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: 3/18

BARRY COOPER – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Christopher Kenton FRICS and Ms Angela Matthews

Date of hearing: 29 May 2019, Belfast

DECISION

The unanimous decision of the tribunal is that the Decision on Appeal of the Commissioner of Valuation for Northern Ireland is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order"). At the hearing of the matter the appellant was present and the respondent was represented by Ms Gail Bennett and Mr Andrew Crawford.

2. The appellant by Notice of Appeal, appealed against the decision of the Commissioner issued on 13 April 2018.

3. This appeal is in respect of the valuation of a hereditament situated at 28 Knockcastle Park, Knock, Belfast, BT5 6NA ("the subject property").

The Law

4. 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.

5. 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".

6. In relation to unoccupied property, the Rates (Unoccupied Hereditaments) Regulations (NI) 2011 ("the 2011 Regulations") provide that domestic dwellings and parts of buildings for the purposes of the 1977 Order are to be subject to rating (subject to certain statutory exceptions). Therefore, rates are payable on an unoccupied domestic property at the same level as if the property were occupied. These provisions came into force on 1 October 2011.

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 13 April 20218;
   (b) The appellant's Notice of Appeal received 24 April 2018;
   (c) A document entitled 'Presentation of Evidence' dated 25 October 2018, prepared on behalf of the respondent Commissioner by Andrew Crawford

BA (Hons) Geography, MRICS and submitted to the tribunal for the purposes of the hearing;

(d) Email from the office of the appellant's Member of the Legislative Assembly (MLA) dated 10 October 2018;

(e) Form of authority by the appellant in favour of his MLA dated 4 October 2018;

(f) Email from the appellant dated 5 December 2018;

(g) Adjournment order dated 11 December 2018;

(h) Appellant's response to the respondent's Presentation of Evidence dated 14 December 2018;

(i) Email from the respondent dated 21 February 2019;

(j) Email from the appellant dated 23 February 2019;

(k) Adjournment order dated 20 March 2019.

The Facts

(1) The property is a privately built detached house, built between 1966-1990. The property has a gross external area (GEA) of 167m^2 with a garage of 19m^2 and outbuilding of 7m^2. The capital value has been assessed at £245,000.

(2) The appellant contends that the property should have been granted a temporary exemption from the requirement to pay rates due to the fact that it was a dwelling undergoing extensive refurbishment and thus incapable of beneficial occupation.

The Appellant's Submissions

9. At the outset of the hearing the appellant very helpfully confirmed that he had no issue with the capital valuation of the property at £245,000. The only issue was that he considered that the subject property should have the benefit of being temporarily exempt from rates as it was not at that stage capable of beneficial occupation.

10. The appellant, a quantity surveyor, indicated that in 2011 the company for which he had been working went into liquidation. In the light of this he decided to redevelop a property with a view to making a profit on it. He stated that he has

re-developed or renovated perhaps 12 houses in recent years. He admits that due to the nature of the renovation works being carried out to the relevant property sometimes the property was granted a temporary exemption from rating liability as the property was classed by the respondent as not being capable of beneficial occupation. Indeed, he confirmed that eight of his properties had previously been granted a temporary exemption from rating due to them not being capable of beneficial occupation. He queries why this previous practice is now being ignored by the respondent.

11. The appellant confirmed that in 2017 he bought the subject property. He knew that the property required work to be undertaken to it. He saw his options to be to rent it out or to carry out work required. In deciding to undertake the work he assumed that he would be granted a temporary exemption from rates as he had been granted in the past in respect of other properties.

12. The appellant commenced work to the property and sought a change to the capital valuation on 13 December 2017 on the basis that the subject property was derelict. He was advised by the respondent that the property was considered to be capable of beneficial occupation and no change was made to the capital valuation. This was appealed to the Commissioner of Valuation and no change was made to the capital valuation. The appellant having appealed this decision, the matter comes before this tribunal.

13. The appellant indicated that he failed to understand why in six years, with no change in the law, the position regarding rates had changed. He argues that he has been charged rates for a property where he was not able to live in. He also contends that Northern Ireland is the only part of the United Kingdom where there is no exemption for rates for houses that are undergoing serious renovation.

