

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

CASE REF: 9/12

**ALAN FLETCHER – APPELLANT AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND –
RESPONDENT
NORTHERN IRELAND VALUATION TRIBUNAL
DATE OF HEARING 15 OCTOBER 2012 AND 20TH JUNE 2013**

CHAIRMAN: STEPHEN WRIGHT

MEMBERS: MR DAVID McKINNEY MRICS AND MR GARY McKENNA

DECISION

The unanimous decision of the Tribunal is that the decision on appeal of the Commissioner of Valuation in Northern Ireland is not upheld and the appellant's appeal is partially allowed.

REASONS

Introduction

1. The appellant Mr Alan Fletcher attended the Hearing and represented himself. The respondent was represented by Mr Ronan McKenna and accompanied by Mr Gordon Bleakley.
2. The property subject to the appeal is 7 Milfort Avenue, Dunmurry, BT17 9BJ (“the subject property”).
3. The appellant's property was built pre-1919 and is a privately built semi-detached two-storey house. The gross external area of the property is 107.3m². The property has mains water, mains electricity, and mains sewerage. The accommodation on the ground floor comprises of two reception rooms and kitchen. On the first floor: 3 bedrooms and a bathroom.
4. The appellant by notice of appeal dated 23rd May 2012 appealed against the decision of the Commissioner of Valuation on Appeal dated 9th May 2012. This decision determined that the non-exempt domestic capital value was £100,000. The Commissioner commented that the valuation, as assessed is considered fair and reasonable in comparison to similar properties.

5. The appellant in his notice of appeal stated he believed that the actual valuation should be £20,000-£25,000. The appellant later made representations that in essence the property is derelict and should not be in the rating List or be “zero rated”
6. The following documents have been considered by us:-
 - (a) The notice of appeal against Valuation for Rating Purposes (Form 3) sent on the 23rd May 2012 and received in the Valuation and Tribunal Office on the 24th May 2012. Attached to the Notice of Appeal was a three-page letter from the appellant Mr Fletcher to the panel of the Northern Ireland Valuation Tribunal.
 - (b) A letter from Conall McDevitt MLA dated the 11th May 2012.
 - (c) Photographs of the subject property of the hallway at front door; the front room with wallpaper falling off the wall, a front room upstairs; front room with wallpaper peeling off; wallpaper hanging off wall - front room downstairs; damp surrounding electrical socket in living room; another view of the living room with damp; kitchen wallpaper full of damp; damp on the walls of the kitchen; middle room upstairs where roof is not weatherproofed; skylight area – bedroom; another room with extensive damp problems and front bedroom.
 - (d) A document entitled “Presentation of Evidence” submitted by Mr Ronan McKenna BSc MRICS.
7. Mr Fletcher gave evidence to the Tribunal on the 15th October 2012. As Mr Fletcher was giving his evidence at 1.50 pm the case had to be adjourned as Mr Fletcher was unwell and had to be conveyed to hospital where he has since made a full recovery. Arising from the evidence Mr Fletcher gave and Mr McKenna gave it was agreed that a further inspection of the property be made with a view to a report being given as to the cost to make the house habitable.
8. It has been agreed by both the appellant and the respondent that no further verbal evidence would be necessary and that the Tribunal would consider the documents furnished to them.
9. I refer to the letter from Mr Fletcher which was received by the Tribunal Office and is dated the 3rd December 2012 and the attached quotation from J H Price & Sons states that the total required to make the property habitable would be £85,000 and the said firm recommends that the appellant considers demolishing and rebuilding the property. This was received in the Valuation Office on the 3rd December 2012.
10. I refer to the response of the Valuation Commissioner dated the 9th day of April 2013 by Michael McGrady. This was delayed, as Mr Ronan McKenna had been absent from work due to sickness. I refer to the following documents from

Mr McGrath from the 9th April 2013 and costing's for the Roof Replacement at the subject property.

11. I further refer to additional representations made by the appellant and respondent set out in paragraphs 43-74 of this judgment the last of which is dated the 25th October 2013.

THE LAW

12. The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006 (the 2006 Order"). Article 54 of the 1977 Order enables a person to appeal to this Tribunal against the decision of the Commissioner on appeal regarding the capital value.

13. Schedule 12 of the 1977 Order as amended states 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 9-15, the hereditament might reasonably be 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. ...

(4) in sub-paragraph (1) "relevant to capital valuation date" means 1st January 2005 or such date as the Department may substitute by order made subject to a negative resolution for the purposes of a new capital valuation list."

(7) Article 54(3) of the 1977 Order provides that on appeal any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. Thus, any appellant must successfully challenge and displace the presumption of correctness otherwise the appeal will not be successful.

