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: 1/17

BRIAN FINCH – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr H McCormick MRICS and Ms Noreen Wright

Date of hearing: 16 January 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"). There was no appearance before the tribunal by or on behalf of the appellant and the respondent both parties being content to rely on written representations.

2. The appellant by Notice of Appeal, appealed against the decision of the Commissioner issued on 8 March 2017.

3. This appeal is in respect of the valuation of a hereditament situated at 8 Cullentragh Road, Cullentragh, Poyntzpass, Newry, BT35 6SD ("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. Reference will be made later in this decision to the relevant case law to which the tribunal was referred by the parties.

The Evidence

7. The tribunal heard no oral evidence. The tribunal had before it the following documents:

   (a) The Commissioners Decision issued on 8 March 2017;
   (b) The appellant's Notice of Appeal received 5 April 2017;
   (c) A document entitled 'Presentation of Evidence' dated 26 July 2018, prepared on behalf of the respondent Commissioner by Edel Mackin MRICS and submitted to the tribunal for the purposes of the hearing;
   (d) Evidence submitted by the appellant dated 22 August 2018;
   (e) Response from the respondent dated 26 September 2018.

The Facts

(1) The property is a privately built pre-1919 detached cottage. The property has a gross external area (GEA) of $38m^2$. The property is of rubble masonry

construction with a pitched slate roof. The capital value has been assessed at £32,000.

(2) The appellant contends that the property is not habitable and should not be retained in the valuation list.

The Appellant's Submissions

8. In relation to the issue as to whether the property should remain in the list as a hereditament, the appellant states that the house is not habitable. In his notice of appeal, he states that the property has been declared unfit for human habitation by the NI Housing Executive (NIHE) in 1973 and therefore it should be exempt from rates.

9. In his evidence dated 22 August 2018 the appellant refers to classes of hereditament which are not prescribed for the purposes of paragraph 1(1)(a) of Schedule 8A to the Rates (NI) Order 1977. In particular he refers to the condition that the person entitled to possession of the hereditament is prohibited by law from occupying it or allowing it to be occupied.

10. The appellant also refers to a statutory charges search dated 3 March 2017 which notes an entry in the following terms (insofar as are material to this matter):

> "The Northern Ireland Housing Executive … having received an undertaking… dated 12th of October 1973 in pursuance of Section 29(5) of the Planning and Housing Act (Northern Ireland) 1931 the house situate on the parcel of lands of Cullentragh marked 451/2 on Ordnance Map No. 22-1 when vacated… is not to be used for human habitation until the Executive is satisfied that it has been rendered fit for that purpose."

11. In the light of these matters the appellant contends that the property should be exempt from domestic rates. He further states that the capital value of the property should be exempt or nil.

The Respondent's Submissions

12. In the Commissioner's Presentation of Evidence to the tribunal Ms Mackin confirmed that she inspected the property. In her evidence she states that externally the fabric of the building remains intact. The roof, windows and doors are still in average repair. Internally she states that the property is in a shell-like state with a lack of floor coverings, kitchen or bathroom fittings. It was further indicated on behalf of the respondent that the external repair of the property appears average and although internally the property has fallen into a certain level of disrepair due to being unoccupied for a number of years with evidence of damp and holes in the ceiling, it could with a reasonable amount of repair be re-occupied as a dwelling.

13. The respondent contends that the correct approach as to whether a hereditament exists is as outlined in *Wilson* v *Coll (Listing Officer).* The Presentation of Evidence goes on to outline some extracts from the judgment of Mr Justice Singh in that case.

