

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: 14/18

CALVIN BRAMMELD - APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James V Leonard, President

Members: Mr E Spence and Mr G McKenna

Hearing: 6 February 2019, Belfast

DECISION

The unanimous decision of the tribunal is that the appeal is dismissed.

REASONS

Introduction

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, by Notice of Appeal (Form 3) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate dated 25 June 2018 in respect of the capital valuation of a hereditament situated at number 31 Niblock Oaks, Niblock, Antrim BT41 2DJ ("the subject property").
2. The appellant, in making his appeal, indicated that he was content to have the appeal disposed of by written submissions. The tribunal sat to hear the matter on 6 February 2019.

The Law

3. The statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (“the 2006 Order”). As is now the case in all determinations of this nature, the tribunal does not intend in this decision fully to set out the detail of the statutory provisions of Article 8 of the 2006 Order, which amended Article 39 of the 1977 Order as regards the basis of valuation, for the reason that these provisions have been fully set out in many previous decisions of this tribunal, readily available. All relevant statutory provisions and principles were fully considered by the tribunal in arriving at its decision in the matter. Antecedent valuation date or “AVD” is the date to which reference is made for the assessment of capital values in the Valuation List. Until a further domestic property revaluation occurs, capital values are, under the statutory regime, notionally assessed as at 1 January 2005, that being the AVD for the purposes of the domestic rating scheme. The legislation, at Schedule 12, paragraph 7 of the 1977 Order, as amended, provides that the capital value of a hereditament shall be the amount which, on the assumptions mentioned (materially in paragraphs 11 and 12 of Schedule 12, mentioned below), 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 paragraphs of Schedule 12 include the following statutory assumptions, which provide that –

- The hereditament is sold free from any rentcharge or other incumbrance;
- 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,
- The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

The tribunal shall further allude to, below, some case law authorities which, whilst not binding upon the tribunal, are nonetheless persuasive. These provided assistance in the decision-making of the tribunal.

The Issue to be Determined and the Evidence

4. The central issue in this case relates to the state and condition of the subject property, 31 Niblock Oaks, Niblock, Antrim BT41 2DJ, at the material time. The proper focus of the tribunal is placed upon the state and condition of the subject property at the time of issue of the Commissioner's Certificate of Valuation, dated 28 June 2018, with the appellant's subsequent Notice of Appeal against that Certificate being made to the Tribunal on 23 July 2018. In this regard, it is clear from the evidence that a very significant oil spillage occurred which has adversely affected the subject property. This resulted in the necessity to excavate the floors to carry out remedial work and the appellant was required to vacate the subject property. The photographic evidence provided clearly indicates a utility room and a kitchen floor with excavations under way and an entrance hall and living room, which also require excavation. It is accepted on behalf of the respondent that the subject property would not be capable of beneficial occupation for the duration of these remedial works. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) and the documents included the following:- (a) the Valuation Certificate dated 25 June 2018, indicating a Capital Value of £97,500 (unaltered on appeal); and (b) a document dated 6 November 2018 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Ms Seline McClelland B.Sc. (Hons) MRICS and submitted to the tribunal.
5. The subject property has been further described in the Presentation of Evidence arising from an inspection conducted by Ms McClelland on 15 June 2018. The appellant does take issue with the details provided in this document as far as the condition and characteristics of the subject property are concerned. The tribunal will focus upon the specific point of issue, which can be simply stated: when a property is incapable of beneficial occupation for a period of time on account of necessary remedial action and repair, how is that property to be assessed in rating terms, given the applicable statutory provisions and the current state of the law?
6. This difficulty is clearly expressed by the appellant in his form of appeal in the following terms: *"I don't feel as this is a fair decision given the situation and circumstances me and my family have been put in. I feel I should be exempt from paying rates as this is no fault of ours and is not only an environmental but also a health risk to us being in the house. Therefore, we were forced to leave until the*

corrective action is taken and cleaned by professionals. This involves complete excavation on all floors, foundation, block work and surroundings of this house, which makes it uninhabitable. Therefore no services are being used, bins, water, street lights etc. We had to leave on 12 February 2018 and hope to be returning in October 2018 work permitting. All information and pictures provided on request.”