THE EVIDENCE AND SUBMISSIONS OF THE RESPONDENT

14. The respondent referred to his presentation of evidence and the attached location map, photographs of the subject property and comparable evidence of property subject to the 5 Milfort Avenue, 56 Glenburn Road, 52 Glenburn Road and 1 Milfort Avenue.
15. The subject property namely 7 Milfort Avenue, Dunmurry, BT17 9BJ has an assessed capital value of £100,000. Subject property is a privately built – two storey house. It was built pre-1919. It has a gross external area of 107.3m²,

double glazed uPVC window units, mains water, main electricity, and mains sewerage. There is accommodation on the ground floor, which comprises of two reception rooms and kitchen. On the first floor: three bedrooms and a bathroom.

16. The capital value was assessed on the 1st January 2005 was £110,000 reduced to £100,000.
17. Mr McKenna notes that the appellant's grounds for appeal are that the property at the moment is currently totally inhabitable and that it would take tens of thousands of pounds to bring to a liveable standard for selling or renting. Further in its present condition the chances of selling the subject property are slim as there are any amount of "ready to move in" properties for sale in the area with reduced prices which are not moving.
18. The subject property is located in Dunmurry. The subject property is a two storey semi-detached house built pre-1919. The main house is constructed of rubble, masonry walls with a slate roof and single storey rear extension, which has a flat roof. Accommodation comprises two living rooms and kitchen on the ground floor with three bedrooms and bathroom on the first floor. The property has been vacant for upwards on 10 years and has fallen into a state of disrepair as a result.
19. The hereditament was valued originally at £110,000 in 2005. However, following a review in august 2006 the capital value was reduced to £100,000 to account for the severe damp problems associated with the capital value assessment remained in place until Mr Fletcher made his application in November 2011 when the valuer made a decision that the subject was valued in tone with similar properties and therefore made no change to the capital value. Mr Fletcher subsequently appealed the decision to the Commissioner of Valuation and the decision was upheld that no changes were warranted in this case for the same reason.
20. Mr McKenna then commented on the external nature of the property. He states that the PVC double glazed windows appeared to be in good condition. He notes the front and back doors are both wooden and are showing signs of disrepair but continue to serve their purpose adequately. The slated roof appears to be in satisfactory condition but the brick chimneystack has been breached by water allowing the rain to penetrate through the house causing internal damp problems. The water appears to be seeping through the velux windows to the rear adding to the water penetration problem. Further the rear extension has a flat roof, which also seems to be leaking into the property. Mr McKenna states that there are external defects associated with the property all of which are contributing to the issue of external water penetration into the inside of the dwelling.
21. Mr McKenna states that the reduction of the capital valuation was reduced from £110,000 to £100,000 in October 2006, which he states was given in recognition of the damp problems associated with the property.

22. Commenting on the internal state of the subject property Mr McKenna states that the property has solid floors on the ground floor. Mr Fletcher reports that the heating and the electrics have all been compromised due to the damp problem and a fire. Mr Fletcher has been advised that these all need replaced. The kitchen extension to the rear is old, dated and need of modernisation. The WC on the first floor is in good repair and would appear to serve the purpose adequately.
23. Mr McKenna states there is evidence of a significant damp problem in the majority of rooms within the house in the ground and first floor, which appear to be caused by water penetration from outside. This has caused wallpaper to fall from the walls and a fungus to grow on some of the walls throughout the house. Mr McKenna witnessed a very strong damp smell throughout the property. Mr McKenna concludes internally this house is in need of modernisation but initially the sources of the damp problem need to be rectified.
24. Mr McKenna referred to the capital value assumptions set out in the Rates (Northern Ireland) Order 1977 Schedule 12, namely, that the hereditament is an average state of internal repair and fit out having regard to the age and character of the hereditament and its locality. Mr McKenna referring to this assumption states its requirements have regard to other capital values in the list. Mr McKenna has considered the capital value assessments of other properties as set out in Appendix 2. Appendix 2 shows that the value of the property at 5 Milfort Avenue a pre-1919 semi-detached dwelling with a gross external area of 107.7m² is £110,000; the property situated 50 Glenburn Road is a pre-1919 semi-detached dwelling with a gross external area of 94m² is £105,000 and the property situated at 52 Glenburn Road is a pre-1919 semi-detached dwelling with a gross external of 94m² is £105,000 and that 1 Milfort Avenue with a gross external area of 70m² is £90,000.
25. Having regard to the particular attributes to the subject property compared to those of comparables and on the basis of the legislation Mr McKenna concludes that he is of the opinion that a reasonable assessment of capital value of the subject at the antecedent valuation dated the 1st January 2005 is £100,000.
26. Mr McKenna in his evidence referred to the *The Rating of Empty Homes Guidelines*. Mr Kenna states that since the Rating of Empty Homes Legislation has come into effect the Land Property Service has been applying a set of guidelines in order to establish what properties should be kept on the list and those that should be removed.
27. The introduction of vacant rating has moved rates from being a tax on the occupation of property to a tax to property itself, regardless of occupation.
28. As the valuation list requires the Land & Property Service to maintain the relativity of the values one with another Mr McKenna indicated that it must be borne in mind that there are many domestic properties that are in extremely poor condition that are occupied.

