

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 39/15

JIM CRAWFORD APPELLANT

AND

COMMISSIONER OF VALUATION FOR NI - RESPONDENT

Northern Ireland Valuation Tribunal

Date of hearing: 11 January 2017

Chair: Sarah Ramsey

Members: Tim Hopkins (Valuer) and Robert McCann (Lay)

DECISION AND REASONS

The Facts of the Case

1. This is an appeal relating to a cottage situate at 25 Lisnafillon Road, Ballymena BT42 1JA.
2. The reference is made under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (“the 1977 Order”). By a Notice of Appeal dated 21 December 2015. The Appellant appealed to the Northern Ireland Valuation Tribunal against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland (“the Commissioner”) in respect of the decision letter of 4 November 2015 in relation to the valuation of the hereditament situate at 25 Lisnafillon Road, Ballymena (“the subject property”) as £85 000.
3. Although this Appeal was not received within the applicable timescale of the 2007 Rules, by Order of 29 September 2016 leave was granted to

extend this time limit, there being no objection on the part of the Respondent.

4. The Appellant having indicated he did not intend to attend the hearing, was dealt with on the papers.
5. The Property is a privately built detached chalet bungalow built circa 1955. The Gross External Area is 104m² with a Garage of 19m² and Outbuildings of 12m²
6. There is no central heating system. Mains services are in place but disconnected.
7. The Appellant in his Notice of Appeal indicated that the proper valuation of the property should be Nil and that the property is uninhabitable. The Appellant sets out that the property is jointly owned neither party will invest in it to make it habitable and has no potential to generate an income to provide for itself. The property is subject to a replacement dwelling planning application and if approved will be demolished to allow erection of a new home.
8. Planning for a replacement dwelling was approved on 5 January 2016 under reference LA02/2015/0689/0.

The Evidence

9. The following documents were before the tribunal;
 - Appellants' original Notice of Appeal to the Tribunal dated 21 December 2015
 - Respondent's written Presentation of Evidence dated 15 April 2016
 - Correspondence pertaining to Appeal being lodged out of time and Order granting extension of time for lodging of Appeal

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

10. 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.
11. 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.

12. 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.
13. 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.
14. The issue before the Tribunal in this appeal 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 unoccupied properties which fall within the categories of exceptions set out in the 2011 Regulations.

Is the subject property liable to rates?

15. In relation to the question as to whether a hereditament exists the Respondent made reference to Mr. Justice Singh's judgment in *Wilson v Coll* and the local NIVT decision of *Anne O'Hare –v- COV 88\12*. A property which requires a reasonable amount of repairs continues to be a hereditament.
16. The Respondent asserted that the property constitutes a hereditament. Photographs of the subject property were presented in the written evidence of the Respondent. These were annotated with a list of Internal and External Repair issues as identified by the Respondent on inspection. Issues included:
- The main roof was in average repair with no evidence to the Respondent of water ingress
 - Metal and Window frames were intact though in poor condition.
 - The property was in poor decorative repair inside and out
 - Internally the electrical system is outdated
 - There is no working heating system
 - The property would require re-plumbing
17. The Appellant had made no assertions to the effect the repairs detailed would be economically unviable or otherwise.
18. The Respondent produced five comparables in support of his assertion regarding the tone of the list which were unchallenged by the Appellant.

The Tribunal's findings

19. The Appellant's assertion that the subject property is uninhabitable is not the correct test in determining whether a hereditament exists. Accordingly The Tribunal found the subject property to be a hereditament under Art 2 (2) of the Rates (NI) Order 1977.

20. Applying the average internal repair presumption as per schedule 12, paragraph (12) of the Rates (NI) Order 1977 should be applied, and the subject property should be valued in accordance with the tone of comparable properties.
21. 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.
22. The Appellant has not discharged the burden upon them to show that the valuation assessed for the subject properties 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 appropriately on the Valuation List in accordance with tone with evidence the respondent has adduced in its Presentation of Evidence. The Appellant chose not to challenge the comparables proposed by the Respondent in the presentation of the evidence. In all of the circumstances and in light of the findings above the Tribunal was satisfied that the valuations shown on the Valuation List in relation to the subject properties is correct and that the Tone has been established.
23. The unanimous decision of the Tribunal is that the appeal is dismissed.

Ms. Sarah Ramsey, Chair

Northern Ireland Valuation Tribunal

Date Decision Recorded in Register and issued to Parties: 16 February 2017