NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 11/12

SAMUEL J BINGHAM – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 31 October 2012

Chair: Ms Nessa Agnew

Members: Mr Brian Sparkes and Ms Noreen Wright

DECISION AND REASONS

The Hearing

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). By a Notice of Appeal dated 21 May 2012 the Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 30 April 2012 in respect of the Valuation of a hereditament situated at 110A Kilkinamurry Road, Ballyward, Castlewellan, Co Down, BT31 9QS ("the subject property"). The Appellant, Mr Bingham was not present at the Tribunal and was represented by his solicitor, Mr Drew Nelson. The Respondent was represented by Mr Gordon Bleakley and Mr Stuart Robinson.

2. The Respondent's Presentation of Evidence describes the subject property as a pre-1919 detached bungalow in a rural area accessed by a shared, medium length good surface laneway which is shared with numbers 110 and 112 Kilkinamurry Road. It has a Gross External Area (GEA) of 179$m^{2.}$ It has been lying vacant for around 20 years. The dwelling was constructed with stone rubble masonry walls and a pitched slate roof. There is a single storey extension to the rear which was built around 1930 which is of brick/block walls construction with a flat roof. The walls are finished with a rough cast render. The outbuildings are ex-agricultural and a small portion of the outbuildings are used to store agricultural items and machinery. It has a mains water supply which is disconnected as is the septic tank and the electricity supply is through a generator which is currently not working.

3. The Respondent has assessed the capital value ("CV") of the property as £115,000. The Appellant in his Notice of Appeal dated 21st May 2012 stated that the subject property be removed from the Valuation list on the basis that it was exempt and incapable of beneficial occupation. The Commissioner of Valuation certificate issued on 6th August 2012 and the decision was to retain the property in the valuation list as it was capable of beneficial occupation. The valuation was maintained at £115,000. The Explanation in the Valuation Certificate stated:

> Property is deemed to be capable of beneficial occupation. Current Capital Value adequately reflects current quality, repair and location of property in relation to comparable properties in the area. No change to Capital Value.

4. There are two issues in this appeal. The first is whether the subject property should be retained on the Valuation list being a property 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. The second issue is whether, if the property is properly included on the Valuation list, the capital valuation is correct.

5. The Appellant appeals against that decision under Article 54 of the Rates (Northern Ireland) Order 1977, as amended (hereinafter the 1977 Order).

The Evidence

6. The following documents were before the Tribunal;

- Appellant's Notice of Appeal to the Tribunal dated 21 May 2012;
- Commissioner's Decision on Appeal dated 6 August 2012;
- Letter from Appellant's solicitor of 17 August 2012 enclosing Notice of Refusal of Application for a Certificate of Fitness issued by Banbridge District Council dated 10th July 2012
- Respondent's Presentation of Evidence dated 3 September 2012;
- Undated faxed letter from Appellant's solicitor responding to the Presentation of Evidence (received by Tribunal Unit on 18 September 2012);
- LPS response to fax dated 12 October 2012 which enclosed the following caselaw:
    a. Wilson v Josephine Coll(Listing Officer) [2011] EWHC 2824 (Admin) ("Wilson v Coll")
    b. Valuation Tribunal for England Wilson case dated 3rd May 2012.

On the morning of the hearing Mr Nelson provided the Tribunal with a document from LPS entitled, "The Valuation for Rating of Vacant Properties Guidance Note" which was downloaded that morning from the LPS website.

7. The Tribunal heard evidence and submissions from Mr Nelson on behalf of Mr Bingham and from Mr Bleakley and Mr Robinson.

8. 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

9. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter the 2006 Order). 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, as is customary, does not intend in this decision to fully 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, for the reason that these provisions have been fully set out in many decisions of this Tribunal, which are readily available. All relevant statutory provisions and principles were fully considered by the Tribunal in arriving at its decision in the matter.