29. Mr McKenna indicated that it is only equitable for the Land & Property Services to treat all properties on the same basis whether occupied or vacant. Mr McKenna refers to Page 21 regarding a property in poor order that is currently being lived in.
30. When considering whether property should remain in the valuation list the Land & Property Services firstly has to consider whether the property is capable of Beneficial Occupation. Mr McKenna states that there is no case law in Northern Ireland to help define what “beneficial” occupation is with regard to domestic property.
31. Beneficial occupation was considered for property in *Scottish and Newcastle Retail Limited-v-Williams VO (2001)*. Here the “*rebus sic stantibus*” rule was considered whereby a property must be looked at in its actual state must be ‘valued as it stands’. The case did clarify that the rule can allow for “some minor alternations”. However, this case relates purely to commercial property whose base valuation is on a net annual basis as opposed to a capital value.
32. Mr McKenna states that Land & Property Services contend that beneficial occupation property that was last used as a domestic hereditament should mean that having regard to the character of the property and allowing for a reasonable amount of repair work to be undertaken could the premises could be occupied as a dwelling? Mr McKenna stated that it would be helpful for future reference if the Tribunal could provide some guidance on the interpretation of what beneficial occupation should reflect and what it may consider to be reasonable in terms of the amount of repair work to be undertaken.
33. Mr McKenna states that it is reasonable for the Land & Property Services to assume that the individual in ownership of a residential property would carry out certain maintenance works, on his property on an annual basis, in order to keep the property in a habitable state. However, a vacant property such as the subject property may not have had continual works carried out and due to their vacant state and may have fallen into a more critical state of repair which would now require some more substantial works to be undertaken (in order to counteract the dampness element) which would not be required had the property continued to be occupied/maintained.
34. Mr McKenna in his report further states that to establish beneficial occupation Land & Property Services:
 - (1) Must look at the actual state of the entire property and note any defects/problems that are evident.
 - (2) Any defects noted must be assessed on whether they are considered normal for their age and type of property, e.g., it is considered normal for a pre-1919 house to suffer from some rising and perhaps some penetrating dampness. It is considered normal that a property of 1965 era may have some defective wiring that does not adhere to current regulations.

- (3) Many properties with sub-standard elements to the building are occupied and are liable to be rated so these aspects alone would not mean a property is capable of beneficial occupation.
 - (4) Any works that may need to be undertaken to counteract any defects will only require to be to a basic standard for the age and character of the property. So if a kitchen is in a poor order the cost of repair to that kitchen is all that can be considered not the cost of an entire brand new kitchen. The Land & Property Services will consider the cost to repair the roof to mend a specific problem not the entire cost of re-roofing. The same process will also be followed for other elements of a building such as rectifying dampness, wiring or plumbing.
 - (5) If the Land & Property Services has decided on looking at the actual condition of the property as an entirety, and concludes that it is capable of beneficial occupation and then to assess the appropriate capital value it must be assumed the property is in a state of average internal repair for the age and nature of that dwelling as stated in the legislation set out at Paragraph 7 above. If the property is considered to be capable of beneficial occupation then the “internal fit out and repair” assumption must be applied even if the property appears to not be in an average state.
35. Mr McKenna then comments on the matters raised in the appellant’s grounds for appeal. The first ground that the appellant raises is that the property at the moment is currently totally uninhabitable.
 36. Mr McKenna states this property is in a state of disrepair. The external defects noted of penetrating damp, which appears to have been caused by water penetration through the main roof and the flat roof on the extension. However, due to the age of the property it is a fair assumption to make that some degree of damp would be evident within the subject property. Many houses of this era do not have foundations and this fact will be reflected in the value of any of the properties of this era. Whilst some penetrating damp may be evident in houses of this era it is considered the amount found in the subject property over and above what might be considered normal – therefore some remedial works are required to overcome this defect in the property. As the house has been lying vacant for a long period of time with lack of proper heating and ventilation it has exacerbated the dampness in the walls.
 37. Mr McKenna states that if the necessary external repair works were undertaken (reseal/grout junction at chimney and roof, seal around the velux, reseal flat roof on extension) and the property effectively heated and ventilated that this problem could be abated enough to enable the property to be occupied. The completion of these repairs in his view would mean that the envelope of the property was weather tight and damp problem would be resolved. There was no evidence during the inspection that there is an issue with structural integrity of

the property. A substantial reduction in value (£110,000-£100,000) was given previously to reflect the poor external condition of the property and the internal problems caused by these external defects.

