

**NORTHERN IRELAND VALUATION TRIBUNAL**

**The Rates (Northern Ireland) Order 1977 (as amended) and the Valuation  
Tribunal Rules (Northern Ireland) Rules 2007 (as amended)**

**Case Reference Number – 42/14**

**Gary Johnston -- APPELLANT**

**and**

**Commissioner of Valuation for Northern Ireland – RESPONDENT**

**NORTHERN IRELAND VALUATION TRIBUNAL**

**Date of Hearing - 21 August 2015**

**CHAIR – Garrett E. O' Reilly**

**Members – Christopher Kenton (Valuer) and David Rose (Lay)**

**DECISION AND REASONS**

**Introduction**

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended (the 1977 Order) whereby the Appellant appealed against the decision of the Commissioner for Valuation as to the Capital Value of £70,000.00 (the Valuation) in respect of the property situate and known as 204, Sligo Road, Drumgallan, Enniskillen BT74 5NG (the Appeal Property).
2. The Tribunal was satisfied that notice of appeal had been duly served.
3. In the Notice of Appeal the Appellant indicated that he was content for the appeal to be disposed of by written representations and the members were satisfied to proceed in his absence.
4. The written representations of the Appellant and the Respondent considered by the members are detailed in the Schedule hereto.

## **The Appeal**

The Appellant appealed the Valuation on the two grounds specified in the Notice of Appeal which, in summary, are firstly that the Valuation of £70,000.0 specified in the Certificate at 2 in the Schedule hereto is not correct in that there are no comparable properties to justify the Valuation and secondly that the Appeal Property is uninhabitable and derelict and should not have been included in the Valuation List.

## **The Hearing**

It was apparent to the members if the Appellant's second ground of appeal was successful that the Appellant's first ground of appeal must automatically also succeed and so it would be not be necessary to hear the first ground of appeal. Accordingly it was agreed that it was appropriate to hear and decide the second ground of appeal prior to the first ground of appeal.

## **Appellant's Evidence that the Appeal Property should not be included in the Valuation List**

The Appellant's evidence to support this submission and satisfy the Tribunal in this regard was contained in

1. the Notice of Appeal - The Appellant stated in the Notice of Appeal that "the property has not been occupied since 2002. It was condemned by NIHE in 2005 as being uninhabitable and unrepairable such that a replacement dwelling was approved. I feel that the property should be removed from the Valuation List as I consider it to be 'a truly derelict property which is incapable of being repaired to make it suitable for its intended purpose' (Wilson v Col 2001)".

The members interpreted the reference to Wilson v Col (2001) as a reference to a judgment of Mr. Justice Singh in the English High Court in the case of Wilson v Josephine Coll (Listing Officer) 2011 EWHC 2824 9 (the Wilson case) being the leading case most frequently referred to in relation to the existence of a hereditament having regard to the state of disrepair of a property.

2. the Notice of Refusal of Application for Certificate of Fitness of Fermanagh & Omagh District Council referred to at 4. in the Schedule hereto (the Refusal Notice) - The Appellant submitted the Refusal Notice as evidence that the Appeal Property could not be made fit for habitation again with some repair works.

3. the nidirect government services web site notice referred to at 6 in the Schedule hereto (the Nidirect Notice) - The Appellant submitted the Nidirect Notice being a print out from two parts of a government website relating to "dangerous or derelict properties" and "suitable housing – is your home fit to live in".

## **Respondent's Evidence that the Appeal Property was properly included in the Valuation List**

The Respondent's evidence in support of this submission was contained in the Statement of Case referred to at 3 in the Schedule hereto (the Statement of Case).

### **Review of the Evidence**

1. (i) As both the Appellant and the Respondent contended that the Wilson case supported their submissions to the Tribunal and although the Wilson case was not binding on the Tribunal and only of persuasive authority the members considered the Wilson case.

Having done so it was the members' conclusion that the Wilson case showed that a property could become so derelict that it could cease to be a hereditament and therefore taken off a Valuation List. However to decide if such a cessation had taken place it was necessary to consider the state of disrepair of an individual property and the capability of putting that property back into repair for occupation as a dwelling house.

(ii) the members also concluded from the Wilson case that the capability of putting a property back into repair was the issue and further that the cost of that repair could only be of any significance as an overall part of evidence to show that property was not capable of being repaired.

2. As a result the members proceeded to review all the evidence presented to the Tribunal to assess the actual state of repair of the Appeal Property having regard to the guidelines set out in the Wilson case.

3. They considered the Statement of Case and noted

(i) There were external and internal photographs of the Appeal Property showing the physical state of the Appeal Property and detailed therein were some of its basic features (including that it benefited from mains water and electric and a septic tank).

(ii) It was submitted that the external state of the Appeal Property was structurally sound with a slate roof in fair repair, two chimneys in reasonable condition with lead flashings in place and rainwater good fit for purpose and hardwood windows in fair repair.

(iii) It was acknowledged that the Appeal Property was vacant and in poor repair with evidence of damp.

(iv) It was submitted that the Appeal Property was repairable in accordance with the principles outlined in the Wilson case and so the Appeal Property continued to be a hereditament and therefore subject to valuation and to its inclusion in the Valuation List. Further having regard to the Wilson case, the cost of such repair was not an issue to be considered.

4. The members considered the Refusal Notice in detail and noted the response in the McGrady letter mentioned at 5 of the Schedule hereto to say that the Refusal Notice is advisory only and relates to rentals and lists items of repair which show that the house is repairable.