10. Further relevant legislation for the purposes of this appeal is Article 2(2) of the 1977 Order which 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

11. 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 ("the 2011 Regulations") came into force on 1 October 2011. These prescribe that, subject to the exceptions set out in the schedule to the Regulations, unoccupied domestic properties are liable to rates.

12. Article 54(3) of the 1977 Order provides that, 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

13. As set out at paragraph 4, 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 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?

14. Mr Nelson referred to guidance from the LPS website and the definition set out therein of 'Beneficial Occupation'. The guidance states,

> "A property which "is or may become liable to a rate" must be a property that is capable of beneficial occupation-that is a property for which a tenant would pay a rent…A property which is incapable of beneficial occupation would not fall within the definition of "hereditament" in Article 2(2)[of the 1977 Order]. It should not therefore be entered, or remain as the case may be, in the valuation list."

Mr Nelson referred to the fact that at No 1 in the Notice of Appeal, the Notice had stated 'not capable of beneficial occupation' but that on page 6 of the Presentation of Evidence the word 'beneficial' had been omitted by the Respondent in its Outline of the Appellant's grounds of Appeal. Mr Nelson submitted that if Mr Robinson had based his findings on being capable of occupation then that was the incorrect test. He referred the Tribunal again to the LPS guidance on the meaning of beneficial occupation and to page 8 of the Presentation of Evidence where there is a further reference by LPS to beneficial occupation. Mr Nelson then referred the Tribunal to the case of *Wilson v Coll*. In that case the property had been occupied until 2007. In this case, Mr Nelson submitted that, the subject property has not been occupied for upwards of 25 years. Further the subject property is up a lane and it does not have mains electricity. The period for which the subject property has been unoccupied is much longer than in the *Wilson v Coll* case.

15. Mr Bleakley on behalf of the Respondent referred the panel to the 2011 Regulations which came into effect on 1st October 2011 and which legislation had introduced the rating of empty properties. In light of this legislation, the subject property had been provided with a capital value.

16. Mr Robinson had carried out the inspection of the subject property and gave evidence on behalf of the Respondent as to the condition of the property. The cottage is a pre 1900s detached property in a rural area about one and a half miles from Katesbridge. It had a mains water supply but this is disconnected as the pipes had frozen, there is septic tank drainage and the property is not connected to the mains electricity supply. The electricity supply is from a generator. He said that there is rising damp, penetrating damp, condensation and no heating or ventilation. There are a number of radiators and there is solid fuel central heating with a back boiler. There is pooling of water on the kitchen worktops and ceiling staining is present which shows the water coming through. Mr Robinson gave evidence that this has been due to the fact that the flat roof on a part of the property had not been maintained and needed to be resealed but that throughout the rest of the property the ceilings were sound. The majority of the floors were of solid concrete although some were suspended timber floors.

17. In relation to the external condition of the subject property Mr Robinson gave evidence that all five chimneys were in good repair and that a lack of flashing had led to water ingress. In relation to the roof, the photographic evidence showed that the tiles are bowing but Mr Robinson submitted that the roof was generally sound. Although there is bowing, it only affected part of the roof and it was not in danger of falling down.

18. One of the documents submitted in evidence by the Appellant is a Notice of Refusal of Application for a Certificate of Fitness ("the Notice") issued by Banbridge District Council and the Notice had included a list signed by the Council's Environmental Health Officer entitled, Schedule of Works Required to Make the Property Fit for Human Habitation ("the Schedule"). No 3 had stated,

> "Strip roof, check battens and renew as necessary. Reslate using original slate where possible".

Mr Robinson submitted that this was not necessary for the property to be occupied. He did concede that he had not inspected the roof void. He further gave evidence that there was no downspout for the rain water goods and that a small number of window frames were rotten. In relation to the render work, he stated that there was no evidence that it was cracked and in his opinion the defects noted externally were all repairable at reasonable costs.