14. The appellant referred to practice notes issued by the Valuation Office Agency in England. He considered that while the English legislation has no standing in Northern Ireland, as the respondent made reference to the English case of *Wilson* v *Coll* in establishing the existence of a hereditament, then the English

practice notes were relevant. In particular he referred to Practice Note 1 paragraph 4.5 “where a domestic property is derelict or undergoing structural alterations to the extent that it is not ready for, nor capable of, beneficial occupation, it will not constitute a dwelling…” and Practice Note 4, paragraph 7.2 “The hereditament test… look at whether the property is capable of occupation assuming a reasonable amount of repair work has been undertaken. It is therefore, necessary in applying the hereditament test, to consider whether the state of the premises during these improvement works (e.g. removed walls) is such that given a reasonable amount of repair being undertaken the property would or would not be capable of occupation as a dwelling. If not capable, then it is not a hereditament and consequently not a dwelling.”

15. The appellant states that the position of the respondent in relying on English cases such as *Wilson* v *Coll* and a decision of the English Valuation Tribunal case of *Baiyelo* v *Corkish (Listing Officer),* is disingenuous given that in both these cases the properties benefitted from an exemption from rates for 12 months under the Council Tax (Exempt Dwellings) Order, which he admits does not apply in Northern Ireland.

16. The appellant referred, in his written evidence, to the works undertaken to the subject property as part of the renovation:
    (a) Missing ceilings, damaged floor joists;
    (b) Wet rot resulting in complete replacement of the kitchen floor;
    (c) Plaster stripped back to brick/block;
    (d) Wiring and pipework removed so that the building appears more a shell then a building fit for occupation;
    (e) Structural issues, involving removal of a cracked block wall, replacement of unsuitable load-bearing lintels and repairs to chimney breast cracking.
    (f) All the windows and doors and two flat-roof areas were replaced (making the property not wind and watertight);
    (g) Two walls were removed downstairs and one wall was removed upstairs.

17. Reference was made to schedule 12 of the Rates (NI) Order 1977 and in particular to the concept of average internal repair. The appellant argued that

while this was relevant to a new capital list it was not the case that this should apply to every property at all times for the duration of that capital valuation list. He argued that the internal condition of the property cannot be ignored when assessing it. Therefore, while the subject property does not appear truly derelict when viewed from the road, the appellant states that it could certainly be considered internally derelict.

The Respondent's Submissions

18. At the outset, the respondent admitted that in the past they had adopted a different approach to properties which were undergoing renovation. However, the respondent had reviewed its practice in the light of cases like *Wilson* v *Coll* and other cases in the Northern Ireland Valuation Tribunal as it found that there was no legislative support for their previous practice.

19. The respondent considered that the works carried out to the property were works of refurbishment and render it capable of being occupied for the purpose for which it was intended. It was not a truly derelict property.

20. In relation to the issue relating to the windows and doors and two flat-roof areas being replaced, the respondent referred to the case of *Baiyelo* v *Corkish (Listing Officer)* before the English Valuation Tribunal in which a demolition of a gable wall was not considered to render the property truly derelict. The tribunal in that case had decided (in paragraph 28-30):

> "While the removal of the gable wall was clearly a significant act on the property and would, as mentioned above, at least temporally have rendered the house open to the elements, it was clear that this was undertaken as part of the repair necessary to the property to make it suitable for occupation as a dwelling. It was not a case of the wall collapsing, although that may in the long run have been the outcome had the work not been done, but instead formed part of the work necessary to bring the house back into a habitable state.
> The panel concluded that on balance the removal and replacement of the gable wall did not cause the appeal property to cease to be a dwelling, even during the period while that work was ongoing.
> The panel concluded that having regard to the facts of the case and the legal precedent set in the case of Wilson v Coll, the appeal property remained a dwelling for the period in dispute in this appeal."

21. In relation to the issue that schedule 12 to the Rates (NI) Order 1977 includes a reference to an assumption that the property is in an average state of internal repair, the respondent contended that this did not just apply at a capital listing i.e. a new capital valuation or adding another property to the list for the first time but that the assumption applied to all properties for the duration of the capital valuation list.

22. The respondent submitted that at the inspection of the property from the exterior of the property it looked fine and that the only works that were undertaken were internal, it was therefore not a truly derelict property. The respondent would argue that the works did not significantly alter the character of the property.