5. The members also considered the Nidirect Notice in detail and noted that

(i) the first part thereof made suggestions as to how to identify “Dangerous and Derelict Properties” for the purpose of reporting them to the Building Control section of a Local Council as being dangerous to the public. In relation to derelict properties it was noted that among the features therein mentioned were “the property is boarded up with metal screens; there is rubbish dumped at the front or back of the property; there is evidence of squatting or illegal activities; the property looks derelict with broken windows and doors or holes in the roof”.

(ii) the second part thereof dealt with the importance of a home being in a good state of repair and gives general advices about action to be taken to make a home fit to live in.

They also noted the Grimley email response to the Nidirect Notice mentioned at 7 of the Schedule hereto which comments that the Nidirect Notice does not relate to the 1977 Order (valuation) and relevant case law.

5. The members further noted that the Appellant had not given any evidence of the planning permission for the replacement dwelling in lieu of the Appeal Property specified in the Notice of Appeal.

### **The Law**

1. The members noted that there was statutory provision in the Rates (Unoccupied Hereditaments) Regulations (Northern Ireland) 2011, which can result in a property being excluded from a Valuation List, but the members were satisfied that the Appeal Property was not a property which should be excluded thereunder.

2. Article 2(2) of the 1977 Order provides that a hereditament shown in a Valuation List is a property which is shown as a separate item in a valuation list.

3. The Appeal Property is shown in the Valuation List.

4. The members took the view that the decision on this appeal would be decided on the facts and the evidence pertinent to the physical state of disrepair of the Appeal Property as to whether the Appeal Property should be excluded from the Valuation List

## **Decision**

1. The members had regard to the Respondent's factual and photographic evidence of the Appeal Property tending to show that the Appeal Property was capable of being repaired for occupation as a dwelling house and it was not derelict as envisaged by the Wilson case.
2. The members acknowledged that the Refusal Notice related specifically to the actual physical state of the Appeal Property but they also noted and accepted the submission in the McGrady letter that the Refusal Notice related to rental criteria, did not prevent owner occupation and demonstrated that the property was repairable for occupation as a dwelling house. The members agreed with the submission in the McGrady letter and the Refusal Notice was not considered by the members to be of any help in establishing the Appellant's case.
3. The members noted that the Nldirect Notice could not be considered to be specific to the Appeal Property in that they were general comments and they were not relevant to rating and so were not helpful.
4. The fact that evidence of planning permission for a replacement dwelling had not been furnished was not considered to be of any significance by the members. If such evidence had been provided the members found it difficult to understand how such permission could have advanced the appeal. In any event no part of the evidence of the Respondent indicated that the disrepair state of the Appeal Property was such that there was a need to reconstruct it.
5. The members decided that the Appellant's evidence fell far short of what could reasonably have been required to show that the Appeal Property was not repairable and so the Appellant had not discharged the burden of proof to show that the Appeal Property should no longer properly be classified as a hereditament and should not be included in the Valuation List.
6. Accordingly the appeal on this ground was dismissed and the issue as to the correctness of the Valuation was then considered.

## **Applicant's Valuation Evidence**

The members noted the Appellant had not provided any evidence to support his contention in the Notice of Appeal that "there are no comparable properties in the locality in terms of age, construct, current condition that warrant the same criteria being applied in determining valuation".

## **Respondent's Valuation Evidence**

In the Statement of Case the Respondent accepted there were few good direct comparables available but did produce evidence of one comparable which was

considered a direct comparable and four other comparables, the capital values of which have been adjusted downwards to favour a lower valuation of the Appeal Property.

### **Review of Valuation Evidence**

1. The Appellant did not make any attempt to adduce any evidence to prove that the Valuation was incorrect or show an alternative valuation of the Appeal Property.
2. The members were conscious that comparable properties can be more difficult to find in rural areas but the Respondent had adduced evidence by way of details and photographs of other properties to support the Valuation.

### **The Law**

Article 54 (3) of the 1977 Order provides:

"On an appeal under this Article, any valuation shown in a valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown".

By virtue of this statutory presumption the burden of proof is on the Appellant to prove that the Capital Value of the Appeal Property is incorrect.

### **Decision**

1. The members decided the Appellant had failed to rebut the statutory presumption that the Capital Value was incorrect. By virtue of the Appellant's failure to attempt to rebut the statutory presumption the members accepted that it might not have been necessary to consider the Respondent's evidence. However the members did so for the sake of completeness and on that evidence they were not dissatisfied with the Capital Value.
2. This appeal is dismissed in its entirety and the Tribunal confirms that the Capital Value of £70,000.00 shown in the Valuation List in respect of the Appeal Property is correct.

### **Schedule**

1. Notice of Appeal dated 24 November 2014.
2. Letter of Land & Property Services dated 2 December 2014 with Valuation Certificate attached.
3. Statement of Case of Evidence for Commissioner of Valuation of Karen Grimley BSc (Hons) MRICS dated 6 March 2015.
4. Letter of the Appellant dated 28 May 2015 with Notice of Refusal of Application for a Certificate of Fitness in respect of the Appeal Property (comprising 4 pages) dated 20 May 2015.

5. Letter of Michael McGrady dated 3 June 2015.
6. With Compliments Slip dated 27 July 2015 signed by the Appellant with documentation from NIdirect government services website (comprising six pages).
7. Email dated 03 August 2015 attaching email of same date from Karen Grimley.

**Dated the 21 August 2015**

**Garrett E. O' Reilly, Chair  
Northern Ireland Valuation Tribunal**