He further submitted that the property is indeed capable of occupation and is a hereditament. In relation to the Notice of Refusal issued by Banbridge District Council, Mr Robinson stated that the subject property is capable of being rented, albeit at a maximum rent. This is a reference to the fact that the Notice states that when such a notice is issued in respect of a dwelling-house let on a private tenancy, an appropriate rent shall be determined by the rent officer and that is the maximum rent which can be charged for the tenancy. The subject property requires redecoration. It has been vacant for 20 years and would need to be connected to running water. The Respondent conceded that a tenant would pay less rent because of the condition of the subject property. The LPS highlighted the list of repairs set out in the Schedule by the Council and submitted that the property is, by virtue of the Schedule, capable of being repaired and on that basis the property is not derelict but rather, it is a hereditament and capable of beneficial occupation.

19. In response, Mr Nelson submitted that the test should be whether someone could live in the subject property. He made reference to the LPS guidance and the test set out- is it a property for which someone would pay a rent? He submitted that he did not think that anyone could live in the subject property.

20. Mr Bleakley interjected and made a number of points in relation to the LPS guidance that Mr Nelson was relying on. He submitted that it was not a legal document and in view of the recent *Wilson v Coll* case the guidance is in the course of being redrafted. He further submitted that there are no cases in the jurisdiction which set out what the test should be. He submitted that the test should be redrafted to take account of Mr Justice Singh's judgment in *Wilson v Coll*. He referred to Schedule 12 paragraph12 (1) and the assumption that the property is in an average state of repair. The case of *Wilson v Coll* was a decision in relation to a judicial review decided in the High Court of England and Wales. Whilst this decision is not binding on the Tribunal, as it relates to legislation applicable in England and Wales, it provides useful guidance on the interpretation of similar provisions in the 1977 Order.

21. In relation to the use of the term 'beneficial occupation' the Tribunal acknowledges that the LPS guidance defines the term as a property for which a tenant would pay a rent. The Respondent has submitted that the LPS guidance predates the *Wilson v Coll* case. The Tribunal has further noted that the LPS guidance is undated but was written whilst a consultation exercise was being carried out on the introduction of vacant rates for domestic properties. It was therefore written prior to the introduction of the 2011 Regulations. The *Wilson v Coll* case appears to the panel to be the leading case on whether a property is a hereditament. Mr Justice Singh refers to 'whether a property is capable of being rendered suitable for occupation' but does not use the term 'beneficial occupation'. In any event, the Tribunal accepts the Respondent's submission that the property is capable of being rented, but that Banbridge District Council in issuing the Notice on 10th July 2012 will be responsible for deciding the appropriate level of rent and on that basis the subject property appears to fit the definition of beneficial occupation which is contained in the LPS guidance.

22. Mr Nelson sought to distinguish the subject property from the facts in the *Wilson* case. He highlighted that the period during which the property had not been occupied was much shorter - three years rather than 25 years in respect of the subject property. Mr Nelson referred the Tribunal to the extent of repairs required to the property at the centre of the Wilson case which are set out at page 3 of the Valuation Tribunal ("VT") decision in the Wilson case under the heading, "Facts Found". A list of repairs required to be carried out is set out at No 8. At No 9, the VT decision states that 'The property did not and does not require any significant reconstruction and is largely wind and water tight'. In Mr Nelson's view, that statement differentiates the condition of the Wilson property from the works which are required to the subject property. He submitted that in respect of the subject property the septic tank does not meet modern standards and probably requires a consent to discharge effluent before it could be recommissioned. There is bowing to the roof and significant damp problems. In short, Mr Nelson submitted it requires significant renovation.

