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: 8/20

Ms CAROL DEL CASTILLO – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr James Leonard, President

Members: Mr C Kenton FRICS & Mrs N Wright

Hearing: 25 October 2021, Belfast

DECISION

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

REASONS

Introduction

1. This appeal consists of a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order"). The appellant, by Notice of Appeal (Form 3) appealed against the decision of the Commissioner of Valuation in a Valuation Certificate in respect of the capital valuation of a hereditament situated at number 70 Belfast Road, Ballyedward, Larne, County Antrim BT40 2PH ("the property").

2. The appellant, in making her appeal, indicated that she was content for the appeal to be disposed of by written representations. The respondent concurred. The tribunal sat to hear the matter on 25 October 2021.

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 legislation, at Schedule 12, paragraph 7 of the 1977 Order provides that the Capital Value of a hereditament shall be the amount which, on the assumptions mentioned (materially paragraphs 11 and 12 of Schedule 12, the details of which are mentioned below), the hereditament might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date. The relevant paragraphs of Schedule 12 include the following statutory assumptions, which provide that –

- The hereditament is sold free from any rentcharge or other incumbrance;
- The hereditament is in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality,
- The hereditament is otherwise in the state and circumstances in which it might reasonably be expected to be on the relevant date.

Regarding the rating of unoccupied hereditaments, in summary detail the statutory provisions which concern the rating of empty homes are included in the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011 ("the 2011 Regulations"). From 1 October 2011 domestic buildings and parts of buildings (as well as non-domestic buildings or parts of buildings) for the purposes of Article 25A of the 1977 Order became subject to rating. (This latter is subject to certain statutory exceptions, which do not apply in this case). Accordingly, rates are levied upon an unoccupied domestic property at the same level as if the property were to be occupied.

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

The Issue to be Determined and the Evidence

4. A central issue in this case relates to the state and condition of the property at the material time. The tribunal considers that in this case, as presented by the appellant, the proper focus of the tribunal ought to be placed upon the state and condition of the property at that time.

5. The tribunal had before it the appellant's Notice of Appeal to the tribunal (Form 3) received 8 October 2020 and the documents also included the following:-

5.1. Copy of a report from a firm called Spill Resolve which consists of a Site Investigation Report. The tribunal notes that this report appears to consist of 63 pages. However, for whatever reason the evidence placed before the tribunal comprises one page of text appearing to be the first

page of the report (this being apparently page 1 of 63), together with three copy colour photographs (each subtitled “Page 1 of 1”) and then one page entitled “Conceptual Site Model and Preliminary Risk Assessment” in the form of a schedule (this being apparently page 22 of 63). The first page of the report referenced above is also replicated by the respondent in the Presentation of Evidence.

5.2. Copy Valuation Certificate in regard to the property, issue date 10 September 2020 (no effective date stated), signed by the Commissioner of Valuation and confirming a Capital Value of £200,000.

5.3. A document dated 18 June 2021 entitled "Presentation of Evidence" prepared on behalf of the Commissioner, as respondent, by Ms Marianne Graham MRICS and submitted to the tribunal. This latter includes a timeline which indicates the following material dates:

- 15 February 2020: the appellant submits an application to the District Valuer advising of an oil spill at the property. This is stated to have resulted in the need to excavate the floors, with the appellant being required to vacate the property. A Valuation Certificate was issued on 20 July 2020 confirming that the property should stay in the Valuation List, with no change to the existing Capital Value figure of £200,000.

- 1 August 2020: the appellant submits an appeal to the Commissioner of Valuation. A decision of no change to the Capital Value figure of £200,000 is issued on 10 September 2020 by Valuation Certificate signed by the Commissioner of Valuation and, again, it is determined that the property should remain in the Valuation List.

- 14 October 2020: the decision of the Commissioner of Valuation is appealed to the tribunal.

5.4 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.

