

**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: NIVT 6/20**

**ROBERT FLEMING ESQ– APPELLANT**

**AND**

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT**

**Northern Ireland Valuation Tribunal**

**Chairman:**  
**FRANCIS J FARRELLY ESQ**  
**(Legal)**

**Members:**  
**BRIAN REID ESQ**  
**(FRICS Valuer)**  
**and**  
**GARRY MCKENNA ESQ**  
**(Lay)**

**Date of hearing:**  
**28<sup>th</sup> September 2021**

**DECISION**

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

**REASONS**

Introduction

1. This appeal relates to the charge for rates upon 142 Coleraine Road, Portstewart. The property has been rated as having a capital value of £145,000. A valuation certificate issued on 10 September 2020, effective from 1 April 2020, reduced the valuation from £150,000.
2. The owner of the property, Mr Robert Fleming, hereinafter referred to as the appellant, lives in Dungannon. He states the property was vacated at the end of August 2019 so that extensive refurbishment did take place. This included removing the roof and carry out work to the internal walls. With the outbreak of Covid 19 building works had to stop and only resumed at the end of June. In his notice of appeal, he states that he should be awarded a rebate of at least three months on his rates bill because it was government enforcement action which prevented the work finishing earlier.

3. As a finding of fact, we accept the appellant carried out significant works to his property and there was a halt to work because of the Covid pandemic.

#### The appeal

4. The appellant has elected for a hearing on the papers. We see no injustice occurring in proceeding in this way.
5. There is a written submission on behalf of the respondent from Ms Marian Graham B Sc Hons., MRICS. It is described as a 'presentation of evidence'. The report contains photographs of the property. Central to her submission is the proposition that the property constitutes a hereditament as at the date of the District valuer certificate. If the property is a hereditament that should remain in the valuation list and continues to be liable for the full rates as assessed.
6. 'Hereditament' is an old phrase which continues to be used in legal proceedings. It means something which is capable of being inherited and can include property. When it is a physical object as opposed to a right to do something with no physical form it is called a corporeal hereditament. The expression has made its way into the Rates (Northern Ireland) Order 1977 and article 2(2) defines a hereditament as a property liable for rates.
7. She inspected the property on 26 August 2020 by which stage the refurbishment works were nearing completion. The works included a ground floor extension and renovation of the first floor to include dormer windows in what is a bungalow and various internal works.
8. The submission refers to the hereditament test and the decision of Wilson and Coll, cited by the respondent in most cases.
9. Wilson –v- Coll [2011] EWHC 2824 is a decision of the High Court in England on appeal from the Valuation Tribunal. It concerned a property built in the 1930s which had been vacant since 2007 and was in poor repair. The issue was whether it should appear in the valuation list. The Valuation Tribunal had concluded the property remained a hereditament and could not be deleted from the valuation list because of disrepair.
10. Mr Justice Singh heard that appeal. He noted the distinction between the existence of a hereditament and the issue of its valuation. The judge concluded that whether a property remains a hereditament involves consideration of whether it is capable of being rendered fit for its intended purpose of occupation with a reasonable amount of repair works. A distinction was made between a truly derelict property incapable of repair and property capable of being occupied by repair. The judge said the issue was not whether the repairs would be economic.

#### Consideration

11. The application of Wilson –v- Coll imposes a very high threshold to have a property excluded from the list. It must be shown the property is truly derelict and incapable of repair, irrespective of the economics involved. Applying this decision, it is difficult to see how a property can be excluded unless it is a complete ruin. We

have not been referred to any decision of the higher courts which have taken a different view from that set out in Wilson –v- Coll. The NIVT in McCombe v The Commissioner Valuation is a local decision. It in turn refers to Whitehead v The Commissioner Valuation. Both have adopted this approach. It is easy to envisage a completely derelict property and compare that with a rundown property in need of repair.

12. In the present instance, the appellant has intended to improve his property by undertaking this work. It was not derelict before the repairs were undertaken. The very fact they have undertaken repairs indicates Mr McIntyre and his builder felt it was capable of being made habitable.
13. Applying this decision, we do not see any scope for rates relief on a property during the ‘in between stage’, covering the period when works were ongoing, and the property was uninhabitable until the work is concluded.
14. We are aware in the past the respondent has made an allowance for other householders. On occasion the provisions in the legislation relating to newbuild have been applied and a completion date is given. However, it would be a distortion of the meaning of a new build to say this was the appellant’s situation.
15. It is our conclusion therefore that the property constitutes a hereditament.
16. The appellant has not queried the valuation based upon his property. Under the legislation we must assume it is in an average state of internal repair. The respondent refers to various properties set out in the schedule to their submission which they say can be used as comparators. We consider these find ourselves in agreement.
17. Our conclusion is that in light of the reasoning advanced in Wilson –v- Coll the respondent’s decision is correct. We appreciate that the appellant feels aggrieved at the apparent unfairness of having to pay rates upon property whilst it is undergoing significant building works and cannot be occupied. However, we find the respondent has applied the law. We do not have a free hand but are considering whether the decision made was lawful, which we do.

**Chairman: Francis J Farrelly Esq**

**Northern Ireland Valuation Tribunal**

**Date decision recorded in register and issued to the parties: 14 February 2022**