23. The parties discussed whether the subject property was or was not water tight with the Respondent arguing that the property is largely water tight. The Respondent further submitted that when a property has water ingress this alone does not cause it to be taken out of the valuation list as such a problem is easily rectified. The character of the building is pre-war. The Respondent's submission was that the subject property had to be repaired, not replaced. The repairs to the roof would only be necessary to a small area. Most of the defects do not render the premises derelict as they are all capable of being repaired and in fact, are not that extreme. In relation to the VT's use of the word reconstruction, the Respondent stated that it was not sure what is meant but further submitted that the necessary repairs to the roof would not change the character of the property as the roof is not being replaced-the same elements can be used to repair it. The Respondent stated he was not convinced reconstruction means taking off slates and putting them back. If, however, a property had no roof then that property would be out of the valuation list.

24. Mr Bleakley submitted that a truly derelict property could not be repaired without changing the character of the property. Mr Bleakley asked whether the subject property is repairable without changing the character - by undertaking a reasonable amount of repair works. He referred the Tribunal to paragraph 12 of the VT decision which stated, "In conclusion the panel found that having regard to the character of the property and a reasonable amount of repairs it could be occupied as a dwelling". He further referred to paragraph 40 of the *Wilson v Coll case, "*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."

25. The repairs necessary to the property are not minor repairs and may well be expensive to carry out-some of these have been set out in the Schedule prepared by the Council. In relation to the septic tank, the Appellant's representative has said that as well as being disconnected there is no consent to discharge effluent in place. However, no evidence has been put before the Tribunal as to the cost involved in reconnecting the septic tank. In addition it will be necessary to repair the generator and reconnect the house to the mains water supply.

26. However the correct test as Mr Justice Singh highlighted in paragraph 41 of the *Wilson* judgment is not whether repairs are economic,

> "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."

27. The test for deciding whether a property is a hereditament is set out in the *Wilson* case,

> "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."

28. The Schedule drawn up by Banbridge District Council is entitled 'Schedule of Works Required to make the Property Fit For Human Habitation'. The Tribunal is not suggesting that this list is an exhaustive list of the works to be carried out and it is accepted by the Tribunal that the property has not been occupied for over 20 years. The Tribunal, from the photographs and all of the evidence, is of the view that if certain

repairs were carried out the subject property could be occupied as a dwelling and on that basis the Tribunal finds that it is not truly derelict.

29. The Tribunal accepts the Respondent's submission that the repairs necessary will not alter the character of the subject property and that it can be repaired- it is not necessary to reconstruct or replace the subject property.

30. Whilst conditions in the property may be below what is expected 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. The problems identified in this property would be expected in a property of this age and type of construction. In these circumstances we are satisfied that the subject property is a 'hereditament' and therefore liable to a rate.

31. 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

32. Mr Robinson on behalf of the Respondent referred to the tone of the other properties in the area. In relation to poor external repair and a search for comparables there are a number of similar houses in a 3 to 4 mile radius. He submitted that if the subject property was in an average external repair it would have a capital value of £145,000. As it is in poor external repair it is important to make reference to that. Overall, there has been a 20% allowance to the capital value. There was a 10% reduction to CV because of its siting amongst agricultural outbuildings and a further reduction of 10% for the poor external repair. The reduction is not based on the cost of repair - rather in valuation terms, the impact the required repair works would have had on valuation on 1st January 2005 which is the Antecedent Valuation Date. In respect of the required repairs Mr Robinson went through the necessary external repairs.

    1 Fixing the ridge tiles and flashing. Replacing missing slates.
    2 Repairing the defective guttering across the eaves-cast iron guttering
    3 Installing downspouts.
    4 Replacement of rotten window frames
    5 Front door needs to be replaced

33. Mr Nelson submitted that a reduction of 10% in respect of the agricultural outbuildings was far too low. It would be hard to get someone to bid for this property - there is a long laneway and the subject property is in the middle of a working farmyard. The property is not in a very good state of repair. The reduction to the CV already provided is far too low and should be 30% to 50 %. The laneway is shared and such laneways can be a great source of conflict. The Respondent intervened to point out that Mr Bingham would be selling the property with the benefit of the right of way and that there is a statutory assumption that the property is sold free from encumbrance. Mr Nelson referred to the

nuisance aspect of a house which is located at the end of a lane and he argued that the value of the subject property would be adversely affected by the lack of a mains water supply. He also submitted that bungalows were no longer being built and that fashions had changed and the idea that bungalows attract higher values is out of date. Mr Bleakley said that since 2005 he has made an analysis of house sales and that bungalows attract higher sale prices than other houses types.