The Appellant's Submissions

6. The case made by the appellant is stated in the appeal form as follows:

> "*On entering the property on 14 July 2019 it was clearly obvious that the pollution and fumes of oil was extremely detrimental to human health. A detailed site investigation by professionals confirmed ridiculous levels of contamination. Given one of my children suffers from asthma it was imperative we moved out immediately. I would ask that the request to pay rates on this property be cancelled as I cannot legally occupy the property. The pollution and subsequent ongoing remedial works have rendered the property uninhabitable. To ensure that works are compliant with current health and safety regulations I have been forced to vacate the property for the duration of the remedial works programme. See attached photos showing a dangerous and uninhabitable property*." The case is sought to be reinforced by part of the report from SpillResolve being annexed. The page copied and available for inspection by the tribunal confirms that the author of the report (regrettably not identifiable on the copy provided) observes that it was reported that around 19 July 2019 an escape of oil was noted at a boiler unit and the information was that an oil leak originated from a failed compression fitting on the oil feed pipe connection to a boiler unit which was located inside the main house. This leak was repaired by a registered heating engineer/plumber. The pollutant has been confirmed as kerosene and the volume of oil lost was unknown. The pollution event was classified as very significant based on the data retrieved together with the severity of the oil impaction of the internal structures. SpillResolve was commissioned to undertake an investigation which was completed in two stages. An initial assessment was undertaken on 20 to July 2019 which identified what was described as being: "….*a very significant oil pollution event had occurred that had resulted in very significant oil contaminant impact of the boiler room, kitchen and utility room combined with a very significant risk of further contaminant impact beneath the bathroom, rear hall, central hall and sitting room".* The report continues: "*SpillResolve was informed that the policyholder's daughter suffers from asthma and requires medication to control her symptoms. In that light it was recommended that due to the severity of the pollution at the property in question that the family should move into alternative accommodation immediately*".

7. The report then proceeds to make reference to a phase 2 intrusive site investigation and to state that SpillResolve then completed what is termed a Stage 2 site investigation on the 26 and 30 September 2019. There is a reference made at the bottom of the page to SpillResolve's report detailing the extent of this investigation together with the findings, risk assessment, discussion on the findings and next stage recommendation. Apart from the photographs which appear to have been included in the report, the only other document apparently contained in this report made available is copy of a schedule consisting of one page entitled "Conceptual Site Model and Preliminary Risk Assessment" (this being apparently page 22 of 63).

8. From all of this, the appellant's case rests upon the proposition that the property was incapable of being occupied as a domestic residential dwelling from in and around the time of the oil spill and up until the completion of any remedial works. The argument thus is that the property was rendered uninhabitable, on account of this oil spill and pollution, and thus that rates should not be levied on the property.

9. Regarding the matter of comparative valuation, the appellant's case rests entirely upon the "listing issue" and does not seek to advance any submissions regarding the "valuation issue" and the appropriateness, or otherwise, of the properties cited as comparators by the respondent.

The Respondent's Submissions

10. The submissions on behalf of the respondent are set forth in the Presentation of Evidence. Firstly, regarding the issue of whether or not the property is to be included in the Valuation List, taking account of this pollution incident, the Presentation of Evidence recounts the Valuer's inspection of the property on 26 August 2020 and records the appellant's confirmation that the property was vacated on 19 July 2019 and that it was anticipated that remedial works would not be completed until the summer of 2021. It is accepted on behalf of the respondent that remedial works will include the following: excavation of floors at ground level, specifically the boiler room, kitchen and utility room; treatment works to the rear of the property which were anticipated to last approximately 9 months, after which time the foundations would be reassessed; new sub-floors to be installed, together with a new DPC (damp proof course); new electrics and plumbing to be installed; reinstallation of the existing kitchen/replacement kitchen units and sanitary ware. The respondent's Valuer also took additional photographs on the day of inspection which are included in Appendix 3 to the Presentation of Evidence. The Presentation of Evidence then includes submissions regarding what might be termed the "listing issue": a reference is

made to Article 2 (2) of the Rates (Northern Ireland) Order 1977 which is stated to define "hereditament" as being a "*property which become* [sic] *liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the Valuation List*". Such a property must be capable of beneficial occupation. Beneficial occupation is a term which is used to describe a building that is capable of being used for its intended purpose, even though it may have some minor defects. In the case of the property, as a significant amount of the floor will require to be excavated, this constitutes a major defect.

11. This submission then proceeds to comment on "the Hereditament Test" and reference is made to the often-referenced case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and to what might constitute a "reasonable amount" of repair work. The submission then puts forward the proposition that the oil spill does not render the property "truly derelict". Ongoing repair works, although extensive, would without doubt render the property capable again of being occupied for the purposes for which it was intended. Furthermore, the statutory assumption in Schedule 12 (12) of the 1997 Order provides that (the assumption must be made that) "*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."*

12. The submission confirms that the attending Valuer had noted evidence of fumes on the date of inspection. However, the statutory assumption contained in Schedule 12 (11) of the 1997 Order states that "….*the hereditament is sold free from any rent charge other encumbrance*" and therefore any restriction on occupancy of the dwelling must be ignored, it is submitted. It is further accepted on behalf of the respondent that the oil spill has occurred through no fault of the appellant. However, the stated task is to establish whether a hereditament exists; taking into account ***Wilson v Coll,*** as the property is being repaired it cannot be considered "truly derelict". Accordingly, the view is to be taken that a hereditament has continued to exist and that the property should remain in the Valuation List for the duration of the works.