7. The subject property has been further described in the Presentation of Evidence and the appellant, it seems, does take issue with the details provided in this document as far as the condition and characteristics of the subject property are concerned. The subject property is an end terrace house built around 2008 of cavity block construction, with brick outer face and pitched tiled roof. It extends to circa 114.68 m² (GEA) and comprises one reception room, a kitchen, a utility room, three bedrooms, a bathroom and two half-baths. The comments in the Presentation of Evidence provide considerable detail, including a schedule of works required to reinstate the subject property. It is confirmed that the appellant vacated the subject property on 12 February 2018 in order to permit the works to be completed by an anticipated date in November 2018. It is accepted in the Presentation of Evidence that the central issue is whether or not the subject property is to be properly determined as constituting a hereditament during the period in which these remedial works are being conducted and when the subject property is incapable of occupation. The Tribunal accepts that this is the central issue to be determined. Whilst there are comparable properties indicated in the Schedule of Comparisons annexed to the Presentation of Evidence, it seems that the appellant does not take issue with any of these, in comparative terms, save probably insofar as these properties are not subject to remedial works and are thus not vacated for that reason.

The Submissions and the Tribunal’s Consideration of the Issues

8. On behalf of the respondent, the Presentation of Evidence provides a comprehensive statement of the respondent’s position in respect of this appeal. The fundamental contention on behalf of the respondent is that the subject property, at the material date, was properly rateable and was properly to be included in the Valuation List. Whilst it is accepted on behalf of the respondent that the entire ground floor of the subject property is or will be completely excavated to eradicate oil contamination, which amounts to major defects, nonetheless the respondent is obliged to consider if a hereditament exists. The respondent’s argument is accordingly that the subject

property falls into a category of hereditaments which, whilst in disrepair, are nonetheless capable of being repaired and which are properly to be included in the Valuation List. The respondent's submission relies upon what is referred to as the test established in the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and the judgement of (as he then was) Mr Justice Singh, in that case. The Presentation of Evidence, for that reason, cites portions of that judgement and also alludes to the fact that ***Wilson v Coll*** has been considered, in the Northern Ireland jurisdiction, in several appeals to the Valuation Tribunal. This is correct for that case has been considered by the Valuation Tribunal most notably in the case of ***Whitehead Properties Ltd v Commissioner of Valuation (Case Ref. 12/12)*** and also, for example, more recently in the case of ***John Trodden v Commissioner of Valuation (Case Ref. 38/15)*** and also in several other cases.

9. Essentially, the respondent seeks to argue that the subject property could not be considered as being truly derelict. The contention is that it is capable of being repaired in order to make it suitable for its intended purpose. When that point is established and a hereditament is deemed to exist, capable of being included in the Valuation List, the respondent's further submission is that the statutory provisions of Schedule 12, Paragraph 12 (1) of the 1977 Order are applicable. These provide for certain statutory assumptions concerning Capital Value. At Paragraph 12 (1) is stated the statutory assumption 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 and its locality. Given this specific statutory assumption, it is submitted for the respondent that any internal disrepair of the subject property cannot properly be considered in the assessment of the Capital Value, but rather only external disrepair, if any, should be considered. It is contended that the repairs are being undertaken within the external fabric of the property. No argument has been received from the appellant to counter that specific submission.
10. The Appendix to the Presentation of Evidence includes the details of the subject property and also brief particulars of three other properties which are stated to be comparable to the subject property. The appellant did not seek to challenge the comparability issue in respect of these three properties. Accordingly, the tribunal carefully considered any evidential material available from these matters.

