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: 41/21

ALLASTAIR BARRON - APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr T Hopkins FRICS & Mrs N Wright

Hearing: 24 May 2022, Belfast

DECISION

The unanimous decision of the tribunal is that the appellant's appeal is upheld and the tribunal Orders the property which is the subject of this appeal to be removed from the Valuation List.

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 in respect of the Capital Value of a

property situated at number 35B Dungonnell Road, Aldergrove, Dungonnell, Crumlin BT29 4DG ("the property").

2. The tribunal sat to hear the matter on 24 May 2022. The appellant was unable to attend in person at the tribunal hearing venue but he was represented by his mother, Mrs Barron. The respondent was represented by Nicola Stewart MRICS attending remotely by WebEx, accompanied by Steven Jeffrey MRICS, Senior Valuer, also attending by WebEx. The tribunal panel members attended in person.

The Law

3. The relevant 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 the Valuation 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 ("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 2006 Order amending legislation applied to the 1977 Order, at Article 8 (2), provided that in Part 1 of Schedule 12 (concerning the basis of valuation), after paragraph 6 there was to be inserted paragraph 7. Paragraph 7 (3) provides that 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 circumstances as another, this being the statutory principle underpinning assessment of Capital Value. The material provisions, for the purposes of the tribunal's determination in this case and which the tribunal explored with the parties at hearing, read as follows:-

> *11. The hereditament is sold free from any rentcharge or other incumbrance;*
>
> *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 circumstanc*es in *which it might reasonably be expected to be on the relevant date.*

The Issue to be Determined and the Evidence

4. It is clear that a central issue in this case relates to the physical condition of the property at the material time. The appellant has raised an issue regarding a Completion Notice served in regard to the property: the appellant contends that this Notice was "served prematurely", as he expresses it, on account of matters to which he now seeks to draw the tribunal's attention. The respondent's argument in that regard is that the appellant had indeed appealed the Completion Notice. However, the Commissioner of Valuation had not upheld that Completion Notice appeal. The appellant then had not appealed further at the material time. However, subsequently, upon entry of the property into the Valuation List the appellant submitted a further appeal. The respondent's position, accordingly, was that only the Capital Value (not the Completion Notice) could be considered in the present appeal. Regarding the issue of the physical condition of the property at the material time, the respondent has sought to rehearse arguments that often deployed concerning the so called "hereditament test", more of which below. The tribunal had before it the appellant's Form of Appeal to the tribunal (Form 3) dated 7 December 2021 and the documents also included the following:

4.1 Copy of a comprehensive report from Equilibrant Limited, Consulting Engineers, dated 24 June 2021 (Dr Jim Cromie, BEng (HONS) PhD CEng FIStructE MICE IMaPS DipCII), addressed to the appellant.

4.2 Copy of a report dated 29 June 2021 in the form of a tender with estimated costings from Larsen Foundations Limited t/a Larsen Piling (Mr Michael Anderson), addressed to the appellant.

4.3 Copy Valuation Certificate in regard to the property, issue date 29 November 2021, signed by the Commissioner of Valuation.

4.4 A document dated 4 March 2022 consisting of a Presentation of Evidence prepared on behalf of the Commissioner of Valuation, as respondent, by Ms Nicola Stewart BSc (Hons) MRICS and submitted to the tribunal. This Presentation of Evidence includes a timeline which indicates, in a little detail, the following material dates:

9 December 2019: The District Valuer issued a Completion Notice confirming that Land and Property Services (LPS) would regard the completion day to be 8 March 2020, the notice being issued in accordance with Article 25B and Schedule 8 of the 1977 Order.

19 December 2019: The Completion Notice was appealed by the appellant to the Commissioner of Valuation. On 6 October 2020 the Commissioner held that the Completion Notice should be treated as valid. As a result, the completion day remained unchanged. The appellant did not appeal the Completion Notice any further.

14 October 2021: The District Valuer entered the property into the Valuation List in accordance with the Completion Notice. The Capital Value of the property was assessed at £330,000 and the effective date was taken as 8 March 2020.

