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 34/21

LAURA GARGAN AND MATTHEW MCCARTNEY– APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Charles O'Neill

Members: Mr Hugh McCormick and Ms Noreen Wright

Date of hearing: 13 December 2021

DECISION

The unanimous decision of the tribunal is that the Decision of the Commissioner of Valuation for Northern Ireland is upheld and the property should be included in the domestic valuation list. The appellant's appeal is not successful and the tribunal orders that the decision of the Commissioner of Valuation is upheld.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").

The law

2. 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. All relevant statutory provisions were fully considered by the tribunal in arriving at its decision in this matter.

The evidence

1. The tribunal heard no oral evidence in relation to this matter. By agreement the matter was dealt with by written submissions of the parties. The tribunal had before it the following documents:
    a. Notice of application to the Valuation Tribunal dated 30 July 2021.
    b. Copy valuation certificate dated 5 July 2021.
    c. Presentation of Evidence prepared by the Respondent dated 22 October 2021.
    d. Email from the Appellant dated 26 October 2021.
    e. Correspondence with the tribunal office.

The facts

2. The subject property is located at 14 Belair Avenue, Newtownards, County Down (the subject property). It is a 1946-1965 detached 1.5 storey house constructed circa 1955. It has a gross external area (GEA) currently of 94.8m2 and a garage of 19.2m2. It has a capital valuation of £160,000.

3. On 27 April 2021, the Appellant submitted an application to the District Valuer advising that the subject property was undergoing a programme of renovations, to include an extension. The District Valuer determined that a hereditament continued to exist and this decision was appealed to the Commissioner of Valuation who determined that the subject property should remain in the valuation list. This decision has been appealed to this tribunal.

The appellant's submissions

4. The appellant states that they applied for a rates removal due to ongoing works to the property when it was bought in December. It is stated that the roof was removed, all heating and electrics removed, walls have to be held up by acro props, all insulation removed. In short it is submitted that the property was just a shell and so completely inhabitable and not water tight. The appellants state that as the roof was completely removed, there was no heating system, electrics or windows, water was entering the property, they are of the view that this should allow an exemption from paying rates for a period of time. The appellants state

that due to COVID no one from the Respondent was able to attend the property but that photographs have been submitted to the Respondent.

The respondent's submissions

5. The respondent in its submissions states that the subject is undergoing a programme of renovation works which will ultimately include the demolition of the existing sunroom to the rear of the property, the construction of a new two storey rear extension, conversion of the garage to create living space, the installation of a dormer window and rendering and replacement of the existing roof.

6. The respondent indicated that due to the measures in place to prevent the spread of COVID-19 it was unable to physically inspect the property during the period of the building works which commenced in and around January 2021. However, the respondent states that the photographs showing the extent of the works by the Appellant have been fully considered and some of which are included in the Presentation of Evidence.

7. The respondent is of the view that notwithstanding these comments about the property condition for rating purposes regard has to be had to the hereditament test as described in *Wilson* v *Josephine Coll (Listing Officer)* [2011] EWHC 2824 (*Wilson* v *Coll*). In accordance with this test the respondent is of the view that the property is capable of repair and as such should still be maintained in the valuation list. Once it has been established that a hereditament exists then the Respondent states that the statutory assumptions must be applied including that the property must be assumed to be in an average state of internal repair and fit out. The Respondent goes on to assess the capital valuation of the subject property in the manner outlined above.

8. In relation to the capital value of the subject 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:

(a) 20 Belair Avenue, Newtownards, County Down BT23 4UD being a privately built 1946-1965 detached 1.5 storey bungalow with a GEA of 96m2 and a garage of 19.2m2 with a capital valuation of £160,000.
(b) 24 Belair Avenue, Newtownards, County Down BT23 4UD being a privately built 1946-1965 detached 1.5 storey bungalow with a GEA of 94m2 and a garage of 16m2 with a capital valuation of £160,000.
(c) 12 Belair Avenue, Newtownards, County Down, BT23 4UD, being a privately built 1946-1965 detached 1.5 storey house with a GEA of 107m2 and a garage of 19.2m2 with a capital valuation of £175,000.

The Tribunal's Decision

9. 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

10. 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".

11. Reference will be made later in this decision to the relevant case law to which the tribunal was referred by the parties.

12. In relation to the listing issue the tribunal's attention was drawn by the respondent to the decision in *Wilson* v *Coll* and in particular the decision of Singh J. In the light of this the respondent stated that the question the tribunal had to decide was

"having regard to the character of the property and a reasonable amount of repair works could the premises be occupied as a dwelling?"

13. In relation to this matter the tribunal has considered recent judgments of the Northern Ireland Valuation Tribunal in *Whitehead* v *Commissioner of Valuation* (12/12) and in *McGivern* v *Commissioner of Valuation* (19/16).