11. The tribunal accordingly considered any available evidence in reaching a determination and conclusion upon what might be referred to as the primary "listing issue", in other words whether the subject property was a hereditament properly to be included in the Valuation List.
12. The Valuation Tribunal, in earlier determinations, has made observations at some length, regarding the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and the judgement of (as he then was) Mr Justice Singh, in that case. As mentioned, ***Wilson v Coll*** has been considered, in the Northern Ireland jurisdiction, in several appeals to the Valuation Tribunal. The first of these was the case of ***Whitehead Properties Ltd v Commissioner of Valuation (Case Ref. 12/12)*** where the tribunal conducted a detailed consideration and analysis of the principles properly to be extracted from ***Wilson v Coll*** and the appropriate application of these principles in the jurisdiction of Northern Ireland. The tribunal does not intend in this decision to rehearse that detailed analysis, already conducted. A consideration of what the tribunal in that case had to say can be gained from a reading of the decision of the Valuation Tribunal in the case of ***Whitehead Properties***. This matter has, in addition, been the subject of some further cases which have been determined by the Valuation Tribunal, including a case that is alluded to in the Presentation of Evidence, ***John Trodden v Commissioner of Valuation (Case Ref. 38/15)***. (The tribunal also notes, in this regard, the quite recent case of ***Barry McAlpine v Commissioner of Valuation (Case Ref. 6/17)*** which decision again helpfully sets forth a detailed analysis of and commentary upon the topic). In the briefest of summaries only therefore, the principles emerging from these latter cases are, firstly, that in Northern Ireland each case should be determined upon its own particular facts and circumstances. Secondly, that the essential concept of a "reasonable amount of repair" required in order to place any property into a proper state of habitation must be determined by the application of sound common sense and in an entirely practical and realistic manner, as opposed to the application of any overly-rigid principle or any slavish application of the narrowest of interpretations of the dicta of Mr Justice Singh in ***Wilson v Coll***. Thirdly, the tribunal in making this determination is not entitled to take into account the individual circumstances of any appellant, including the personal financial circumstances of that party. The tribunal is entirely in accordance with ***Wilson v Coll*** in this latter respect (and with ***Whitehead*** and the other local

Valuation Tribunal cases) in that the appellant's own personal financial circumstances cannot be taken into account. The tribunal is therefore confined to a consideration of any evidence concerning the state and condition of the subject property at the material date being truly derelict and incapable, applying the test of reasonableness, of being repaired. Taking all of the available evidence fully into account, the tribunal's considered assessment is that the subject property was, at the relevant time, reasonably capable of being repaired. Indeed the clear evidence is that it was in the course of being repaired. For that reason, it constitutes a hereditament properly to be included in the Valuation List. Again, it must be emphasised that this assessment applies to the material date of the tribunal's focus. For that reason the appellant's challenge to the "listing issue" does not succeed.

13. The tribunal's further task is to assess, in the light of all of the evidence, the correctness of the Capital Value stated in the Commissioner's Valuation Certificate. Accordingly, the tribunal examined the evidence available from the respondent's Presentation of Evidence. In scrutinising the evidence, the Tribunal's view is that there appears to be a consistency between the characteristics of the subject property and the other stated comparables which, of itself, does not lend to the suggestion that the capital value of £97,500 is "out of tone". The other three comparables are, respectively, the adjacent properties located at 33 Niblock Oaks (Capital Value £97,500), 35 Niblock Oaks (Capital Value £97,500) and 32 Niblock Oaks (Capital Value £97,500).
14. The statutory presumption contained within the 1977 Order, Article 54(3) provides that any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by this tribunal to be so incorrect that the statutory presumption must be displaced and the tribunal must adjust the capital value to an appropriate figure.
15. The tribunal saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the prescribed manner, as

provided for in Schedule 12 of the 1977 Order. The tribunal's unanimous decision is that the appellant has not put forward sufficient evidence and argument effectively to displace the statutory presumption of correctness in respect of the capital valuation applied to the subject property. For that reason, the appeal cannot succeed and it is dismissed by the tribunal.

James V Leonard, President
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 27th March 2019