34. The Respondent put forward evidence of five comparable properties in Katesbridge. All of the comparables are connected to mains electricity and are in average external repair and on that basis they can all be distinguished from the subject property. Comparable B is at 2 Lough Road, Katesbridge and the LPS submitted that it is the most reliable comparable. It is almost the same size with a GEA of 182m^2. It had an unadjusted capital value of £150,000 and an adjusted value of £120,000. Comparable C is 2 miles from the subject property; it is larger at 184 m^2 GEA and has a garage which the subject property does not. Its CV is £145,000. Property D is a 2 storey detached farmhouse and is located 0.25 miles from the subject property. It has an adjusted CV of £108,000 and the unadjusted CV is £135,000. It is at 86 Kilkinamurry Road and it is the same size with a GEA of 179m^2. Comparable E is at 15 Kilkinamurry Road and is 0.25 miles from the subject property. It has a smaller GEA of 167 m^2 and a CV of £108,000. It is a two storey property.

35. It is the Tribunal's view that Comparable B can be distinguished as although it is also pre 1919 it has a more modern appearance and appears to be in considerably better external repair. The Respondent did not provide evidence as to how Property B was accessed but from the map submitted it would appear to be adjacent to a road.

36. 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 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.

37. As the property must be assumed to be in an average state of internal repair and fit out the panel cannot take account of the internal damp problem and other internal repairs identified by the Appellant.

38. We have had regard to the capital values in the valuation list for the comparable properties submitted by the Respondent. The panel is of the view that the subject property is out of tone with the comparables. The oral and written evidence from both parties has shown that it is not in a good state of external repair. In addition the CV would be affected by its situation amongst agricultural buildings, in what Mr Nelson described as a working farm, and the length of the shared laneway. In applying Schedule 12 paragraph 7(2) of the 1977 Order, the Tribunal is of the view that the comparable properties submitted by the Respondent are not appropriate. Although the

five properties are in the same area, they are not in the same state and circumstances as the subject property. The comparables are all connected to mains electricity whilst the subject property is not. The Respondent has stated in the Presentation of Evidence that if the subject property was deemed to be in an average state of repair and connected to mains electricity it would have an Unadjusted Capital Value of £145,000. In oral evidence the Respondent submitted that the most reliable comparable is property B. It is the only comparable which is a bungalow - the others are either one and a half or two storey properties. The CV of comparable B is £120,000. It is in average external repair and connected to mains electricity. The other comparable D is a similar size and with the benefit of electricity and average external repair has a CV of £108,000. The panel is not satisfied that the capital value of the subject property is consistent with the properties put forward as comparables.

Decision

39. The Tribunal must take account of the statutory presumption contained in Article 54(3) of the 1977 Order. It states "On an appeal under this article any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown ". It is therefore up to the Appellant in any case to challenge and to displace the presumption or perhaps for the Commissioner's decision on appeal to be seen to be so manifestly incorrect that the tribunal must take steps to rectify the situation.

40. The Appellant has discharged the burden upon him 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. The Tribunal is of the view that the subject property is out of tone with the properties that the Respondent has adduced in its Presentation of Evidence.

41. In all of the circumstances and in light of the findings above the Tribunal is of the view that a reasonable reflection of the differences between the subject property and the comparables would be a reduction of £15,000 to reflect the factors set out above.

42. The unanimous decision of the Tribunal is that the appeal is allowed to the extent that the Capital Value is decreased to £100,000 and the Commissioner of Valuation shall amend the Valuation List to reflect this decision.

Ms Nessa Agnew, Chair
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: *8 February 2013*