38. The second point of the appellant's appeal "it take tens of thousands of pounds" to bring to a liveable standard for selling or renting.
39. Mr McKenna comments that the capital value is assessed under the *Rebus Sic Stantibus* Principle, which dictates that a property must be 'valued as it stands'. Therefore the subject has been valued as it was on the date of inspection in its current condition. The rebus principle was tested in the case of *Scottish and Newcastle Retail Limited-v-Williams VO (2001)* as discussed above within this case that *rebus* principle does permit minor works to be carried out in order to make a property capable of beneficial occupation. Ground 3 of Mr Fletchers appeal is that "the chances of selling are slim as there are any amounts of ready to move in properties for sale in the area with reduced prices, which are not moving." Mr McKenna comments that the "capital value for rating purposes is being assessed at the AVD 1/1/2005 as is the case for all domestic properties across Northern Ireland to ensure relativity of fairness amongst all ratepayers. Therefore the current property market conditions are irrelevant in terms of carrying out assessments, as it is too far removed from the AVD to be considered." Mr McKenna further comments "the property has been assessed in its current state and not as if it had been modernised."
40. Commenting on ground 4 of his appeal, he states, "If I was able to secure a loan I might not get my outlay back from selling the house". Mr McKenna comments that unfortunately, this is not a factor, which can be taken into consideration when assessing the capital value – this is personal decision to be considered by the ratepayer. The Land & Property Services carries out rate assessments under the assumptions set out in Schedule 12 of the Rates (Northern Ireland) Order 1977.
41. Commenting on ground 5 of the Mr Fletcher's appeal in which he states, "I have never failed to pay my rates as seen by my payment record". Mr McKenna commented, "A person's individual financial situation is not a consideration which can be taken into account when assessing the capital value of a property for rates purposes". Capital value is assessed in line with the assumptions listed in Schedule 12 Rates (NI) Order 1977 to ensure fairness and relativity for all rate payers across Northern Ireland.
42. Mr McKenna includes that the subject property has been valued in tone with similarly pre-1919 semi-detached dwellings in the vicinity of Milfort Avenue as illustrated in the attached schedule. Having regard to the particular attributes of the subject property compared to those of the comparables and on the basis of the legislation as set out above he is of the opinion that the reasonable assessment of the capital valuation of the subject property as at the 1st January 2000 is £100,000. He states then his opinion the best comparables for the subject is the neighbouring property at 5 Milfort Avenue. This is also pre-1919 semi-detached house of a similar size, which also has 3 bedrooms. This has a

capital valuation of £110,000 (capital valuation of subject prior to being reduced for disrepair). Therefore, considering all of the above Mr McKenna concludes that the capital valuation of £100,000 reflects all the external problems associated with the subject property and as such no further reduction should be made.

THE EVIDENCE AND SUBMISSIONS OF THE APPELLANT – MR ALAN FLETCHER

43. Mr Fletcher adopted his letter and attached correspondence from Mr Conall McDevitt MLA and the attached photographs of his property as his evidence.
44. Mr Fletcher helpfully sets out his summary of the grounds for the appeal at the conclusion of his letter received in the Tribunal's Unit dated 24th May 2012. He states:-
 - (1) The property at the moment is totally uninhabitable.
 - (2) It would take tens of thousands of pounds to bring to a living standard to sell or rent legally.
 - (3) In its present condition the chance of selling are slim as there are any amount of ready to move in properties for sale in the area with reduced prices which are not moving.
 - (4) If I was able to secure a loan I might not get my outlay back when selling.
 - (5) I never have and never will not pay my rates as seen by my payment records.
45. Mr Fletcher in the body of his letter explains why he is appealing the decision of the Commissioner. Mr Fletcher states, "To say that the property was in a bad state of repair would be a gross understatement. When you first enter the property the first thing you notice is the smell of damp, which stems from the roof area and is spread right throughout the house. I took advice on this a number of years ago and was advised to lift all the floorboards and fill with a membrane and cement. I also had new doors fitted to replace the rotten ones and of course redecorate. After getting this work done the valuation people reduced the property's value from £110,000 to £100,000."
46. Mr Fletcher further states that this work was in vain and the damp soon returned proving it was ill advised. After this the property was left vacant. Mr McKenna states that it doesn't take long for a property to rapidly go downhill when it is left vacant.
47. Mr Fletcher further states that there is no heating in the property and there was a chimney fire a number of years ago and the fire authority advised him not to

light the fire as the chimney needed totally re-lined and as of the 24th May 2012 this was the position.

