

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1997 (AS AMENDED) AND
THE VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007

CASE REFERENCE: NIVT19/12

DAVID FAGAN

Appellant

and

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND

Respondent

Date of Hearing: 11th December 2012

Chairman: Francis Farrelly LLM

Members: Ms.Siobhan Corr, MRICS and Patrick Cumiskey

Decision and Reasons

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

1. The appeal was heard on the papers in accordance with Rule 11 (1) of the Valuation Tribunal Rules (Northern Ireland) (2007).
2. The property, 110 Church Road, Holywood, BT18 9BX is an end terrace private dwelling house, presently unoccupied.
3. In accordance with Rule 9 (2) (D) and Rule 26 of the 2007 Rules the time for appealing has been extended. The appellant has appealed the decision of the Commission for Valuation for Northern Ireland (The Commissioner) dated the 16th July 2012. The capital value has been put at £230,000 to include a reduction of £100,000 in respect of structural defects in the property.
4. The Tribunal considered the Notice of Appeal, the correspondence between the appellant and the Tribunal and the respondent's Presentation of Evidence and accompanying documents. On the day of the hearing we also received a letter from the appellant dated 7th December 2012 and the respondent was able to comment by way of an email. We also had a short response to the appeal from the Department, received on 4th December 2012.

The Relevant Law

5. In appealing the burden of proof is upon the appellant to show by the ordinary civil standard of proof, the balance of probabilities, that the respondent's decision is incorrect in law or fact. 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.
6. The statutory provisions are the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (hereinafter referred as the 2006 Order').
7. Article 2 (2) of the 1977 Order defines a hereditament:

“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”.
8. Schedule 12 of the 1977 Order as amended provides as follows;
 - 7.—(1) Subject to the provisions of this Schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in paragraphs 9 to 15, 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.
 - (2) In estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised.
 - (3) The assumptions mentioned in paragraphs 9 to 15 shall apply for the purposes of determining whether one hereditament is a comparable hereditament in the same state and circumstances as another with the omission of sub-paragraphs (2) and (3) of paragraph 12.
 - (4) In sub-paragraph (1) “relevant capital valuation date” means 1st January 2005 or such date as the Department may substitute by order made subject to negative resolution for the purposes of a new capital value list.
9. Paragraph 12(1) deals with statutory assumptions, namely :

“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.

10. 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.

Issues arising

11. The first issue arising is whether the property is a hereditament liable to a rates within the definition. If so, the second question then is whether the capital valuation is correct.

A hereditament

12. The respondent cites the decision of Wilson –v- Josephine Coll [2011] EWHC2824. The property at issue there was a 2 bedroom semi-detached house which had been vacant since June 2007 and was in a state of disrepair. The judgement referred to the Court of Appeal decision of Post Office –v- Nottingham Council [1976] 1WLR624 where Lord Justice Brown at 635B stated:

“the question is whether the building as a building is so far completed as to be capable of occupation or ready for occupation for the purposes for which it is intended – as a house, shop, office, factory, or in this case a telephone exchange”.

He went on to say at 635H....

“I think the test is: as a matter of fact and degree, is or will a building as a building be ready for occupation, or capable of occupation, for the purpose for which it is intended”.

In the Coll case Mr Justice Singh at Paragraph 17 of his judgment stated:

“There is a crucial distinction in law between the valuation of a hereditament and the prior question of whether a hereditament exists”.

At Paragraph 40 he stated:

“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 probably 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”.

At paragraph 41 he stated:

”The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake”.

13. Following these authorities our conclusion is that the appellant’s property does constitute a hereditament. It is clear that it requires substantial structural repair and the cost of the remedial work is significant. However, looking at matters in the round the property is not at such a state where it is incapable of being rectified for occupation by undertaking repair works, albeit at considerable expense. There is no evidence to suggest that the property is otherwise exempt from the payment of rates.

Capital value

14. We now return to the next issue, namely capital value. To an extent matters are simplified in that this property is an end terrace in a row of 9 properties.
15. As comparators the respondent has used the three adjoining properties. Appearance wise all are virtually identical. There is a very slight variation in size but nothing which would suggest the tone is significantly affected. The capital value placed upon the other properties is £330,000.00. There is no evidence that these values have been challenged successfully. Although the appellant states one of the properties, number 108 was sold in 2011 for in or around £250,000. However, we are dealing with comparators as valued at 1st January 2005 and it is well known that there has been a substantial drop in property values in general since.
16. In the appellant’s letter received on 11th December 2012 he refers to the other properties possessing substantial backyards. The only evidence we have to indicate the backyards is that shown in the location plan which would show the appellant does have a backyard or garden which appears to be slightly smaller than his next door neighbour. However the variation in size does not appear to be significant. Unfortunately, we do not have a valuation for house number 98 which appears to have a much smaller backyard. This would have helped us in determining if this was a material factor. All of the houses appear to have similar size frontage. The appellant has referred to an area at the side of his house which he states is not his garden. We appreciate this and have operated on the basis his garden relates to the front and rear of his property, similar the other houses used as comparators.

17. The respondent in the email received 11th December indicates that the gardens were not found to be value sensitive and therefore the size of the garden is immaterial.
18. It is our view in the case of a row of terraced houses which appear very similar and which do not have substantial gardens a slight variation in size is unlikely to make any significant difference to the overall tone. We find the houses used are appropriate comparators. Consequently, our conclusion is that the capital value of £330,000.00 is reliable.
19. The respondent has reduced this amount by 30% to reflect the appellant's property having poor external repair. A 30% reduction gives a slightly higher figure than the £230,000.00 arrived at.
20. The papers refer to a NIHE Renovation Grant quotation of £30,000.00 plus VAT to carry out remedial works. There are different options at different costs. The respondent encountered difficulties in finding comparable properties in the immediate area with structural defects. As approximate comparators they refer to three properties, two of which are in Belfast and one of which is in Newry. The first property, 5 Castle Hill Manor, Belfast was reflected by 20% of a reduction because of subsidence. The property in Newry was reduced by 30% because excavation for a quarry left the house unstable. 2 College Heights, Belfast also received a 30% reduction because the property was constructed without necessary support. Based on these approximate figures a 30% reduction in our view is reasonable in all the circumstance. We appreciate it can be difficult to be precise in costing because of unforeseen events occurring and various options. Nevertheless, bearing in mind the figures quoted we find the discount appropriate.

Conclusion

21. Our conclusion is that the property does constitute a hereditament and is not otherwise exempt from rates. We find that the valuation of £330,000.00 is in keeping with the tone of the adjoining properties. We also find that the 30% reduction is adequate to reflect the structural problems involved in the house. Consequently, we uphold the respondent's conclusion. Our decision undoubtedly is a disappointment to the appellant, particularly at a time of falling house prices when he is faced with considerable repair and renovation costs. However, our task is to see if the legislative scheme has been applied correctly and we find it has been.

Decision

22. The appellant has failed to show that the valuation assessed for the subject property is incorrect as not in accordance with Paragraph 7 of Schedule 12 of the 1977 Order. In all of the circumstances and in light of the findings above the Tribunal is satisfied that the valuation shown on the

valuation list in relation to the subject property is correct. The unanimous decision of the Tribunal is that the appeal is dismissed.

Francis Farrelly Chair
Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: *11 March 2013*