13. This submission continues with the argument that a similar set of circumstances to the appellant's was examined in the Northern Ireland Valuation Tribunal case of ***Calvin Brammeld v Commissioner of Valuation (14/18).*** This case of ***Brammeld*** was considered as a very significant oil spillage matter which had adversely affected the property in question, requiring excavation of the floors to carry out remedial work. The appellant in that case, Mr Brammeld, also had to vacate his property until the works were completed. An extract from paragraph 12 of the tribunal's decision in ***Brammeld*** is consequently cited in argument, as follows:

"The tribunal is therefore confined to a consideration of any evidence concerning the state and condition of the subject property at the material date as being truly derelict and incapable, applying the test of reasonableness, of being repaired. Taking all of the available evidence fully into account, the tribunal's considered assessment is that the subject property was, at the relevant time, reasonably capable of being repaired. Indeed the clear evidence is that it was in the course of being repaired. For that reason, it constitutes a hereditament properly to be included in the Valuation List".

14. Aside from the listing issue, the respondent's submission contained in the Presentation of Evidence concludes with the contention that the existing Capital Value figure of £200,000 is considered to be fair and relative taking into account details of the most appropriate comparables which are contained in the appendix, with a schedule of comparisons therein.

The Tribunal's Determination of the Listing Issue

15. A preliminary issue of considerable significance in this case is whether the property, at the material time, ought to have been included in the Valuation List. The respective arguments are relatively straightforward. The appellant, in essence, argues that the property was incapable of habitation and in such a state that it ought not to have been included in the Valuation List. The respondent fully accepts that there was a serious oil spillage incident, that it was necessary to conduct substantial remedial works, and that the property was incapable of occupation on this account. However, the respondent also contends, in the light of the applicable legal test and the circumstances, that the property ought to have been included in the Valuation List. The respondent references the often-cited case of ***Wilson v Coll*** and indeed refers the tribunal to the case of ***Brammeld v Commissioner of Valuation*** where the Valuation Tribunal was required to make a determination upon facts which are contended to be largely similar to the present case.

16. To state, firstly, the legal position: The respondent's submission quite correctly references what is referred to as the "Hereditament Test" established in the case of ***Wilson v Josephine Coll (Listing Officer) [2011] EWHC 2824 (Admin.)*** and the judgement of (as he then was) Mr Justice Singh. The Presentation of Evidence, for that reason, cites portions of that judgement and also alludes to the fact that ***Wilson v Coll*** has been considered, in the Northern Ireland jurisdiction, in several appeals to the Valuation Tribunal, including the case of ***Brammeld v Commissioner of Valuation***.

17. The Valuation Tribunal, in earlier determinations, has made observations at some length, regarding the case of ***Wilson v Coll.*** It is not necessary to repeat much of that in this determination. ***Wilson v Coll*** was first considered in ***Whitehead Properties Ltd v Commissioner of Valuation (Case Ref. 12/12***) where a detailed consideration and analysis of the principles and the appropriate application of these principles to the jurisdiction of Northern Ireland was rehearsed. There has been further consideration of the matter in a number of Valuation Tribunal cases.

18. Very briefly, the principles emerging from this are: firstly, in Northern Ireland each case should be determined upon its own particular facts and circumstances; Secondly, the essential concept of a "reasonable amount of repair" required in order to place any property into a proper state of habitation so as to be included in the Valuation List, must be determined by the application of sound common sense and in an entirely practical and realistic manner, as opposed to by the application of any overly-rigid principle or any slavish application of the narrowest of interpretations; thirdly, the tribunal is not entitled to take into account the personal and financial circumstances of the appellant.

19. The tribunal must now apply these established principles to an assessment of the primary issue - whether or not the property ought to be included in the Valuation List. In doing so, the tribunal is cognisant of the fact that, as mentioned, the tribunal's determination must in each case depend upon the specific facts, derived from the evidence. What factors therefore are properly to be taken into account? It is not in contention that there has been a serious oil spillage affecting the property. The respondent accepts that the property has been properly and reasonably vacated pending substantial remedial works being conducted. Throughout the course of these works the property is incapable of beneficial occupation. Whilst the tribunal is not permitted to take account of the appellant's individual financial circumstances, the tribunal is nonetheless fully permitted to adopt an entirely common sense approach to the matter concerning whether or not, by the carrying out of a reasonable amount of repair works, the property might be made fit for habitation to such an extent as to be properly included in the Valuation List. The tribunal had, indeed, fully considered largely similar circumstances in the case of ***Brammeld v Commissioner of Valuation***.

20. There are essentially two issues in play. The first of these relates to a statutory assumption - in the application of that assumption the tribunal has no discretion and it is required to follow that assumption. This point is sometimes misunderstood. It is perhaps worth again explaining the absence of tribunal discretion in regard to the application of any statutory assumption of this nature. The fundamental point is that Schedule 12 (12) of the 1997 Order prescribes that (the assumption must be made that): "*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." It must be explained that this is a somewhat artificial construct. Irrespective of the facts as to the actual state of internal repair, the tribunal is obliged, without discretion, to apply this assumption that the property is in: "*an average state of internal repair and fit out*". Accordingly, upon application of that assumption, anything internal of an adverse nature must be disregarded by the tribunal. In the case of this type, this is a fundamentally significant point.