23. In the present appeal the respondent states that the subject property is not truly derelict and that it is capable of being repaired to make it suitable for its intended purpose, without changing the character of the property. Therefore, a hereditament exists.

24. 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.

The Tribunal's Decision

25. The Tribunal is grateful to both parties for narrowing the issues in relation to this matter. As a result of this it appeared that the only issue between the parties related to what is commonly called a listing issue and that there was no dispute as to the actual capital valuation of the subject property which was accepted at £245,000.

26. The main issue in this case relates, at its simplest, to whether the appellant should be charged rates when his property is undergoing extensive refurbishment. He feels that it is unfair that he is charged rates for a period of time when he is not able to live in the property.

27. In this regard the tribunal is aware that in other areas of the United Kingdom there is provision for properties undergoing renovation to be exempt from council tax, notably in England for instance under the Council Tax (Exempt Dwellings) Order 1992. However equivalent legislation does not apply in Northern Ireland and the tribunal can only apply the law as it applies to this jurisdiction. It is not for the tribunal to express its view on the appropriateness or otherwise of such legislation as exists elsewhere.

28. The practical outworking of the Rates (Unoccupied Hereditaments) Regulations (NI) 2011 ("the 2011 Regulations") provide that domestic dwellings and parts of buildings for the purposes of the 1977 Order are to be subject to rating (subject to certain statutory exceptions). Therefore, rates are payable on an unoccupied domestic property at the same level as if the property were occupied. These provisions came into force on 1 October 2011. Properties can be unoccupied for a variety of reasons including undergoing renovation.

29. In the absence of any equivalent of legislation exempting properties undergoing renovation, it falls to consider if a hereditament exists. If it does exist then it should be included in the valuation list.

30. In relation to the issue as to whether a hereditament exists, 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."

31. In its Presentation of Evidence, the respondent made reference to the case of *Wilson* v *Coll* and indeed to another case of the English Valuation Tribunal of *Baiyelo* v *Corkish (Listing Officer).* It is possible that this reference has led the appellant to rely in his submissions on Practice Notes issued by the Valuation Office Agency in England as applying in Northern Ireland.

32. However, the case of *Wilson* v *Coll*, as interpreted in other cases of the Northern Ireland Valuation Tribunal, relates only to the issue of whether a hereditament exists. In this regard it may be helpful if in Presentations of Evidence this is made clear and the interpretation of *Wilson* v *Coll* in cases such as *Whitehead* v *Commissioner of Valuation* is made clear.

33. The law relating to rating in Northern Ireland is different to that in other jurisdictions which mean that reliance cannot be placed on English practice notes as having applicability in Northern Ireland.

34. In this case the appellant bought a property and was then left with a decision whether he should rent it out or refurbish it for his own use. He decided on the latter course of action, perhaps labouring under the impression that it would achieve a temporary exemption from rates during the period of refurbishment.

35. The works which were carried out were;
    (a) Missing ceilings, damaged floor joists;
    (b) Wet rot resulting in complete replacement of the kitchen floor;
    (c) Plaster stripped back to brick/block;
    (d) Wiring and pipework removed so that the building appears more a shell then a building fit for occupation;
    (e) Structural issues, involving removal of a cracked block wall, replacement of unsuitable load-bearing lintels and repairs to chimney breast cracking.
    (f) All the windows and doors and two flat-roof areas were replaced (making the property not wind and watertight);
    (g) Two walls were removed downstairs and one wall was removed upstairs.

36. Upon questioning by the tribunal it was established that these works cost in the region of £40,000 although the appellant undertook part of the works himself.

37. 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 finds that while it is clear that repairs and improvements were undertaken, if a reasonable amount of repair works were carried out the property could be occupied as a dwelling. 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, is properly to be included in the rating list as a hereditament. The appellant’s appeal on that point fails accordingly. If the tribunal is satisfied that a hereditament exists, one of the statutory assumptions in Northern Ireland rating law is that the property is in an average state of repair and fit out, having regard to the age and character of the hereditament and its locality.

38. As there is no dispute as to the capital valuation of the subject property at £245,000 the tribunal confirms by consent of the parties that the capital valuation of the subject property is this sum.

39. Therefore, in this case the appellants appeal is dismissed and the tribunal orders accordingly.

Signed: Mr Charles O'Neill, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 3 July 2019.