48. Mr Fletcher stated that the central heating packed in during one of those severe winters. Mr Fletcher states, "I was advised it needed replacing but as the property was vacant I couldn't justify this". Further there were thieves in the area stealing heating oil and as I had the tanks drained and removed the house was set on fire. So there is absolutely no way to heat the house." Mr Fletcher stated that the electricians in the house have been affected by the damp so that sometimes the electricity trips and he has to check the property with a torch.
49. Mr Fletcher states that he is not one of these people who try to get out of what they owe. He refers us to his records at the Rate Office, which confirm that he pays his rent on time. This is accepted by both the respondent and the Tribunal.
50. Mr Fletcher submitted photographs of the hallway at front door, the front door, the front room with wallpaper falling off the wall, the front room upstairs, another picture of the front room, wallpaper hanging off wall at front room upstairs, damp surrounding electrical socket in the living room, another view of the living room with damp, kitchen wall full of damp, damp on the wall of the kitchen, middle room upstairs where the roof is not weather proofed, sky light area of the bedroom, another picture of a room with extensive damp problem, and finally a picture of the front bedroom.
51. Mr Fletcher further states that the position he now finds himself in is that it would make more economic sense to give the property away and if he was as to pay £1,000 every year it would not be long until he had paid the Rates Office the true value of the house. Mr Fletcher states that his view is that he is in a "no win" situation as in the area the property there are any number of "ready to move in" properties up for sale and they are not moving due probably to, not getting finance from the banks, and he asked how could he possibly sell the property or let it out in its present slum conditions without spending £50,000 (an estate agent's estimate) to make it legal and habitable.
52. Mr Fletcher referred the panel to a letter from Mr Conall McDevitt MLA who states that when Mr Fletcher visited his office he brought one of the pictures of the house in its current state and explained his situation as to how the house came into possession. The house is extremely damp and as a result has created a foul smell. Mr Fletcher is in the unfortunate position as he is unable to invest the large amount of money, which would be required in order to make the property habitable. Mr McDevitt asked the Tribunal to look upon Mr Fletcher's case sympathetically given the current economic climate and the particulars of the situation.
53. A further letter was received from Alderman Paul Givan MLA dated the 2nd October 2012 in which he states inter alia Mr Fletcher's decision made in regards to the rates demands for vacant property at 7 Milfort Avenue, Dunmurry. In 2006 the valuation of this property was reduced because of damp and the general condition of the property. The property has deteriorated significantly

over the last number of years and there is no heating or lighting, the ceilings have fallen down and in my opinion the premises are uninhabitable. Indeed, I understand that when officials visited the premises they too agreed with Mr Fletcher that the premises were uninhabitable. I would be most grateful for your favourable consideration of Mr Fletcher's appeal.

54. Mr Fletcher further submitted a report from Estate Agent Samuel Dickey. In a letter dated the 7th June 2012 he states inter alia, "*at present the property is in need of considerable repair to bring it to a habitable condition. Whilst my inspection was for valuation purposes only it should not be construed as any form of survey, I did note considerable damp throughout the property in all its forms. The damp was only one of several defects noted at the time of inspection.*

The market value of the property would be represented by a figure in the region of £35,000 assuming no owner risk conditions to title or lease.

It would be in my opinion that a figure in the region of £50,000 should be allowed in your budget to facilitate improvements in order to re-instate the property to its full potential".

55. In essence Mr Fletcher's contention is that his property is currently totally uninhabitable and it would take tens of thousands of pounds to bring it to a liveable standard for selling or renting. In other words the property is incapable of beneficial occupation. Mr McKenna referred to a legal authority in support of his submissions, namely the *Valuation and Rating of Vacant Properties Guidance Notes* and the reported judgements of *RF Williams (Valuation Officer) and Scottish and Newcastle Retail Limited Allied Domecq Retail Limited, 15th February 2001 (a Court of Appeal Ruling)*. Further cases that were submitted where the matter of *Wilson-v-Joseph Coll (Listing Officer) [2011] EWHCAT2824*, before Mr Justice Singh. Judgement has also been referred to by the Tribunal in the matter of *Oliver Donaghy – Appellant and the Commissioner of Valuation for Northern Ireland – Respondent – 16th March 2012*.
56. Mr Fletcher as he was nearing the conclusion of his evidence became unwell and the case had to be adjourned.
57. On the 30th October 2012 the Chairman of the Tribunal Mr Wright wrote to Mr Fletcher that the Valuation Commission would not be calling any further evidence. In determining the case the Tribunal requested that when Mr Fletcher was fit and able if he could provide an estimate of the work and material required to ensure that the property could be made habitable. Mr Wright referred him to page 9 in Mr McKenna's report, which Mr McKenna referred to remedial works that are required to overcome the defects of the property. Mr Wright further stated that there may be other matters that Mr Fletcher considered had been excluded and that he may consider should be included in such an estimate. The Tribunal further indicated an estimate should to be obtained from builders for minimal repairs with a breakdown of costs for material and repair work. In considering the estimates the Tribunal can only consider an estimate in light of

the legal criteria, namely minimal repairs that would be required to make the house habitable. The Tribunal further directed that upon receipt of this estimate that the Land & Property Services respond accordingly. The Tribunal further indicated that it would be good if an estimate could be agreed between the valuer and Mr Fletcher.

58. It has been agreed between the parties that no further oral submissions were required.

FURTHER EVIDENCE OF THE RESPONDENT

59. Mr Fletcher further wrote to the Tribunal in a letter received in the Valuation Tribunal Office on the 3rd December 2012.

60. Mr Fletcher states that in the interim period he asked a builder to inspect the property and to give a quote in regards to making the house waterproof and also for the works required internally. Mr Fletcher attached a copy of the said estimate.

61. The estimate is submitted by JH Price & Sons. After this inspection Mr Price states that to make this house waterproof it would need a complete new roof and chimney, which would on its own would cost approximately £35,400.00 inclusive of VAT.

62. With reference to the inside of the property Mr Price states that there has been a lot of water damage with leaking roof causing rising damp and also dry rot in the timber, so therefore the whole inside needs to be cleared out and redone to completely make it damp proof. The price includes re-plastering, rewiring, new heating system and all new woodwork inside including new staircase. This would approximately cost £42,000.