21. As the tribunal has previously observed, for example in ***Brammeld***, the tribunal is confined to a consideration of any evidence concerning the state and condition of the subject property at the material date as being truly derelict and incapable, applying the test of reasonableness, of being repaired. The evidence is that repair work has been, or is currently being, undertaken. If this is correct, the property is capable of being repaired by the conducting of a reasonable amount of repair work and there is no evidence that this is not so.

22. On account of all of the foregoing, the tribunal's considered assessment is that the subject property was, at the relevant time, reasonably capable of being repaired: it was in the course of being repaired; there is absolutely no suggestion that the property is incapable of repair. For that reason, the property must be determined to constitute a hereditament to be included in the Valuation List. It satisfies the "hereditament test". The tribunal is conscious that this determination, at first glance, to the appellant might seem harsh and possibly even unreasonable. However, it is important to stress that the determination of the tribunal in this regard must be made within certain prescribed legal parameters and by the application of defined legal principles to the facts of any particular case.

23. Notwithstanding that the appellant has not sought to challenge the Capital Value issue and any part of the comparables evidence and the respondent's arguments advanced in respect of this, in fairness to the appellant and in conducting its proper function, the tribunal did give consideration to this evidence and to the appropriateness of the assessment of the Capital Value. So, the second issue for determination is whether the assessed Capital Value stated in the Commissioner's Valuation Certificate can be upheld at a figure of £200,000. On behalf of the respondent, in the Presentation of Evidence there are three additional properties presented, in addition to the subject property (these being numbered from No. 2 to No. 4). These are all located within Kilwaughter Ward in a similarly rural location. There is a location map provided. The specific details in regard to the subject property (which have not been challenged by the appellant in this appeal) are as follows: 70 Belfast Road,

Larne BT40 2PH: 1946-1965 detached house (built circa 1955); GEA 249.6m2, outbuildings 393.7m2; external repair: average; location rural.

24. The submitted comparables all are presumed to have unchallenged capital valuations, for that would have been otherwise stated if any such were to be under challenge. In addition to the subject property, the following, with brief material particulars provided, are stated to be as follows:-

[No.2] 70 Ballyrickard Road, Larne BT40 3EF: 1946-1965 detached house (built circa 1958); GEA 277.6m2; external repair: average; located approximately 2.4 miles from the subject property. The stated Capital Value is £260,000.

[No.3] 64 Ballyhampton Road, Larne BT40 2SP: 1946-1965 detached house (built circa 1955); GEA 262m2, outbuilding 73.9m2; external repair: average; located in a rural village with access via a shared laneway approximately 1.7 miles from the subject property. The stated Capital Value is £195,000.

[No.4] 67 Browndod Road, Larne BT40 3DX: 1946-1965 detached farmhouse (built circa 1952); GEA 183m2; external repair: average; located approximately 2 miles from the subject property. The stated Capital Value is £190,000.

25. Having considered all of the evidence, and whether or not the property was, in broad terms, “in tone”, the Tribunal’s considered assessment is that there appears to be some helpful evidence available from these scheduled properties, albeit rather limited in terms of the number identified and specific characteristics. These nonetheless do provide some evidential material concerning the broader locality and general tone. The evidence, of itself, does not suggest that the Capital Value of £200,000 is "out of tone”.

*2*6. As the Tribunal has often observed, there is a statutory presumption contained within the 1977 Order, Article 54(3). Because of this, any valuation shown in a Valuation List with respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal to the Tribunal, any appellant must either successfully challenge and displace that statutory presumption of correctness or perhaps the Commissioner's decision on appeal, objectively viewed, must be seen by the Tribunal to be so incorrect that the statutory presumption must be displaced and the Tribunal must adjust the Capital Value to an appropriate figure. The Tribunal, in assessing this appeal, saw nothing in the general approach taken to suggest that this has been approached for assessment in anything other than the prescribed manner, as provided for in Schedule 12 of the 1977 Order. This being so, the Tribunal

examined the essential issue of whether, in the absence of any specific challenge by the appellant, there was anything sufficient to challenge the respondent's evidence or other argument available effectively to displace the statutory presumption of correctness in respect of the valuation.

27. Having carefully considered the evidence and any arguments advanced, the Tribunal's unanimous decision is that the appellant (in the absence of any expressly-stated challenge) has not effectively displaced the statutory presumption of correctness in respect of the Capital Value applied to the property and there is no reason, otherwise, for the appeal to succeed. Accordingly, the appeal is dismissed.

James Leonard

James Leonard, President

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 15 November 2021