14. 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?
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 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 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 embers 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."

15. In another decision of the Northern Ireland Valuation Tribunal, that of *Lindsay* v *Commissioner of Valuation* (07/16) it was held:

"In the briefest of summaries only therefore, the principles emerging from these latter cases include, firstly, that in Northern Ireland each case should be determined upon its own particular facts and circumstances. Secondly, that the essential concept of a "reasonable amount of repair" required in order to place any property into a proper state of habitation must be determined by the application of sound common sense and in an entirely practical and realistic manner, as opposed to by the application of any overly-rigid principle or any slavish application of the narrowest of interpretations of the dicta of Mr Justice Singh in Wilson v Coll. Indeed it must be said that a rather colourful (and of necessity extreme – to make the point) illustration of this latter was provided by the Valuation Member in the course of this hearing when the Member cited the hypothetical example of "Dunluce Castle". It is a fact that Dunluce Castle is "capable" (in terms of the proposition that this could

physically be done) of being repaired, perhaps it might be postulated, to provide luxury hotel accommodation on the Causeway Coast. The mere fact that it is "capable", in these terms, of being repaired cannot be disassociated from the extremely high economic cost and the technical issues of doing so. Not upon any reasonable assessment could it be properly said that a "reasonable amount of repair" would be required and thus that (if it were classified as a domestic property) Dunluce Castle ought to be included in the Valuation List. This extreme example hopefully serves to make the point. Thirdly then, the Valuation Tribunal in making this determination is not entitled to take into account the individual circumstances of any appellant, including the personal financial circumstances of that party."

16. Thus, the question for the tribunal to consider is whether the property is such that – having regard to the character of the property and a reasonable amount of repair works being undertaken, could the subject property be occupied as a dwelling? In this regards the tribunal has to take a broad view of all the facts relevant to this case in applying the decision-making factors included in the *Whitehead* case.

17. Each of these cases turned on their own specific factual circumstances. As the President of the Valuation Tribunal stated in *McGivern* v *Commissioner of Valuation*

"Having accepted, in previous decisions of the Valuation Tribunal, that there is no "economic test" comprised in the relevant statutory provisions in Northern Ireland, the view has also been that the only proper approach is to examine the fact-specific circumstances in individual cases, thereby taking proper account of any relevant factors. A realistic and a common-sense approach needs to be taken. It is for these reasons that the tribunal has been reluctant to formulate any rigid principle that might otherwise prevent such a proper, common-sense, view being taken of all the relevant facts and information. Any undue restriction or any overly rigid approach might otherwise lead to the absurdity alluded to above.

18. The question for the tribunal to consider is whether the subject property is such that – 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? In this regard the tribunal has to take a broad view of all the facts relevant to the case applying the decision-making factors in the Whitehead case.

19. The appellant has pointed out significant issues with the property. They state that the roof was removed, all heating and electrics were removed, walls had to be held up by acro props and the property was just a shell and was not habitable and was not water tight.

20. As against this, the respondent states, in the light of case law such as Wilson v Coll (referred to above) that a hereditament exists. The respondent also referred to the case of Baiyelo v Corkish (Listing Officer) in which the removal of a gable wall did not cause the appeal property to cease to be a dwelling, even during the period when work was ongoing.

21. In this case, weighing up the evidence forwarded by the appellant and the respondent to the tribunal, on the evidence placed before it in this case, the tribunal is satisfied that having regard to the character of the subject property and a

reasonable amount of repair works being undertaken this property could be occupied as a dwelling. It will be appreciated that this relates to this case only and the tribunal recognises that each case will be considered on its own merits.

22. Therefore, the conclusion of the tribunal, unanimously, is that a hereditament exists. The appellant's appeal on that point fails accordingly.

23. If the tribunal is satisfied that a hereditament exists, one of the statutory assumptions in Northern Ireland rating law is that the property is taken to be in an average state of internal repair and fit out, having regard to the age and character of the hereditament and its locality.

The capital value issue

24. Having established that a hereditament exists the next question is to establish the capital valuation of the subject property.

25. In relation to the comparables forwarded by the respondent the tribunal finds that 20 Belair Avenue, Newtownards is the most helpful. It is the almost the same size as the subject property and is close to the subject property. It has a capital value which is the same as the subject property.

26. The capital valuation of the property is also supported by the valuation of 24 Belair Avenue which is almost the same size as the subject property and has a capital valuation of £160,000.

27. Thus the comparables put forward by the respondent support the capital valuation of the property at £160,000.

28. Therefore, the tribunal unanimously finds that the capital valuation of the subject property is upheld and that the appellant's appeal is dismissed and the tribunal orders accordingly.

Chairman: Mr Charles O'Neill.

Northern Ireland Valuation Tribunal.

Date decision recorded in register and issued to the parties: 06 April 2022