8 November 2021: The appellant submitted an appeal to the Commissioner of Valuation. A 10% allowance was considered warranted to reflect the potential for future repair issues associated with defective foundations, resulting in an amended Capital Value of £295,000. A Valuation Certificate was issued to the appellant confirming this on 29 November 2021.

14 December 2021: The decision of the Commissioner of Valuation was appealed to the Northern Ireland Valuation Tribunal.

4.5 Copies of various emails to the Tribunal Secretary from the appellant and on behalf of the respondent and emails from the Tribunal Secretary to the parties.

4.6 In the course of the hearing, Mrs Barron alluded to certain photographs of the property which had, at that time of hearing, not been shared with the respondent nor seen by the tribunal. It was agreed, in conclusion of the hearing, that these would be shared with the respondent who would then indicate any objection to the tribunal having sight of these. A communication was received from Mr Jeffrey dated 24 May 2022 making some further observations but indicating that there was no respondent objection to these being received as evidence by the tribunal on the understanding that the date they were taken was referenced in the tribunal's decision (if applicable). These photographs were thus admitted into evidence, subject to such consent.

5. The Presentation of Evidence provides a property description (with which basic description the appellant does not appear to take issue). The property is a privately built post - 1990 detached 1.5 storey chalet. It has a Gross External Area (GEA) of 388 m² (in the Appendix stated as being 388.78 m²) and an integrated garage with the GEA extending to 62 m². The property is stated to be still undergoing construction and, externally, it is at an advanced stage of completion. However, internally, the property remains unfinished and is in a shell state, so the Presentation of Evidence records. The property is situated in a rural location approximately 2 miles north of Belfast International

Airport and four miles south of Antrim town centre. Photographs of the property are provided, including both external and internal photographs. There is also a location map indicating the location of the property and some other properties which are submitted on behalf of the respondent as being comparable.

6. The Appendix to the Presentation of Evidence provides details in respect of a total of five identified submitted comparables, including the property. These are as follows (with a helpful location map):-

    1. **35B Dungonnell Road, Crumlin BT29 4DG** (the property). Aldergrove Ward. Post-1990 detached chalet, habitable space 388.78 m², garage 62 m², external repair average, Grade C, rural location. It is expressly stated "*Site Negative: potential for subsidence in the future due to position on "made ground" – 10% allowance applied*". The Capital Value is £295,000.

    2. **27 Dungonnell Road, Crumlin BT29 4DG**. Aldergrove Ward. Post-1990 detached chalet, habitable space 329.55 m², garage 62 m², external repair average, Grade C, rural location located 0.3 miles from the property on Dungonnell Road. The Capital Value is £310,000.

    3. **81 Loughview Road, Crumlin BT29 4EE**. Aldergrove Ward. Post-1990 detached chalet, habitable space 411 m², garage 104 m², ancilliary (over garage) 47 m², external repair average, Grade C, rural location located 1.7 miles from the property. The Capital Value is £350,000.

    4. **81A Loughview Road, Crumlin BT29 4EE**. Aldergrove Ward. Post-1990 detached chalet, habitable space 309 m², garage 81 m², external repair average, Grade C, rural location located 1.7 miles from the property. The Capital Value is £290,000.

    5. **11B Dungonnell Road, Crumlin BT29 4DF**. Aldergrove Ward. Post-1990 detached house, habitable space 388.78 m², garage 86.2 m², external repair average, Grade C, rural location located 0.9 miles from the property. The Capital Value is £330,000.

