

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 7/19

Alan Gilmore – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Francis J. Farrelly

Members: Timothy Hopkins and Robert McCann

Date of hearing: 18th October 2022

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 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 Tribunal's Decision

3. The appellant is the owner of 36 Circular Road, Castle Rock, Coleraine, the subject property of the appeal. He lives at number 39 Barmouth Road, Castle Rock. The respondent has placed a valuation of £280,000 for rating purposes on the subject property. The appellant does not dispute the valuation.
4. The valuation certificate was issued on 12 February 2019. An appeal made on 28 March 2019 to the Commissioner arguing that there should be no rates liability was rejected. The appellant then appealed to the Valuation Tribunal.

5. In a letter dated 19 June 2019 he advised he bought the property in November 2018 with a view to refurbishing it to suit his medical needs. Work began. His original request was that the charge for rates be stayed on the subject property until the work was complete. Meantime, the intention was to sell the house he was currently living in which is also subject to rates.
6. As building work progressed, he was advised about the alternative of demolishing the building and rebuilding. This is now his preferred option, and he is seeking planning permission.
7. The respondent took the view the property was liable for rates. The appellant lodged an appeal on 21 June 2019. The respondent had no objection to its late lodgement.
8. The subject property is a detached two-storey house with a gross external area of 200 m² and an integrated garage of 18 m² and an outbuilding of 9 m². It is located approximately 6 miles from Coleraine close to the centre of Castlerock village. It was built sometime in the 50s.
9. The property was inspected on 5 April 2019 by a Ms Nuala Burke, a property valuer acting for the respondent. When Ms Burke visited the property was undergoing renovation which included an extension and reconfiguration of the internal layout to allow disabled access and a lift. Sections of the rear external wall had been removed and some of the ground floor. Excavation to create the foundations for the extension had commenced.
10. Ms Burke considered whether the property could be considered a hereditament given its condition. She referred to the English High Court decision of Wilson-v- Josephine Coll [2011] EWHC 2824 which is commonly cited by the respondent in this situation. This is a decision of the High Court in England on appeal from the valuation Tribunal. Factually, 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.
11. '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.
12. Mr Justice Singh 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 went on to say the issue was not whether the repairs would be economic.

13. The application of this decision 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 has taken a different view from that set out in Wilson –v- Coll.
14. Ms Burke applying the guidance in this case concluded the appellant's property could not be considered truly derelict. She referred to the decision of Baiyelo heard on the 18 August 2017. This is a decision of the Valuation Tribunal for England and is not binding upon us. Nevertheless, it is desirable to have consistency amongst decisions. The owner of a property sought to have it removed from the valuation list from October 2002 to December 2007 because of its poor state of repair. The tribunal accepted the property was in poor condition. There was evidence of one point the gable wall was missing. Remedial works were later carried out. At paragraph 25 the tribunal made the point that the fact repair work had been carried out was strongly supportive that it had not fallen into such a poor state as to cease to be a dwelling.
15. This case law was considered locally in the decision of Whitehead-v Commissioner of Valuation by the President of the Valuation Tribunal. He stated it was easy to envisage a truly derelict property at one of the spectra and at the other, many properties which are unoccupied but could be rendered readily habitable with very minor works of reinstatement or repair. He noted the absence of an economic test and went on to consider what constituted a reasonable amount of repair work and concluded this turned on the facts.
16. In a letter to the Tribunal the appellant states that since Mrs Burke visited additional works had been carried out. The extent of the repairs necessary became more apparent. An underground hot air system was discovered which affected the work. Meantime, the appellant said that his application to rebuild rather than repair had been delayed due to the Covid restrictions.
17. Mr Gilmore attended the appeal in person. He describes how having bought the property he decided to install a lift because of his needs. As work progressed various difficulties were encountered. He referred to the discovery of an old underground heating system when the floors were opened. There were issues over the foundation for the installation of a lift. He then told us that the decision was taken to demolish the building and rebuild a fresh. To this end a planning application was made.
18. We are influenced very much by what was said in Wilson –v- Coll. The decision makes it exceedingly difficult to have a property removed from the valuation list because of its condition. The question to be asked is whether the property is truly derelict. The threshold is particularly high because of the absence of an economic repair test. Possibly because of this decision the respondent has ceased the practice of suspending rates when repair works are undertaken.
19. It was our conclusion that the property when it was bought was, if not habitable, then was capable of being rendered habitable. There is no doubt that the building required renovation. The appellant had particular needs and decided upon additional works, such as an extension and the installation of a lift and access to accommodate his

disabilities. In the course of the work the full extent of the issue arising became apparent.

20. We accept that the appellant has been advised that rather than continuing he should consider demolishing and rebuilding. We accept to this end he has applied for planning permission. However, this is not the same issue as whether or not the property is a hereditament. In our view it is. Consequently, it remains liable for rates notwithstanding the fact building works are ongoing or have been abandoned
21. The property is capable of being restored but the demolition option appears now to be preferable. We have sympathy with the positioning the appellant finds himself in, particularly as he has been faced with obstacles that were not anticipated when he bought the property. Nevertheless, applying the case law to the legislation it is our conclusion the property is liable for rates. Mr Gilmore has not challenged the valuation.

Chairman: Francis J. Farrelly

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 01 February 2023