The calculation as thus set out:	£29,500.00
	£42,000.00
	<hr/>
	£71,500.00
Plus 20% VAT	£14,300.00
	<hr/>
Total:	£85,800.00

63. Mr Price recommends that Mr Fletcher considers demolishing and rebuilding the property as he considers it would be a much better job and with very little difference in the cost.

64. On the 1st May 2013 a letter was received from the Right Honourable Jeffrey Donaldson MP to the Tribunal. He states, "I am writing in relation to the Appeal submitted by my constituent Mr Alan Fletcher". He states, "I understand this matter remains under consideration by the Northern Ireland

Valuation Tribunal and I would therefore wish to give my support to Mr Fletcher seeking to have the rateable value of this property removed”.

65. Mr Donaldson further explains The reason for his support (is that having read through the documentation provided by Mr Fletcher in respect of the property and arranged a visit by his office to 7 Milfort Avenue), “I believe the property is in such a state of dereliction that costs of restoring it to a habitable state would be prohibitive. It is clear that the property in the present condition is uninhabitable and the quote provided by Mr Fletcher suggests the cost of restoration would be such that it would exceed a reasonable value for the property and would therefore not be viable.”

FURTHER EVIDENCE OF THE RESPONDENT

66. There was a delay in the response to the Northern Ireland Valuation Tribunal caused by the fact that Mr McKenna was on sick leave and the detailed report was submitted by Mr Michael McGrady with a breakdown of detailed costing’s for a replacement roof at 7 Milfort Avenue. He further stated it has not been possible to agree this figure with Mr Fletcher. In the assessment there is a detailed breakdown involving parts and work for the roof replacement of 7 Milfort Avenue detailing approximately 30 items of work. The total figure of estimated work is £7,482.00.
67. Mr Fletcher was further written to on the 17th April 2013 by the Northern Ireland Valuation Tribunal confirming that he had received the quotation from the Land & Property Services for the replacement of the roof and noting the fact that the parties could not agree this quotation. If the Tribunal did not hear anything further from the appellant within 7 days from the date of this letter it would assume his consent to receipt in this matter.
68. No such further representations have been made by the appellant or respondent.
69. On the 25th June 2013 the Tribunal reconvened and considered the representations made by both the appellant and respondent.
71. On the 23 July 2013 on behalf of the Tribunal Mr Wright wrote to the Respondent and asked the question in light of the judgment of *FJ Wilson (appellant) and M Webb on behalf of the Listing Officer (respondent)* decision of the Valuation Tribunal for England and the case of *Wilson-v-Josephine Coll (Listing Officer)* [2011] EWHC delivered on the 13th October 2011 by Mr Justice Singh.”*Is it the case in Northern Ireland that in commercial /Non-domestic property that the fact that a property is uneconomic to repair a factor to be taken into account assessing capital value and that this is not a factor to be taken into account when assessing the capital value of domestic properties in Northern Ireland? A copy of this letter was forwarded to Mr Fletcher.*
72. The Land Property Service responded on the 24th July 2013 in which they set out their position that inter alia that “following Wilson v Coll, the view of the

Commissioner is that in deciding if a domestic hereditament exists, the test is a physical one and cannot be based on economic cost”

73. In a letter dated the 31st July 2013 Mr Geoffrey Donaldson MP made representations on behalf of the Mr Fletcher stating inter alia that his constituent remains of the view that the cost of replacing the roof on his vacant property as well as the other structural repairs that are necessary would render it uneconomically viable to reinstate the property..... and that in these circumstances that as the property is clearly unfit for human habitation, that the rateable value should be reduced to zero”.
74. I further refer to an email received from Mr Donaldson MP on the 25th October 2013 in which he further sets out inter alia Mr Fletcher’s position with regard to the uneconomic viability of the subject property.

DECISION OF THE TRIBUNAL

75. The appellant’s case to the Tribunal is that the original assessment of the valuation, as revised should not be £110,000. The appellant in his notice of appeal stated he believed that the actual valuation should be £20,000-£25,000. The appellant later made representations that in essence the property is derelict and should not be in the rating List or be “zero rated” The purpose of this Tribunal is to consider the evidence and apply the relevant law to the issues of capital valuation. The valuation to the subject property has been assessed in accordance with the Rates (Northern Ireland) Order 1977.
76. The Tribunal has taken into account an important statutory presumption contained within the 1977 Order. Article 54(3) of the 1977 Order provides, “*On the appeal and this article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to correct until contrary is shown*”. It is thus the statutory assumptions as to the correctness of the valuation list that it be rebutted. 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.
77. The appellant’s contention in essence is that the subject property is in an uninhabitable condition and not capable of beneficial occupation hence it should be taken out of the list.
78. Article 2 (2) of the 1977 Order defines a “hereditament” as meaning a property which is or maybe become 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. A property which “is or may become liable to a rate” must be a property that is capable of beneficial occupation – that is a property which a tenant would pay rent. A property which is incapable of beneficial occupation would not fall within the definition of a “hereditament” in Article 2 (2). The evidence to the Tribunal as

submitted by Mr Fletcher is the total cost to work; including VAT would be £85,800.00. In light of the cost of the repairs Henry Price in his estimate submitted by J H Price & Sons recommends that Mr Fletcher considers demolishing and rebuilding the property as there would be very little difference in the cost.