The Submissions

7. **The Appellant**

On behalf of the appellant Mr Barron, Mrs Barron invited the tribunal to consider the report from Equilibrant Limited and the indication of the very substantial cost of conducting remedial works, as evidenced in the Larsen Piling report. Mrs Barron went into some detail regarding the appellant's personal circumstances (which the tribunal does not feel it is necessary to rehearse in this decision) and how and why the property had been acquired at a public property auction, with foundations only being constructed. She explained why the appellant had proceeded with construction to the current state and then had taken the decision to place the property on the market in that condition. Generally, Mrs Barron's articulation of the appellant's case sought to stress to the tribunal the very considerable personal and financial hardship suffered by the appellant on account of the property being deemed subject to rating and by the property being included in the Valuation List. Mrs Barron confirmed that the property had indeed been on the market for sale with an Estate Agency and that a sale had been agreed, subject to contract. However contractual conditions had included the intending purchasers securing a mortgage loan. She stated that the valuer retained by the intending purchasers' mortgage lender had, upon inspection, identified significant structural issues. It had been agreed between the appellant and the intending purchasers to share the cost of obtaining the structural engineering report and the cost estimation concerning the remedial works. The remedial work cost however was so significant that the purchasers had not proceeded with the intended purchase and the property remained on the market for sale, but unsold. Mrs Barron submitted that, effectively, the property could not be sold in view of the very substantial cost of the remedial works required. She argued, in effect, that the property ought not to be included in the Valuation List in view of its state and condition. At the conclusion of Mrs Barron's submission of the appellant's case, she referred to certain photographs which she had, which she stated showed evidence of structural cracking. She confirmed that these photographs had been taken by the appellant, as the tribunal understands it, either that day or else a very short time before the tribunal hearing. As mentioned above, the respondent, via Mr Jeffrey, after receipt and consideration did not object to the admission of these photographs into evidence, provided that the tribunal (which it does) agreed that the date the photographs were taken was referenced in the tribunal's decision, if applicable. These photographs were thus admitted into evidence and were considered by the tribunal, subject to such consent and to an assessment of any evidential value. Mr Jeffrey also made some observations which will be mentioned in summing up the respondent's submissions below.

8**.** **The Respondent**

Regarding the issue of whether or not the property ought to be included in the Valuation List, the submission made on behalf of the respondent, both in the

Presentation of Evidence and also at hearing, included arguments with which the tribunal is familiar and which are often deployed concerning what might be termed “listing issue” cases. It was considered that this was an unusual case and not one often encountered. Regarding the issue of defective foundations, the Presentation of Evidence indicates that Ms Nicola Stewart had met with the appellant in November 2021 and it was explained to her by the appellant that he had placed the property on the market in 2021 and, having agreed a sale, a survey was requested by the proposed purchaser. This survey uncovered issues with the foundations and resulted in the sale of the property not completing. The issue with the foundations was believed to have arisen from backfilling on top of “made ground” and soft natural bearing soils. Ms Stewart had noted documentation provided by the appellant from the structural engineering consultancy, together with the estimated cost of remedial works. The structural engineering consultancy had suggested that the property may suffer in the longer term from consolidation and differential settlement, which could cause cracking to the superstructure. Underpinning had been recommended as the most practical solution and the contractor had quoted approximately £115,000 to complete the piling and underpinning works and indicated that the works would take roughly 22 days to complete. The Presentation of Evidence states that the appellant had confirmed that there was currently no issue with subsidence and that the property remained on the market with an asking price of over £225,000. This submission proceeds with a commentary on the “hereditament test” and with references to the commonly-cited case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin)***, this being a judgment of the High Court in England which has been the subject of previous observations in a number of decisions of the Valuation Tribunal in Northern Ireland. Thus it is submitted that ***Wilson v Coll*** is relevant as it proposes the appropriate test to be applied – a physical rather than an economic test, the critical distinction not being between repairs which would be economic to undertake (or uneconomic) but rather the proper distinction being between a truly derelict property, incapable of being repaired to make it suitable for its intended purposes and repairs which would render it capable again of being occupied for the purpose for which it was intended. The submission also referenced the previously-determined case of ***Eric McCombe v Commissioner of Valuation [NIVT 43/15]*** which references ***Whitehead Properties Ltd v Commissioner of Valuation [NIVT 12/12]*** (the latter being the first case in which the Valuation Tribunal interpreted ***Wilson v Coll*** as it might apply to Northern Ireland). It is accordingly submitted for the respondent, applying the approach derived from ***Wilson v Coll*** (as exemplified in ***Whitehead*** and ***McCombe***) that, with a reasonable amount of repair works, the property could be occupied for its intended purpose, as a domestic dwelling. It is accordingly submitted that the current circumstances did not prevent the property from being capable of

occupation as a dwelling but that the defect created the potential for structural issues in the future.