14. In relation to 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.

15. In relation to the capital value of the property, reference was made in the Presentation of Evidence to a list of comparable hereditaments stated to be in the same state and circumstances as the subject property. Details of these comparable properties were set out in a schedule to the Presentation of Evidence, with further particulars of same, including photographs of the comparable properties. These were capital value assessments, the details of which are as follows:

	Address	Description	Gross external area	Capital value
1	21 Sandbank Road, Hilltown	Privately built pre 1919 detached cottage in average repair	Habitable space $42m^2$	£37,000
2	20 Tullygeasy Road, Newtownhamilton	Privately built pre 1919 detached cottage in poor repair	Habitable space $36m^2$	£31,000
3	23A Castlewellan Road, Hilltown	Privately built pre 1919 detached cottage in average repair	Habitable space $38m^2$ Outbuildings	£36,000

16. The respondent confirmed in the Presentation of Evidence that the capital value of the subject property reflects the poor external repair of the subject property. The capital value had been retained on the list with a capital valuation of £38,000 on 10 November 2015. On application to the District Valuer the capital valuation was given a 10% reduction to reflect repair issues, giving rise to damp. The amended certificate issued on 10 February 2017. The decision was appealed to the Commissioner for Valuation and the capital valuation was reduced to £32,000 (being a valuation of £36,000 with a reduction of approximately 10% for repairs). This valuation certificate issued in March 2017 and confirmed a capital valuation of £32,000.

The Tribunal's Decision

17. There are two main issues to be considered in relation to this case. These may conveniently be referred to as the listing issue and the capital value issue. Each of these will be considered in turn.

The listing issue

18. In relation to the listing issue 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?
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> 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.
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> 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?
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> 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."

19. In relation to the facts of this case as in any case of this nature the question to be considered by the tribunal is "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". In this regard the tribunal notes that there is currently a statutory charge on the property to the effect that it is not to be occupied until it has been rendered fit for human habitation. However, the tribunal prefers the evidence of the respondent that the fabric of the building is intact. It also finds that while it is clear that repairs and improvements are required, if a reasonable amount of repair works were carried out the property could be occupied as a

dwelling. As to the nature of the works required the appellant has not submitted any figures to support the cost of the work required to be undertaken to the property.

20. The appellant refers to a list in Schedule 8A to the Rates (NI) Order 1997. This is a list of the classes of properties which are excluded from the payment of rates under the rating of empty homes legislation. One of these categories relates to properties in respect of which the person entitled to possession of the hereditament is prohibited by law from occupying it. However, this does not affect the question as to whether the hereditament should be included in the valuation and what its capital valuation should be. These latter issues are matters which the tribunal must decide.

21. 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.

The capital value issue

22. Article 54 of the 1977 Order enables a person who is dissatisfied with the Commissioner's valuation as to capital value to appeal to this tribunal. In this case the capital value has been assessed at a figure of £32,000. On behalf of the Commissioner it has been contended that this figure is fair and reasonable in comparison to other properties.

23. It is appropriate to remember that there is a statutory presumption in Article 54(3) of the 1977 Order in terms that "On an appeal under this Article, any valuation shown in the 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 that presumption, or perhaps for the Commissioner's decision to be self-evidently so manifestly incorrect that the tribunal must amend the valuation. The appellant did not provide any evidence to challenge any of the comparables provided by the respondent.

24. In this case the tribunal accepts that the best comparable available is 21 Sandbank Road, Hilltown. It is of a similar age to the subject property. It is slightly bigger than the subject property and is in an average state of repair. It has a capital value of £37,000. The other comparables provided by the respondent - 20 Tullygeasy Road, Newtownhamilton and 23A Castlewellan Road, Hilltown also support the capital value of the subject property. It is further noted that the respondent has already made an allowance, as stated earlier, for the external repair of the property and access to the property.

25. The tribunal has carefully considered the issue as to whether the appellant has provided sufficient challenge to the Commissioner's schedule of comparables. Taking all matters into account, and in particular the allowances already made by the respondent in relation to the capital value of the property, the conclusion of this tribunal is that the appellant has not placed before the tribunal sufficient evidence to displace the statutory presumption as to correctness of the capital value and therefore the 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: 28th February 2019