79. The respondent's evidence states that it would not be possible to agree this figure with Mr Fletcher. In the assessment there is a detailed breakdown, involving parts and work for the roof replacement of 7 Milfort Avenue, detailing 30 items of work. The total figure of the estimated work is £7,482.00. There is no direct legal authority in relation to the issues raised above.
80. The respondents state that in a case of domestic properties certain repair assumptions should be made:
 - (1) The exterior or structure of the property is deemed in its actual state of repair – subject to only to the minor alterations test as explained in the case of *RF Williams (Valuation Officer) the Scottish and Newcastle Retail Limited Allied Domecq Retail Limited* at Paragraph 36 of the said Judgement.
 - (2) That the assumption also has to be made that the property is in:
 - (a) an average state of internal repair;
 - (b) an average state of internal fit out.

Having regard to the age of the hereditament, the character of hereditament and locality.

81. In seeking to determine the matter the Tribunal have found assistance in the case of *FJ Wilson (appellant) and M Webb on behalf of the Listing Officer (respondent) decision of the Valuation Tribunal for England. In the case of Wilson-v-Josephine Coll (Listing Officer)* [2011] EWHC delivered on the 13th October 2011 by Mr Justice Singh.
82. The material facts in the case *Wilson-v-Josephine Coll* were not in dispute. The property concerned was a two bedroom semi-detached house dating from the 1930s. It has appeared on the valuation list since its commencement in 1993 and had been valued at Band B. Banding is not under challenge in this case if the property is to remain in list at all. The property had been vacant since June 2007 and in a state of disrepair with no work having been carried to it since it became vacant. So far as appears to be the case for the present purposes, it was, for a period after it became unoccupied designated as an exempt dwelling under what is known as Class A of the Exempt Dwelling Order.
83. In referring to a case of *Post Office-v-Nottingham Council* [1976] 1 WLR624 Browne LJ at Page 365 B sets out the following helpful passages.

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

Later at Page 635H-636A Brown LJ returned stated:

“I think the test is; as a matter of fact and degree, is, or, will the building, as a building, being ready for occupation or capable of occupation for the purposes for which it is intended?”

84. Mr Justice Singh stated at Paragraphs 39, 40 and 41 states:

“In answering the question correctly the respondent submitted to me what in fact should be asked as a question which is posed for Listing Officers to consider in a practice note to the council tax manual, practice note number 4. The question is as follows:

“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?”

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 on whether a property is capable of being rendered suitable for occupation (in the present context occupation of a dwelling) by undertaking a reasonable amount of repair works. The distinction which is correctly 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 of being occupied for the purpose for which it is intended.

The crucial distinction in that regard is not between repairs which would be economic to undertake or uneconomic to undertake as I have already indicated, that submission and my conclusion in accepting it, does force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present legal regime, whereas in fact in a legal regime whereas it is present in the legal regime which governs non-domestic rating”.

85. In the case of *Wilson Webb the Chairman of the Valuation for Tribunal for England* in seeking to apply the High Court ruling in which Mr Justice Singh enunciated in *Wilson-v-Josephine Coll* then summarised a detailed list of the repairs that were required to be undertaken to the subject property that was the subject of that appeal and this included inter alia:

- (a) Internally the whole property needed redecorating;
- (b) All windows required rubbing down and repainting;
- (c) The kitchen units needed replacing;
- (d) One window pane in the kitchen needed replacing;

- (e) The bath needed replacing;
 - (f) The hole in the bathroom ceiling needed repairing;
 - (g) A few tiles were missing from the roof and needed replacing;
 - (h) The hot water cylinder (which had been stolen) needed replacing;
 - (i) The copper piping within the dwelling, (which had been stolen) needed replacing;
 - (j) Part of the floor in the kitchen and joists in the kitchen needed replacing;
86. The property did not require any significant reconstruction and was largely wind and watertight.
87. The Chairman of the England Valuation Tribunal in seeking to apply the High Court Judgement of Mr Justice Singh stated at paragraph 15:

“Both parties try to introduce the panel an economic test with the appellant arguing that the cost of repairs and building an extension would meet or might even exceed the value of the dwelling and the respondent arguing the payment of £36,000 (£43,200 including VAT) for fire damage demonstrated the cost of the repair would be substantially lower than the value of the dwelling.

The panel considered neither point was of any assistance when determining the appeal. The fire damage was according to the respondents, contained within one room and would not include all the repairs required and the respondent incorporating in his estimate the cost of meeting the legislative requirements of letting the dwelling. Further at Paragraph 41 of his decision, Mr Justice Singh states, “*the crucial distinction is that regard is not between repairs which would be economic to undertake or uneconomic to undertake. As I have already indicated that submission and my conclusion in accepting it does force from the fact that the concept of the reasonable landlord considering something to be uneconomic is simply absent from the present regime, whereas it is present in the legal regime which governs non-domestic rating*”. The Tribunal concurs with this view.