9. Specifically on the point of the potential for poor repair in the future, the submission proceeds that, at present, there is no evidence of any poor repair; the view was taken that the potential for poor repair in the future, as a result of the foundation issues, would have a negative impact on the value of the property. Reference was made to the case of ***Patricia Grimes v Commissioner of Valuation [NIVT 44/18]*** where the property had been constructed on a riverbank and, as a result, the garden area and an alleyway to the rear had become subject to subsidence and movement. In that case, the tribunal was satisfied that the Capital Valuation of that property had been adversely affected by the subsidence/movement in the land at the rear of the property and determined that the effect of this should be reflected by a reduction of 10% to the Capital Value. In the instant case, the respondent's valuer had reflected the potential for future issues associated with subsidence by awarding a reduction of 10% to the unadjusted Capital Value figure, hence the assessed figure of £295,000. The submission then proceeded to deal with the schedule of comparisons in the Presentation of Evidence and to submit that the Capital Value had been properly assessed on the statutory basis. In regard to the submission of the additional photographs at the conclusion of the hearing, Mr Jeffrey in a commentary contained in his communication giving consent to the tribunal having sight of these photographs, confirmed the respondent's view that these photographs showed settlement cracks rather than evidence of subsidence. It was further observed that the engineer's report did not make reference to these cracks, nor did it suggest there were any current issues with subsidence at the property. It was accordingly contended that this only confirmed that there was potential for cracking to occur at a later date and on that basis the respondent did not wish to amend the Capital Value.

The Tribunal's Determination

10. A fundamental issue in this case is whether the property, at the material date, ought to have been included in the Valuation List. As the parties agree, this is an unusual case and the exact subject matter and circumstances are not often encountered. Many cases concerning the "hereditament test" or "listing issue" involve scrutinising much older properties, whereas this case concerns a property where construction has not been completed. The respondent's case relies heavily upon the principles derived from ***Wilson v Coll*** and the interpretation of that case in the Northern Ireland jurisdiction, referencing a number of cases, as mentioned above. The respondent's submission is that,

applying the established "hereditament test", the property is indeed validly included in the Valuation List.

11. In the course of the hearing, the tribunal directed the parties to certain of the pertinent statutory provisions. In that regard the tribunal requested assistance from the respondent's representatives concerning what they regarded as being the proper interpretation of these provisions (as mentioned above) and certain prescribed statutory assumptions. To mention these again:-

> *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.*

12. In regard to the first of these provisions (12. –(1) "the first provision"), the respondent's representatives had little difficulty in clarifying that the first provision addressed a statutory assumption whereby it had to be assumed that any property was in an average state of internal repair and fit out, having regard to the age and character of the property and its locality. The tribunal, further, explored with the representatives the proper interpretation of the second provision, whereby the assumption had to be made that: "*The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date*" (12. (2) "the second provision"). In regard to the second provision, when this was explored by the tribunal with the representatives, Mr Jeffrey sought to link this second provision to the first provision, thereby arguing that it was, in effect, not a freestanding matter. The tribunal's best interpretation of the position articulated on behalf of the respondent in regard to this, as the representatives appeared to continue to refer the tribunal back to the first provision, is that the second provision could only be interpreted by linking it to the first provision. Further, the tribunal endeavoured to seek a view from the respondent's representatives about the proper interpretation of the words "otherwise" and "reasonably" as these appear in the second provision, but the tribunal was unable to record any definitive view expressed by the representatives in this regard.

