribunal helpfully considered the case of *Wilson v Coll* and its applicability to Northern Ireland. The relevant parts of the judgment in *Whitehead v Commissioner of Valuation* are as follows:

“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.”

27. In relation to the facts of this case in considering the question “having regard to the character of the property and a reasonable amount of repair works being undertaken could the property be occupied as a dwelling”, the tribunal is conscious of the fact that each case has to be judged on its own facts.
28. On the facts of the case as presented, this property is one which the tribunal considers to be derelict. The building has not been used for a long period of time. The fabric of the building is in very poor condition. The respondent in the Presentation of Evidence admits that it is in very poor external repair. The report carried out on behalf of the appellant notes that the fabric is in very poor condition. Significant repairs, including replacement of structural timbers will be required before the property may be considered for occupation.



29. In his evidence at the hearing the appellant stated that the roof has deteriorated further since the date of the report in that the roof rafters are pushing on the eaves from the walls. This is due to the failure of part of the roof. There are also noted to be significant issues with damp penetration, dry rot and timber infestation.
30. 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, would require an unreasonable amount of repair, reinstatement and other works to be conducted, given all the current circumstances to place the dwelling in a state where it could be properly and reasonably occupied as a dwelling.
31. The tribunal would also state that in coming to this decision it is done on the basis of all the evidence before it, including all the written and oral submissions made by or on behalf of the appellant and the respondent and by taking any relevant statutory provisions into account. Nothing in this case shall in turn have any bearing on the specific facts of any other case as each will have its unique and fact-specific issues.
32. Having conducted a full assessment of this case it is the unanimous decision of the tribunal that the subject property ought not to be included in the domestic capital valuation list. Therefore, the appeal succeeds and the tribunal orders that the subject property be removed from the valuation list.

**Signed: Mr Charles O'Neill – Chairman**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to the parties: 28<sup>th</sup> February 2019**