I further refer to the recent Judgment of the President of the Northern Valuation Tribunal Mr Leonard, in the case of *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland*. Case, Reference Number 12/12 in which the Tribunal considered the question “whether or not the subject property ought to be included in the rating list as a hereditament”. In that case the President helpfully considered the case of *Wilson v Coll* and its applicability to Northern Ireland.

88. I now set out the relevant paragraphs at paragraphs 23 -26 of the said judgment:-
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?

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.
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?
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 would most 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.

89. The Tribunal find the decision of *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland* a persuasive authority and accordingly determine, that the same general approach ought to be adopted in Northern Ireland as in the case of *Coll v Wilson* but with the important qualification of the test of “reasonableness” as set out at paragraph 26 of the judgment of *Whitehead Properties Limited v Commissioners of Valuation for Northern Ireland*. The Tribunal concur with the observation of the President of the Tribunal when he states “*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.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. 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....”
90. A factor that may point to the property being taken out of the rating list is the estimate submitted by JH Price & Sons. After his inspection of the subject property Mr Price states that to make this house waterproof it would need a complete new roof and chimney, Mr Price further states that there has been a lot of water damage with leaking roof causing rising damp and also dry rot in the timber, so therefore the whole inside needs to be cleared out and redone to completely make it damp proof. The price includes re-plastering, rewiring, new heating system and all new woodwork inside including new staircase. JH Price and Sons state that the total cost for such work would be £85,000 including VAT.
91. A factor to be taken for inclusion in the rating list is that the respondent states that it has not been possible to agree this figure with Mr Fletcher in the

assessment but the respondent did provide a detailed breakdown, involving parts and work for the roof replacement of 7 Milfort Avenue, detailing 30 items of work. The total figure of the estimated work is £7,482.00.

DECISION

92. The Tribunal have considered all the facts and the evidence. Whilst the property is in a state of serious disrepair, on the basis of the evidence presented to it finds that the property does not have such structural defects that it should result in deletion from the valuation list. The Tribunal considers that if the repair work is completed that the property is capable of beneficial occupation.
93. Having concluded on the balance that the beneficial occupation test has been satisfied and the property should remain on the valuation list, the Tribunal considered the capital valuation assessment. It is a statutory presumption contained within the 1977 Order, Article 54(3) that any valuation shown in a valuation list in respect to a hereditament shall be deemed to be correct until the contrary is shown. In order to succeed in an appeal, the 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 this Tribunal to be so incorrect that the statutory presumption must be displaced and the Tribunal must adjust the capital value to an appropriate figure.
94. The Tribunal note that the subject property was valued originally at £110,000 in 2005. However, following a review in August 2006 the capital value was reduced to £100,000 to account for the severe damp problems associated with the subject. The capital value assessment remain in place until Mr Fletcher made his application in November 2011 when the valuer made a decision that the subject was valued in tone with similar properties and therefore made no change to the capital value.
95. The nearest comparison is 5 Milfort Avenue, the capital valuation is £110,000. Another property referred to above in this judgement at paragraph 23 above demonstrates that the said property comes within the tone of the area.
96. The Tribunal note the different estimates that have been submitted by the appellant and the respondent. They note that in relation to the respondent's estimate, whilst detailed, it correctly focuses on the external structures, namely removal of gutter, the chimney breast and the cost of putting the roofing into a proper state of repair. The appellant's estimate is not as detailed and is broad in scope, taking into account both external work but internal work. It puts the cost of a complete new roof and chimney at £35,400 and the cost of replastering, rewiring, a new heating system and all new woodwork inside including a new staircase at £42,000 plus VAT. There is a clear discrepancy between the costing's involved.

97. The Tribunal, however, are of a clear view that since the revaluation of the capital value of the property in 2006 that the property as at 2013 has clearly deteriorated further.
98. Taking the evidence that is presented to the Tribunal and noting the arguments and submissions, the Tribunal's decision is that the appellant has adduced sufficient evidence, information and argument to displace the statutory presumption of correctness in respect of the capital value assessment. The Tribunal concludes that with the unadjusted capital valuation of the commissioners the valuation is correct as given in 2005, namely, £110,000. Further the Tribunal concludes that the revised capital value of £100,000 was correct as at August 2006. The Tribunal have as concluded on the basis of a majority decision that a further allowance of £10,000 should be made in respect of deterioration of the property as set out in the detailed estimates of costs submitted. The Tribunal conclude that the correct assessment is that the subject property should have a capital value assessed at £90,000. The Commissioner's decision on appeal is thus not upheld and accordingly the appeal, to that extent is partially allowed.

Stephen Wright

S. J. WRIGHT
(Chairman of the Northern Ireland Valuation Tribunal)
10th December 2013