13. In the light of the foregoing and considering fully the arguments advanced, the tribunal's interpretation of these statutory provisions, taking the first provision, is that there is a statutory assumption which must be applied (artificial though this might perhaps seem to the observer) which has its roots in established rating law. Accordingly, an assumption must be made concerning average state of internal repair and fit out, qualified by having regard to the age and character of the hereditament and its locality. That is not in doubt and it is indeed a matter of ready interpretation. However, where the tribunal did encounter some difficulty with the respondent's position was the proposition that the second provision and the statutory assumption expressed therein

was intrinsically linked to the first provision and that it could not be effectively a free-standing matter. Indeed, the tribunal at conclusion of the hearing, despite endeavouring to seek clarity, remained a little unclear concerning the respondent's representatives' position in regard to the second provision and the assumption expressed therein. The tribunal, however, has difficulty in accepting the case which the representatives, at best interpretation, appear to be making. This is so for the reason that the word "otherwise" must, by definition and upon any ordinary interpretation of the word, be deemed to refer to some concept other than that which is contained in the first provision and assumption. It clearly refers to something other ("*otherwise"*) than the matter which is referenced in the first provision. Furthermore the second provision and corresponding assumption is expressly made subject to the test of what is reasonable ("…*might reasonably be expected to be…"*). It is thus not an absolute assumption, but is clearly qualified by the test of reasonableness.

14. Applying what may appear to be some rather abstract statutory concepts to the true reality of the situation faced by the appellant, the respondent's case relies heavily upon the first provision and statutory assumption and upon the proposition that issues identified in the reports were only of relevance to some point in the future.

15. Two important matters of fact, however, emerge from the totality of the evidence. Firstly, the potential purchasers (and presumably their mortgage lenders) were certainly alerted by some means to the issues. Whilst the tribunal is not entirely certain of all of the facts, it is reasonable to assume that these issues emerged at the time of the property being inspected for the purposes of mortgage finance and before the more detailed reports were to hand. If so, something that was observed by the mortgage valuer or surveyor, or brought to the valuer's attention, alerted that person to report issues. These issues were then discussed between the appellant as vendor and the potential purchasers. It was agreed that the matter would be explored further by getting a consulting engineer's report and a corresponding estimation of cost for any remedial work.

16. In that regard, it is submitted for the respondent that the respondent's representative did not observe any evidence of structural issues upon her site visit. She visited the site on 15 November 2021. There appears to be a clear contradiction between that proposition and the fact that at some time prior to this inspection and certainly before the date of the Equilibrant report, that report being dated 24 June 2021, a mortgage surveyor/valuer had observed issues or else these had been reported to that person. This had then resulted in the Equilibrant report, followed by the Larsen cost estimation. Whilst the matter has been portrayed on behalf of the respondent as being what might be termed a "future issue", that could not have been the case as far as the potential purchasers and their mortgage lenders were concerned. It must indeed have been very much a live issue at the time of the contract discussions between the appellant and the potential purchasers. These potential purchasers ultimately did not proceed on account of this very significant issue.

17. In the tribunal's view, it is to take an entirely artificial and strained view that the issues which clearly beset the contract for purchase had no contemporary significance and that the condition of the property might properly be assigned to some indefinite date in the future. The true reality is that, after considerable professional investigation and application of technical expertise by the consulting engineers, a very significant remedial cost was identified. None of this latter has been challenged by the respondent. It is likewise entirely artificial to make the assumption, which is evidently being applied on behalf of the respondent, that it is in some way reasonable for the appellant to proceed with full completion of the property and in making it fit for habitation if there exists a "sword of Damocles" hanging over the property, whereby all or most of the work required to finalise construction and render the property fit for habitation might have to be undone in order to expend a very considerable amount of money to underpin the foundations and to rectify the identified problem. It must be remembered, in assessing what is proportionate and reasonable in true context, that the estimated remedial cost stands at a very considerable proportion of the property's estimated market value. The estimated cost from Larsen Piling, at the time of estimation, was £115,000 and the property was placed on the market for sale for ("offers over") £225,000. Then there is the (currently unquantified) additional cost which might be incurred in finishing off the property and which would be potentially rendered redundant, entirely or substantially, by further significant works having to be carried out.

18. Bearing all this in mind, the tribunal approaches this determination from two perspectives: firstly, the statutory perspective and, secondly, the application of certain determined principles emerging from the case law. Addressing the statutory perspective first of all, in the absence of a satisfactory interpretation being articulated in the respondent's case concerning the second provision and the statutory assumption mentioned, the tribunal's view is that this exists as a freestanding matter and it is so expressed in the statutory provision. Expressly, likewise, it is made clearly subject to the test of what is reasonable. On proper interpretation, what is not reasonable falls outside the reach of the assumption. So, if it were otherwise reasonable, the assumption may be applied that: " *the hereditament is otherwise in the state and circumstances in which it might [*word omitted*] be expected to be on the relevant date"*. However, the tribunal must address whether or not it is reasonable to apply that assumption, in the proper context of the facts of the case. The tribunal's considered conclusion is that it would not be reasonable to do so. The assumption is therefore deemed inapplicable and the tribunal is thus free to dissapply it and to consider whether the property is indeed in the state and circumstances in which it might reasonably be expected to be on the relevant date.

19. In the case of ***Whitehead*** the tribunal first expressed its interpretation in the Northern Ireland jurisdiction of ***Wilson v Coll***. In this and in subsequent cases the tribunal has made it clear that there exists a notional spectrum upon which any property under scrutiny sits. At the risk of repetition, the concept is that at one end of the spectrum there sits a truly derelict property in respect of which it would be entirely unreasonable to expect that it could – reasonably - be

made fit for habitation. The reality of the situation must be taken into account, in that regard, otherwise we reach a position of absurdity. Then, at the other end of the spectrum there exists the, perhaps somewhat easier, case where a small amount of repair work would render such a property fit for habitation. The task of the tribunal, in many of these cases, is to adjudge where any property might sit upon that notional spectrum. This task is accomplished by proper consideration of all of the evidence and by applying an entirely common sense view of matters. Some of the concepts requiring to be addressed by the tribunal might appear entirely artificial and at times abstract, but underpinning all of this there must be a sound application of common sense and it is essential that an overly rigid and entirely unrealistic view of matters is not adopted. As the tribunal observed in ***Whitehead***:-

> *"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"*

20. Examining matters, the tribunal has difficulty in reconciling the weight and detail comprised in the Equilibrant report and in the Larsen cost estimation and the fact that the mortgage lender's valuer was alerted to very significant structural issues, on one hand, with the respondent's contention that no structural issues were apparent or evident and that this was all a matter of something potentially latent and of relevance to the future. Indeed, the other curious issue observed by the tribunal seems to be an apparent contradiction between the assertion made by the respondent that there are no current issues bringing the matter outside proper inclusion in the Valuation List and then an application of a 10% reduction in the Capital Value. The tribunal assessed it is being rather curious, if the respondent's position is as has been

articulated, that a current abatement would indeed be applied concerning what is argued to be a some future issue and not a current one. This appears to be an acceptance on the part of the respondent of some concept of future contingency, rather than instead adopting the rather more consistent position which would be that there is nothing currently of a structural nature preventing completion of the property and inclusion in the Valuation List. The tribunal finds not particularly helpful the reference made to the case of ***Grimes v Commissioner of Valuation*** (where, to recall, that property had been constructed on a riverbank and as a result the garden area and an alleyway to the rear had become subject to subsidence and movement), upon which the respondent has sought to rely in support of the 10% reduction. The facts of that case are clearly different to the instant case, in accordance with what has been asserted on behalf of the respondent. In ***Grimes*** there already existed evidence of external subsidence, whereas in this case it is endeavoured to be argued, for the respondent, that no such evidence of subsidence or structural cracking existed at the material time. The tribunal had difficulty in reconciling the two propositions and why ***Grimes*** appeared to have been relevant and to have been followed in the instant case.

21. Taking everything into account, the tribunal's unanimous conclusion is that the property is not to be included in the Valuation List. This being so, it is not necessary to consider comparables evidence and any other matters pertaining to the assessment of Capital Value. For this reason, the appeal succeeds and it is Ordered that the property shall be removed from the Valuation List.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 07 June 2022